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Office of the Attorney General of the State of Delaware

Attorney General Opinion No. 26-IB30

June 10, 2026

Via Email

Stephanie McGinnis
bibbo27@icloud.com

RE: FOIA Petition Regarding the City of Rehoboth Beach

Dear Ms. McGinnis:

We write in response to your correspondence, alleging that the City of Rehoboth Beach 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 by denying access to the requested records.

Background

On April 18, 2026, you submitted a FOIA request to the City, seeking public records related to a law enforcement response on April 16, 2026 to a property in Rehoboth Beach during which you were advised you "could be subject to arrest for alleged trespassing."¹ Specifically, you sought the following:

1. Incident and Call Records: incident/field reports, CAD/event reports, call-for-service records, CAD logs, timestamps, disposition, and any trespass warning or related documentation.
2. Audio/Dispatch: 911 and non-emergency recordings, police radio traffic, dispatch notes, and call taker comments.

¹ Petition.

3. Video: body-worn camera (BWC) footage from the responding officer and any other officers present or involved; in-car video if applicable.
4. Officer Information: name, badge number, and assignment of the responding officer, identified as . . . , and identification of any additional officers or supervisors involved.
5. Communications/Source of Complaint: records identifying the caller/complainant; any statements or representations made by third parties forming the basis for the response; and communications between officers and third parties, including HOA representatives, board members, or building management.
6. Policies/Basis for Action: any policies or guidance relied upon in issuing or threatening a trespass warning under these circumstances.

On May 11, 2026, the City denied access to the requested records, asserting that the records are part of investigatory files for civil law enforcement purposes, which are exempt under Section 10002(o)(3). This Petition followed.

In the Petition, you argue that the City's blanket denial is inappropriate. You contend that the City failed to segregate and produce non-exempt records, including call for service information, incident metadata, and officer identification. You assert that the City failed to confirm whether body worn camera footage or audio records exist and are being preserved and whether any records of a trespass warning exist. You note that no citation or charge was issued during this encounter with law enforcement.

On May 19, 2026, the City, through its legal counsel, responded to this Petition ("Response"). The City asserts that its response was appropriate. The City notes that several portions of the request seek explanations, identifications, or answers to questions, and while you are welcome to contact the City's police department directly with any inquiries, the City is not required through the FOIA process to make a legal analysis, provide answers to questions, or create new records to respond to a request. The City argues that its assertion of the investigatory files exemption in Section 10002(o)(3) with respect to items 1 to 5 was proper, as the exemption begins upon the agency becoming aware of the issues and continues to apply after the investigation is closed. The City states it conducted a search for records and attached the affidavit of its FOIA coordinator. The coordinator attests that the request was sent to the police department who provided body worn camera footage, audio files, a CAD report, and a letter from the Communications Supervisor certifying these were the records generated in connection with a certain complaint number; the City then determined the provided records were exempt and issued the denial letter.

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

bodies, as well as access to the public records of those entities.”² FOIA requires that citizens be provided reasonable access to and reasonable facilities for the copying of public records.³ The public body has the burden of proof to justify its denial of access to records.⁴ In certain circumstances, a sworn affidavit may be required to meet that burden.⁵

Judicial Watch, Inc. v. University of Delaware provides that Section 10005(c) “requires a public body to establish facts on the record that justify its denial of a FOIA request.”⁶ “[U]nless it is clear on the face of the request that the demanded records are not subject to FOIA, to meet the burden of proof under Section 10005(c), a public body must state, under oath, the efforts taken to determine whether there are responsive records and the results of those efforts.”⁷ In this case, the requested records in items 1 to 5 are exempt on their face. 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.”⁸ This exemption is not limited to pending investigations and continues to apply after an investigation is closed.⁹ Here, this request seeks records related to a law enforcement encounter; such records, on their face, pertain to an

² *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996, 1004 (Del. 2021).

³ 29 Del. C. § 10003(a).

⁴ 29 Del. C. § 10005(c).

⁵ See *Judicial Watch, Inc.*, 267 A.3d at 1008-1012. When demonstrating an adequate search for responsive records, generalized assertions in the affidavit will not meet the burden. *Judicial Watch, Inc. v. Univ. of Del.*, 2022 WL 2037923, at *3 (Del. Super. Jun. 7, 2022). For example, the Superior Court of Delaware determined that an affidavit outlining that legal counsel inquired about several issues, without indicating who was consulted, when the inquiries were made, and what, if any documents, were reviewed, was too generalized to meet this standard. *Id.*

⁶ *Judicial Watch, Inc.*, 267 A.3d at 1010.

⁷ *Id.* at 1012.

⁸ *Del. Op. Att’y Gen.* 17-IB05, 2017 WL 1317847, at *3 (March 10, 2017).

⁹ *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).

investigation for civil or criminal law enforcement purposes.¹⁰ Thus, these records are considered part of the investigatory file and are exempt from disclosure in their entirety pursuant to 29 *Del. C.* § 10002(o)(3).

We also determine that the request for certain policies or guidance in item 6 does not sufficiently identify those records as required by 29 *Del. C.* § 10003(f)(2), nor would the City be required to answer questions or create a legal analysis in response to a FOIA request.¹¹ Additionally, you claim that the response did not state whether body worn camera or audio footage exists and did not affirm whether the footage was being preserved. When a record is exempt on its face, the public body need not conduct a search pursuant to *Judicial Watch*.¹² In addition, a request for a public body to preserve records is outside the scope of the FOIA statute. Thus, we find no violation of FOIA on these additional bases.

Conclusion

For the reasons set forth above, we conclude the City did not violate FOIA by denying access to the requested records.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

¹⁰ *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).”).

¹¹ *Del. Op. Att’y Gen.* 17-IB05, 2017 WL 1317847, at *3 (Mar. 10, 2017); *Del. Op. Att’y Gen.* 17-IB04, 2017 WL 1317846, at *2 (Mar. 8, 2017); *Del. Op. Att’y Gen.* 08-IB05, 2008 WL 1727613, at *1 (Feb. 22, 2008).

¹² We note that the City voluntarily identified records the police department located in the FOIA Coordinator’s affidavit.

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: Lisa Borin Ogden, City Solicitor