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Office of the Attorney General of the State of Delaware

Attorney General Opinion No. 26-IB33

June 16, 2026

Via Email

Richard Sargent
richards@tenpenn.com

RE: FOIA Petition Regarding the City of Rehoboth Beach

Dear Mr. Sargent:

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 violated FOIA by withholding the identity of the individual communicating with the City.

Background

On April 21, 2026, you submitted a FOIA request to the City of Rehoboth Beach regarding a City project to install bollards around the bandstand. You stated that a Cape Gazette news article referenced a City press release stating the project was "spurred by an individual with a wealth of public safety knowledge."¹ Your request sought "the name of the individual referenced in the article."² The City produced emails responsive to this request, but the identity of the individual and other redactions were made and the City cited to common law privacy under Section 10002(o)(6) and the security exemption in Section 10002(o)(17). This Petition followed.

¹ Petition.

² *Id.*

In the Petition, you argue that the City’s denial is inappropriate. You allege that the City proceeded with this \$1.2 million dollar project “outside of the competitive mechanisms ordinarily applicable to public works under Title 29, Chapter 69 of the Delaware Code.”³ You contend that the City’s redaction of the identity of the individual who precipitated this seven-figure public works initiative is inconsistent with FOIA. You argue that the public interest outweighs any asserted privacy interest in this matter. You assert that “[t]he identity of the person whose singular outreach spurred a \$1.2 million project is essential to evaluating potential conflicts of interest, undue influence, vendor relationships, or other factors that could have affected the City’s choice to bypass ordinary competitive mechanisms.”⁴ You argue that interest in accountability is significant where substantial funds are expended on public works, and the person’s identity is integral to understanding what the government is up to. You also argue that blanket removal of the identity violates FOIA; the redaction of the person’s identity, without showing concrete privacy harm that outweighs the compelling public interest, fails to meet the City’s burden of proof under FOIA.

On June 4, 2026, the City, through its legal counsel, responded to this Petition (“Response”). The City asserts that its response was appropriate. The City argues that Delaware courts have recognized the right of privacy includes the right to not have one’s affairs publicized when the public has no legitimate concern. The City argues that the privacy right of this individual substantially outweighs the public interest asserted here. The City states that a private citizen corresponded with the City about a concern with public safety, and this correspondence was made with a reasonable expectation their identity would remain confidential. The City argues that unlike a public official who sought the public eye, this person is a private citizen whose single communication does not strip them of privacy interests.

The City also maintains that this individual merely raised a concern, rather than spurred this project, noting the City’s press release did not accurately characterize this person’s role. Further, the City points out that communications with this individual predate the City’s formal action on this matter by approximately three years, and during that intervening time, the City was independently examining the proposal. The City notes that the topic was discussed in multiple executive sessions from May 2024 to October 2025. The City states that as early as summer 2023, police were deployed in response to these public safety concerns in that area. The City submits that this timeline does not support the fact that the City relied heavily on a single private communication made years earlier. When the City formally acted, it argues it did so publicly: discussing the project at an early October 2025 meeting, voting in a later October 2025 meeting to award a manufacturing contract, and in November 2025, voting to award an installation contract. The City argues that the meeting minutes and these public discussions and votes provide transparency about what the government is up to. Finally, the City disagrees that the redactions were overbroad and notes that an index of withheld records is not required with the response.

³ *Id.*

⁴ *Id.*

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."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

FOIA excludes from the definition of "public record" any records that are "specifically exempted from public disclosure by statute or common law."⁹ Delaware recognizes a common law right of privacy, *i.e.* "the right to be let alone."¹⁰ "[I]n the context of FOIA, we have determined that legitimate privacy claims under Delaware common law must be balanced against the competing need for access to information to further the accountability of government."¹¹

In this case, the emails demonstrate that the individual noticed a safety issue around the bandstand and proposed a solution to the City. We believe that this individual, who voluntarily provided comments on a governmental issue and proposed a solution, has only a minimal expectation of privacy that one would expect when corresponding with a public body.¹² To the extent any minimal privacy interest may exist, it is outweighed in this instance by the public's right of public oversight of government action, including knowing the identity of the individual who

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 29 Del. C. § 10002(o)(6).

¹⁰ *Barbieri v. News-Journal Co.*, 189 A.2d 773, 774 (Del. 1963) (recognizing a common law right of privacy and creating standards for the tort of invasion of privacy); *Reardon v. News-Journal Co.*, 164 A.2d 263, 266 (Del. 1960).

¹¹ *Del. Op. Atty. Gen.* 13-IB03, 2013 WL 4239232, at *3 (July 12, 2013) (citation omitted).

¹² *Del. Op. Atty. Gen.* 10-IB09, 2010 WL 3708657, at *2 (Sept. 2, 2010) (finding that the names of individuals who voluntarily submitted comment via email, letter, or petition signing regarding a highway project were not private, noting, with respect to common law right of privacy in that case, "... the purpose of the FOIA request is public oversight of an agency action, and the public's interest in knowing what DelDOT based its decision on outweighs the minimal expectation of privacy that one would expect when corresponding with or signing a petition to a public body").

submitted comments that the City considered in its decision-making that led to this project.¹³ Accordingly, we find that the City violated FOIA in withholding the identity of this individual and recommend that this information be provided via a supplemental response, sent within the timeframes set forth in Section 10003.

Conclusion

For the reasons set forth above, we conclude the City violated FOIA by withholding the identity of this individual communicating with the City.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: Lisa Borin Ogden, City Solicitor

¹³ *Id.*