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Office of the Attorney General of the State of Delaware

Attorney General Opinion No. 26-IB32

June 16, 2026

Via Email

Julie Morris
juliekmorris@live.com

RE: FOIA Petition Regarding the City of Milford

Dear Ms. Morris:

We write in response to your correspondence alleging that the City of Milford 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 violated FOIA by failing to demonstrate that it appropriately withheld the requested record under FOIA. The claims regarding the cost estimate are moot.

Background

On March 3, 2026, you submitted a FOIA request, seeking various records related to the Flock Safety automated license plate reader ("ALPR") cameras and related software and services, including various records related to contracts and procurement; policies and operating procedures; data retention and sharing; and access and audit information. On March 10, 2026, the City replied with a cost estimate, accounting for three hours of work. The first hour was no charge, and the remaining two hours were for the services of a staff member with administrative access to the data, and the second hour was for the review of privileged information.

After receipt of the cost estimate, you then narrowed your request to include "any current written policy, SOP, user rule, agreement, MOU, or other existing record governing sharing of Milford's Flock Safety ALPR data with outside agencies" and "[a]ny existing list, roster, admin page, screenshot, export, or similar existing record showing the outside agencies currently granted

access to Milford’s Flock Safety ALPR system, portal, or data-sharing network.”¹ You stated that you are not seeking any “audit logs, search histories, contracts, bids, invoices, training materials, or general correspondence at this time.”² For the first item, the City provided a copy of its current policy with redactions pursuant to Section 10002(o)(3), citing investigatory techniques and Section 10002(o)(17) for security risks. The second item of the request seeking a list or other record was denied pursuant to several exemptions, including Section 10002(o)(3) for investigatory files, Section 10002(o)(4) for criminal files, and Section 10002(o)(6) for statutory prohibitions under 11 Del. C. Chapters 85 and 86. This Petition followed.

In the Petition, you allege that the City improperly withheld records responsive to the second item in your request seeking an existing list or similar record showing outside agencies currently granted access to the Flock Safety camera system or data-sharing network. You argue that this access information is not itself a plate read, criminal history record, criminal case file, search history, audit log, or investigative detail; rather, it is government access and data sharing record showing which agencies have been granted access to the City-controlled surveillance system. You assert any sensitive information could be redacted. You note that the produced policy appears to acknowledge the existence of sharing with outside law enforcement agencies. In addition, you assert two claims about the initially provided cost estimate, questioning the propriety of the estimate’s inclusion of the charge for review of privileged information and whether the estimate adequately explained that the staff member, with an hourly rate of \$71.22, was the lowest paid employee capable of retrieving the records.

On June 2, 2026, the City, through its legal counsel, responded to this Petition (“Response”). The City included an affidavit from the Chief of Police, who investigated this matter and attests the facts set forth in the Response are true and correct to the best of her knowledge. The City asserts that the list of agencies with whom the ALPR share intelligence is itself an investigative or intelligence file records because it reflects the structure of the City’s intelligence sharing network, scope of surveillance capabilities available to the City and its partners, and the operational flow of investigative information. The City asserts that revealing the list of agencies with access to the system would have serious adverse effects, including exposing jurisdictions which lack the ALPR or intelligence sharing capabilities; revealing the architecture of regional intelligence networks; enabling offenders to evade detection by routing stolen vehicles or criminal activity through jurisdictions without ALPR access; compromising multi-jurisdictional investigations; and exposing smaller agencies that rely on the City’s technology to heightened risk by publicly identifying their operational limitations. The City also asserts that the identity of the list of agencies is the relevant sensitive data, so producing redacted records is not possible.

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

¹ Petition.

² *Id.*

bodies, as well as access to the public records of those entities.”³ FOIA requires that citizens be provided reasonable access to and reasonable facilities for the copying of public records.⁴ The public body has the burden of proof to justify its denial of access to records.⁵ In certain circumstances, a sworn affidavit may be required to meet that burden.⁶ As a preliminary matter, your claims regarding the cost estimate are moot, as you have since rejected the estimate and narrowed your request to the two above-referenced items.⁷

FOIA excludes certain categories of records from the definition of “public record.” The City cites to Section 10002(o)(3), which 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.” This exemption is applied to specific investigatory files triggered by a particular issue, and “the investigatory exemption attaches as soon as an agency is first made aware of a potential issue.”⁸ As this list or record of other agencies with access to the City’s system is not part of a particular investigative file, we find that the investigatory files exemption does not apply here.

The City also invokes Section 10002(o)(5), which exempts “intelligence files compiled for law-enforcement purposes, the disclosure of which could constitute an endangerment to the local, state or national welfare and security.” Like the investigatory files exemption, this intelligence files exemption is related to specific files. The exemption is aimed at intelligence information for preventing specific criminal activity, and a list or record showing outside agencies’ access to the City’s general surveillance through the ALPR system is not part of a specific intelligence file.⁹ In addition, the requirement for showing endangerment to security or welfare is also not satisfied, as the City’s concerns with information sharing and routing criminal activity rest on the assumption

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

⁴ 29 Del. C. § 10003(a).

⁵ 29 Del. C. § 10005(c).

⁶ *Judicial Watch, Inc.*, 267 A.3d at 1008-1012.

⁷ 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)).

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

⁹ See *Del. Op. Att’y Gen.* 77-026, 1977 WL 24780, at *2 (Sept. 12, 1977) (noting that the Delaware State Police intelligence information proposed for introduction into the intelligence filing system must relate in some relevant way to present or potential illegal criminal group activity).

that public bodies' use of an ALPR is private, but the City has not demonstrated that a public body's use of an ALPR system is nonpublic information. The City acknowledges its use of an ALPR system in this case. Thus, we find that the City did not meet its burden of showing it appropriately withheld this record pursuant to the investigatory files or intelligence files exemptions. We recommend that the City, in compliance with the timeframes set forth in Section 10003, provide a copy of this responsive list, with any redactions appropriate under FOIA.

Conclusion

For the reasons set forth above, we conclude that the City violated FOIA by failing to demonstrate that it appropriately withheld this requested record under FOIA. The claims regarding the cost estimate are moot.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: Gregory A. Morris, City Solicitor