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Office of the Attorney General of the State of Delaware

Attorney General Opinion No. 26-IB27

May 28, 2026

Via Email

Jeffrey Stevens
jeffreystevens2011@gmail.com

RE: FOIA Petition Regarding the City of Newark

Dear Mr. Stevens:

We write in response to your correspondence alleging that the City of Newark violated Delaware's Freedom of Information Act, 29 *Del. C.* §§ 10001-10008 ("FOIA"). We treat this correspondence as a Petition for a determination pursuant to 29 *Del. C.* § 10005 of whether a violation of FOIA has occurred or is about to occur. As discussed more fully herein, we determine that the City did not violate FOIA as alleged in the Petition.

Background

On January 20, 2026, you submitted a FOIA request, seeking all City records relating to you. Specifically, your request sought the following:

1. All police reports, incident reports, narratives, supplements, case files, CAD logs, call-for-service records, and dispatch records in which [you are] named, referenced, or involved.
2. All body-worn camera footage, dash camera footage, audio recordings, and radio transmissions created or retained by any Newark Police Department officer relating to incidents involving [you].
3. All internal communications, including emails, memoranda, text messages, instant messages, notes, or correspondence, whether internal or external, that reference [your] name, including communications between officers, supervisors, command staff, the City Attorney, or any other City employee.

4. All records reflecting charging decisions, arrest decisions, case review, supervisory review, or case closure, including communications with prosecutors or legal counsel.
5. All body-worn camera audit logs, access logs, metadata, and retention records showing when any related footage was viewed, copied, shared, or deleted.
6. All policies, procedures, or directives in effect at the time of the incidents concerning:
 - Body-worn camera use
 - Arrest procedures
 - Domestic incident response
 - Evidence retention and disclosure.¹

The City responded by providing an initial cost estimate dated February 9, 2026 with minimum and maximum cost estimates; you were required to pay half of the estimated minimum cost before the City began processing the request. You paid this amount, and you then were sent a second invoice with the final costs assessed, which you also paid. You received the City's records production and response on March 20, 2026. This response stated that records pertaining to items 3 and 6 in your request were attached. The response also noted that some emails had been withheld or redacted under 29 *Del. C.* 10002(o)(3) for investigatory files compiled for civil or criminal law enforcement purposes and 29 *Del. C.* 10002(o)(16), which pertains to emails received or sent by members of the General Assembly or their staff. In addition, the City stated that it declines "to produce the remainder of the records found in this request," because they are also exempt under Section 10002(o)(3) for investigatory files.² You communicated with the City about your objections to the response but did not resolve them. This Petition followed.

The Petition makes four claims regarding the City's response. You allege that the blanket application of the investigatory files exemption is improper; the City failed to distinguish between investigatory and non-investigatory records, such as the CAD logs, dispatch logs, and call records. You also contend that the City did not provide a clear and adequate denial prior to requiring payment, and you were required to make multiple payments before being informed that substantial portions of the requested records were withheld. Without timely notice of this exclusion, you state that you could not make an informed decision about whether to narrow or proceed with the request. You argue that the City's production, consisting of 295 pages, was largely duplicative email chains rather than unique records, which means the production is artificially inflated and does not justify the assessed fees. You allege that the fees were assessed prior to a proper review of records and lacked adequate quality control. Finally, you contend that while FOIA does not require a formal index, the City must still provide adequate factual support for withholding records and the City's conclusory response did not allow for meaningful review.

On May 7, 2026, the City, through its legal counsel, responded to this Petition ("Response"). The City included affidavits from three employees: the Public Safety Answering

¹ Petition, Ex. A.

² Response, p. 10.

Point and Newark Police Records Manager, the Office of Professional Responsibility/Internal Affairs Lieutenant with the police department, and the IT Infrastructure Manager. The Police Records Manager attests the Response is true and correct to the best of his knowledge, and the other two employees attest that the information they provided within this Response is accurate to the best of their knowledge and belief. Regarding your first claim involving the investigatory files exemption, the City argues that it is not required to release any investigative materials, because those records become investigative once the police department is first made aware of police-related issues and this exemption still applies after the investigation is closed. The City's statements, verified under oath by the City's Police Records Manager, state that the CAD logs, dispatch logs, and call records are considered investigatory records, as they are the records that initiate investigations.

The City responded to your second claim, noting that its responses were timely. The City points out that you asked to proceed with the request and were not deprived of the ability to narrow the request; rather, the cost estimate "did not include charges for accessing any of the investigative material that was requested and ultimately denied" and was "only for pulling non-investigative files and administrative review of the internal communications and policies."³

The City also denies your third claim regarding the document production. The City indicates the IT Infrastructure Manager stated he was the lowest paid staff member with permission to pull all communications, and the Manager provided a time estimate of five to seven hours as it was unknown how many emails and communications existed. The City states that the police department provided a time estimate of one to eight hours because it was unknown that extent of communications and how long the review would take, and the Office of Professional Responsibility/Internal Affairs Lieutenant is the lowest paid employee who could perform the review due to possible internal affairs investigations. After completing their reviews, the City provided its final times, which made up the final invoice. In assessing fees, the Response indicates that legal review and City Secretary Office's redaction time were not included, but the City's review of email threads to ensure all communications were provided and conversion of emails to PDF form both were included.

For your fourth claim, the City denies it provided insufficient justifications for its withholdings in the response to your request. The City states "[a]ll investigative reports, videos, audio recordings and logs were withheld" under Section 10002(o)(3).⁴ In addition, the City's response indicated the reasons for redacting the records provided. An index was not provided, as it is not required under FOIA. Thus, the City asserts no violation of FOIA occurred.

Discussion

Delaware's FOIA law "was enacted to ensure governmental accountability by providing Delaware's citizens access to open meetings and meeting records of governmental or public

³ *Id.*, p. 4.

⁴ *Id.*, p. 6.

bodies, as well as access to the public records of those entities.”⁵ FOIA requires that citizens be provided reasonable access to and reasonable facilities for the copying of public records.⁶ The public body has the burden of proof to justify its denial of access to records.⁷ In certain circumstances, a sworn affidavit may be required to meet that burden.⁸

In this case, you first claim that the City’s blanket application of the investigatory files exemption is improper. Section 10002(o)(3) exempts “[i]nvestigatory files compiled for civil or criminal law-enforcement purposes including pending investigative files, pretrial and presentence investigations and child custody and adoption files where there is no criminal complaint at issue.” “[T]he investigatory exemption attaches as soon as an agency is first made aware of a potential issue.”⁹ This exemption is not limited to pending investigations and continues to apply after an investigation is closed.¹⁰ Here, this request seeks, in part, records related to law enforcement incidents in which you are named, and the CAD logs, dispatch logs, and call records, on their face, pertain to an investigation for civil or criminal law enforcement purposes.¹¹ Thus, these records are considered part of the law enforcement investigatory file and are exempt from disclosure in their entirety pursuant to 29 *Del. C.* § 10002(o)(3).

The second claim is that the City’s failure to advise you in the cost estimate that most items would not be part of the search was improper under FOIA. FOIA permits a public body to charge citizens certain fees for processing FOIA requests. “Prior to fulfilling any request that would

⁵ *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996, 1004 (Del. 2021).

⁶ 29 *Del. C.* § 10003(a).

⁷ 29 *Del. C.* § 10005(c).

⁸ *Judicial Watch, Inc.*, 267 A.3d at 1008-1012.

⁹ *Del. Op. Att’y Gen.* 17-IB05, 2017 WL 1317847, at *3 (Mar. 10, 2017).

¹⁰ *News-Journal Co. v. Billingsley*, 1980 WL 3043, at *2-3 (Del. Ch. Nov. 20, 1980) (determining that the investigatory files exemption attaches as soon as a public body is made aware of a potential issue and the exemption survives after the investigation is completed); *see also Del. Op. Att’y Gen.* 17-IB47, 2017 WL 4652343, at *1 (Sept. 22, 2017); *Del. Op. Att’y Gen.* 05-IB16, 2005 WL 2334345, at *2 (Jun. 22, 2005); *Del. Op. Att’y Gen.* 98-IB13, 1998 WL 910199, at *1 (Dec. 8, 1998).

¹¹ *Del. Op. Att’y Gen.* 25-IB14, 2025 WL 818783, at *2 (Feb. 28, 2025) (“The DSP’s denial of these photographs and video footage under the investigatory files exemption is proper, as these records involve a law enforcement encounter precipitating a police investigation.”); *Del. Op. Att’y Gen.* 24-IB11, 2024 WL 1132324, at *2 (Feb. 23, 2024) (“This request seeks information regarding the date and type of calls for service to the DSP from a particular residence, which on its face, would initiate police investigation. Thus, the requested records are exempt from disclosure pursuant to 29 *Del. C.* § 10002(o)(3).”).

require a requesting party to incur administrative fees, the public body shall provide an itemized written cost estimate of such fees to the requesting party, listing all charges expected to be incurred in retrieving such records.”¹² In this case, the estimate indicates that it will take significant time to fulfill your request. However, the City’s response and description of its search indicate only certain items in the request were subject to fees for processing; the City acknowledges the charges were not assessed for accessing any of the investigative materials that were requested and ultimately denied. The estimate only pertained to non-investigative files. The City therefore failed to timely answer items 1, 2, 4 and 5, which were not part of the categories of records that the City intended to search for and review. The City should have asserted the investigatory files exemption in its initial February response with respect to items 1, 2, 4, and 5, which were not subject to the cost estimate. As the City has now provided a response to all the items, we find this issue is moot but caution the City to ensure cost estimates clearly indicate the items subject to fees for processing, and any other items are timely addressed.¹³

The third claim is that the document production contained duplicative emails which inflated the size of the production and the associated costs. In its Response, the City notes that the request sought all internal communications, including emails, instant messages, notes or correspondence, whether internal or external that reference your name. The City asserts that the program it uses retrieves “multiple emails from the same email chain,” which requires “extensive administrative review of these email chains.”¹⁴ The City describes its search process and review, which makes clear that the City retrieved multiple email chains and charged for converting and reviewing those communications to ensure the completeness of the production, which are the types of charges allowable under FOIA.¹⁵ The City also states it did not charge for legal review. In these circumstances, having duplicate email chains in the production does not lead to the conclusion the costs were inappropriate. The City’s statements were affirmed under oath by the relevant staff, and on this basis, we find no violation of FOIA in this regard.

The fourth claim – that the City’s response contained insufficient facts justifying the denial of the records – is also without merit. FOIA requires that public bodies give the reason for denying records, or parts thereof; a detailed factual description is not required in the response.¹⁶ In this case, the response provided a production of records for items 3 and 6 and set forth the reasons for

¹² 29 Del. C. § 10003(m)(2).

¹³ See, e.g., *Flowers v. Office of the Governor*, 167 A.3d 530, 546 (Del. Super. 2017); *Chem. Indus. Council of Del., Inc. v. State Coastal Zone Indus. Control Bd.*, 1994 WL 274295, at *13 (Del. Ch. May 19, 1994); *Del. Op. Att’y Gen.* 18-IB30, 2018 WL 3118433, at *2 (Jun. 7, 2018); *Del. Op. Att’y Gen.* 17-IB35, 2017 WL 3426275, n. 3 (July 31, 2017) (citing *The Library, Inc. v. AFG Enter., Inc.*, 1998 WL 474159, at *2 (Del. Ch. July 27, 1998)).

¹⁴ Response, p. 4.

¹⁵ 29 Del. C. § 10003(m).

¹⁶ 29 Del. C. § 10003(h)(2).

the City's denial of the remaining items. As such, we find no violation for the lack of a detailed factual background in the City's response.

Conclusion

For the reasons set forth above, we conclude that the City did not violate FOIA as alleged in the Petition.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: Paul E. Bilodeau, City Solicitor