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## OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

### Attorney General Opinion No. 26-IB17

April 17, 2026

#### VIA EMAIL

Andrew Cullen  
[andrewcullen24@gmail.com](mailto:andrewcullen24@gmail.com)

#### **RE: FOIA Petition Regarding the Delaware Department of Natural Resources and Environmental Control**

Dear Mr. Cullen:

We write in response to your correspondence alleging that the Delaware Department of Natural Resources and Environmental Control (“DNREC”) violated Delaware’s Freedom of Information Act, 29 *Del. C.* §§ 10001-10008 (“FOIA”). We treat your 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. For the reasons set forth below, we determine that DNREC did not violate FOIA by failing to provide responsive documents within 15 business days as DNREC informed you that it required additional time to retrieve documents and for review; nor did DNREC violate FOIA by requiring payment for one-half of an hour beyond the first hour to retrieve the response documents. However, we find that DNREC violated FOIA by failing to provide a good faith estimate for additional time to fully respond to your FOIA request beyond the February 16, 2026 deadline.

#### **BACKGROUND**

On November 10, 2025, you submitted a FOIA request to DNREC. The request sought records related to dune crossover, walkway, or beach access and Schell Brother and Delaware State Parks and/or DNREC. On December 4, 2025, you sent an email to DNREC inquiring about your FOIA request.<sup>1</sup> DNREC replied the same day, stating it was necessary to engage the

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<sup>1</sup> Petition.

Department of Technology and Information (“DTI”) to retrieve responsive documents. DNREC explained that DTI was determining the length of staff time needed to retrieve the response records and any administrative fees that may be required for staff time beyond one hour. DNREC notified you that it anticipated completion by January 16, 2026.

On both December 15 and December 17, 2025, DNREC’s FOIA Coordinator notified you that DNREC was continuing to process your request but attached some responsive documents from Division of Parks.

On January 9, 2026, DNREC’s FOIA Coordinator informed you that there was a fee for one half hour of work by the DTI at the rate of \$38.00 per hour for a total cost of \$19.00 to process your search. The FOIA Coordinator also erroneously stated that DNREC was advised that DTI would require one hour of staff time to process the request. You were informed that if you agreed to the cost estimate of \$19.00 to send payment or the FOIA request would be canceled.

Following receipt of your payment, DTI provided the responsive documents to DNREC on February 6, 2026. On February 17, 2026, you emailed the FOIA Coordinator for DNREC asking if any progress was made on your FOIA request. The FOIA Coordinator responded that the files from DTI were still being reviewed.

On March 18, 2026, you filed this Petition with our Office alleging that: (1) DNREC failed to respond to your FOIA request within 15 business days; (2) DNREC failed to provide records within a reasonable time; and (3) DNREC improperly assessed fees.

On March 27, 2026, DNREC, through legal counsel, replied to the Petition (“Response”). DNREC argued that its initial response was timely as the day of receipt of a FOIA request does not count towards the 15 business day deadline in 29 *Del. C.* § 10003(h)(1). DNREC asserted that it received your FOIA request on November 10, 2025 and 15 business days began on November 12, 2025 as November 11, 2025 was a State holiday. DNREC concluded that December 4, 2025 was the 15th business day and thus, its December 4, 2025 response was timely.

DNREC further argued that its response time was reasonable given the necessary involvement of DTI, the error by DTI initially not recognizing the fee as paid, and for its review of the documents retrieved by DTI. DNREC asserted that it resumed work on your FOIA request after being notified that the fee was paid to DTI and gave you a new estimated completion date of February 16, 2026.<sup>2</sup> In its Response, DNREC admitted that it did not provide an updated estimated completion date after missing the February 16, 2026 date and that the new estimated completion date is April 1, 2026.<sup>3</sup>

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<sup>2</sup> Response, p. 6.

<sup>3</sup> Response, p. 6, 7.

## DISCUSSION

Delaware's FOIA law requires public bodies to respond to a citizen's FOIA request as soon as possible but no later than 15 business days after receiving a request.<sup>4</sup> That response must either allow access to the responsive records, deny access to some or all of the responsive records, or advise that additional time is needed due to voluminous records, legal review, or a record is in storage or archived.<sup>5</sup> If additional time is needed, the public body must give one of the three allowable reasons for extensions and "provide a good-faith estimate of how much additional time is required to fulfill the request."<sup>6</sup> The three permitted reasons for an extension of time to respond to a FOIA request is when the request is for voluminous records, requires legal advice, or a record is in storage or archived.<sup>7</sup>

Here, the initial request was received on November 10, 2025 and a response was sent from DNREC on December 4, 2025 which was the 15th business day after the day of receipt of your FOIA request. This Office has held that the day of the public body's receipt of the FOIA request does not begin the statutory countdown, but rather the day after receipt begins the countdown.<sup>8</sup> As such, DNREC did not violate FOIA by responding on December 4, 2025 and requesting additional time for the DTI retrieval.

However, it is undisputed that DNREC failed to give subsequent good faith estimates after the February 16, 2026 date. DNREC argued that as of the date of its Response, the estimated deadline for allowing access to the documents was April 1, 2026 and that any FOIA violation should be resolved. We find that DNREC violated FOIA by failing to provide additional good faith estimates of deadlines.<sup>9</sup>

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<sup>4</sup> 29 *Del. C.* § 10003(h)(1).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *See Del. Op. Att'y Gen.* 03-IB13, 2003 WL 22669562, (June 2, 2003) ("just as the courts do not [count] the day of filing, the time-line for a FOIA response to a public records request begins the next business day after the public body received the request.")

<sup>9</sup> *See Del. Op. Att'y Gen.* 23-IB24, 2023 WL 5216397, (Aug. 9, 2023) ("It is apparent from this factual record that the DHSS FOIA Coordinator did not consistently communicate with you, and the FOIA Coordinator acknowledges the failure to estimate timeframes in good faith, noting that she repeatedly asked for additional increments of fifteen business days, rather than conveying good faith time estimates.")

This Office cautions DNREC to carefully provide good faith estimates of additional time needed to comply with a FOIA request in their response to FOIA requestors. Because DNREC stated in its Response that it anticipated completing your FOIA request by April 1, 2026 and prior to this Opinion, we find no further remediation is necessary.

For your third assertion, you contend that DNREC improperly charged fees. A public body shall charge “for requests requiring more than 1 hour of staff time to process” including generating computer records.<sup>10</sup> FOIA instructs public bodies to bill the requesting party in quarter hour increments at the hourly rate of the lowest-paid employee capable of performing the service.<sup>11</sup> DNREC’s notification to you of the fee estimate included a statement that the DTI required 1 hour of work, which would have been free, while the itemized calculation indicated needing to pay for one half hour of work. This was inadvertent and later corrected.<sup>12</sup> This Office does not find the fee estimation error to be a violation of FOIA. Further, this Office does not find the administrative error regarding your payment to DTI to be a violation of FOIA, as that issue has been corrected and is moot.

### CONCLUSION

For the foregoing reasons, we conclude that DNREC violated FOIA by failing to provide a good faith estimate of how much additional time was needed to fulfill your FOIA request. However, we do not find a violation of FOIA in DNREC’s December 4, 2025 response or for the fees charged.

Very truly yours,



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Daniel Logan  
Chief Deputy Attorney General

cc: Matthew Lintner, Deputy Attorney General  
Victoria E. Groff, Deputy Attorney General

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<sup>10</sup> 29 *Del. C.* § 10003(m)(2).

<sup>11</sup> *Id.*

<sup>12</sup> It is unclear based on this record when you were informed that the work necessary was 1.5 hours with a 0.5 hour fee.