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Office of the Attorney General of the State of Delaware

Attorney General Opinion No. 26-IB35

June 23, 2026

Via Email

Brianna Hill
bhill@spotlightde.com

RE: FOIA Petition Regarding the Delaware Department of Correction

Dear Ms. Hill:

We write in response to your correspondence alleging that the Delaware Department of Correction ("DOC") 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 the DOC violated FOIA by failing to comply with the statute's requirements for asserting the need for additional time related to the email processing and by failing to fully address the three requests. The DOC also violated FOIA by indicating it will charge for legal review fees, which are not permissible under Section 10003(m).

Background

On December 19, 2025, you submitted three FOIA requests to the DOC seeking the following records regarding an inmate who was housed at the Howard R. Young Correctional Institution. The first request sought the following records from August 1, 2025 to December 19, 2025:

1. All DOC-held records reflecting any transport of [the inmate] from Howard R. Young Correctional Institution to an outside medical facility during the above date range. This includes, but is not limited to, transport logs, movement records, approvals, or authorizations.
2. Any logs, records, or documentation showing movement of [the inmate] to or from the Howard R. Young medical unit or infirmary during the above date range.

3. All incident reports, unusual incident reports, or similar documentation concerning medical complaints and/or medical emergencies involving [the inmate] during the above date range.
4. DOC-held records showing [the inmate's] listed emergency contact(s) or notification list on file during the above date range (with phone numbers and addresses redacted as necessary).
5. Any records documenting notification attempts made by DOC to family members or emergency contacts related to [the inmate's] hospitalization, medical emergency, or death. This includes call logs, notes, reports, or other documentation showing when and how notification attempts were made.
6. Any DOC-held records indicating that [the inmate] submitted or attempted to submit sick call requests, medical grievances, or written requests for medical attention during the above date range, including: sick call request logs (if maintained), grievance submissions and responses (with medical details redacted as needed), any referrals or escalations to outside medical care (such as MRI, imaging, or specialist consults), if documented by DOC.¹

The second request sought the following records from the same timeframe:

All emails, text messages, memoranda, or other written communications exchanged between Howard R. Young Correctional Institution leadership, Delaware Department of Correction leadership, and DOC staff, including . . . Please provide all communications that reference or contain any of the following terms: [variations of the inmate's name]. This request includes communications sent or received during the above date range, regardless of format (email, internal memo, or other written correspondence).²

The third request sought the following records from January 1, 2023 to the present, unless otherwise noted:

1. Can you please provide the annual totals of deaths at Howard for 2023, 2024, and 2025, including the manner of death categories used by DOC (e.g., natural, suicide, homicide, accidental, undetermined)
2. The counts of deaths that occurred at Howard and after transfer to a hospital (within 24 hours, 72 hours, or 7 days), if tracked.
3. Please provide the current policies and procedures for[:]
 - a. submitting and logging sick call requests
 - b. medical triage and expected response timelines

¹ Petition.

² *Id.*

- c. escalation of urgent or emergency medical complaints
 - d. any available aggregate data or reports showing the average time from sick call request to medical evaluation.
4. Can you please provide the Howard R. Young Correctional Institution's policies addressing:
- a. How staff are expected to recognize and escalate serious medical symptoms (such as severe abdominal pain, urine discoloration, jaundice, or anemia if referenced in policy). And what is the expected timeline to do so?
 - b. What is the criteria for transporting individuals to outside medical facilities, including imaging escalation (X-ray vs. MRI, if applicable)?
 - c. What DOC policies or procedures are there for notifying next-of-kin or emergency contacts in cases of hospitalization, medical emergencies, and death in custody? Are there any standard forms or logs used to document these notifications?³

On January 20, 2026, you reached out to the DOC's spokesperson and followed up the next day for an update. On February 12, 2026, you received the initial response from the DOC's FOIA coordinator, who stated he was working on the three requests, and the Delaware Department of Technology and Information ("DTI") would assess fees for retrieving the emails and the emails would then be subject to legal review and redacted; additional fees would be assessed for that process. The coordinator stated that "there may also be certain other records that are denied as permitted under FOIA" and the "request for emails is in the process of being submitted to the DTI at this time."⁴ You emailed the DOC twice asking for an update as to when the request would be completed. On February 20, 2026, the DOC stated that the request for the DOC emails had been sent to the DTI and that the death logs were under legal review and more information should be available the next week. The DOC updated you on February 27, 2026 that the DTI received the request and the DTI estimated 7 to 10 business days to process. On February 27, 2026, the DOC replied to the third request with the annual total deaths amounts for 2023 to 2025 and stated that the rest of that request would be provided once gathered and cleared by legal review.

On March 16, 2026, the DOC sent the cost estimate for the DOC emails with a total of \$38.00; two hours of work were estimated but an hour of labor was waived. The DTI acknowledged the receipt of the payment on March 18, 2026. On April 9, 2026, you requested an update from the DOC FOIA coordinator, who responded that the "DOC has been provided with the emails and is currently reviewing the contents in order to redact any information that is not public or releasable under the purview of FOIA."⁵ The coordinator stated that the "documents

³ *Id.*

⁴ *Id.*

⁵ *Id.*

will also be reviewed by DOC legal counsel prior to release to you.”⁶ The coordinator stated that fees will be assessed for this review, and so far, 10.5 hours had been spent on the request, but due “to the amount of other work related duties[,] the DOC employee cannot devote all of their work day on this one request, [and] approximately 12 hours per week is expected to be spent on this.”⁷ The coordinator noted that he “will provide further updates to you as far as progress and accrued fees.”⁸ This Petition followed.

The Petition makes five claims regarding the DOC’s processing of these requests. You first allege that the DOC’s initial response was untimely as the first response was not given until almost two months after the request was submitted and that the request was not timely processed because the request for the DTI to search records did not occur until February 19, 2026. You also allege that the delays have continued because the DOC accessed the emails on March 25, 2026, but two months later, the records still have not been produced. Additionally, you argue that the DOC has not provided a full response to the three requests yet or issued an exemption for why these requests are not being answered. Finally, you question the propriety of the DOC’s statement that fees will be assessed for legal review.

On June 1, 2026, the DOC, through its legal counsel, replied to the Petition (“Response”). The DOC states it has been devoting the bulk of its FOIA resources to fulfilling the most labor-intensive aspect of the FOIA requests – retrieving the emails from digital archives with this inmate’s name. The DOC states that on April 9, 2026, the DOC FOIA coordinator communicated that the emails were being reviewed by the DOC’s FOIA office. The DOC contends that this response, which conveyed that the DOC could spend 12 hours a week on the request and that the emails were subject to legal review, met FOIA’s requirements under 29 *Del. C.* § 10003(h). The DOC points out that it has not denied you any records, and this Petition should be denied on the grounds of prematurity, as the records continue to be reviewed on the indicated 12-hour per week schedule.

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.”⁹ FOIA requires that citizens be provided reasonable access to and reasonable facilities for the copying of public records.¹⁰ The

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996, 1004 (Del. 2021).

¹⁰ 29 *Del. C.* § 10003(a).

public body has the burden of proof to demonstrate compliance with the FOIA statute.¹¹ In certain circumstances, a sworn affidavit may be required to meet that burden.¹²

A public body is required to “respond to a FOIA request as soon as possible, but in any event within 15 business days after the receipt thereof.”¹³ Section 10003(h)(1) permits a public body to inform a requestor that a response will take more than the requisite fifteen days if the request is for voluminous records, requires legal advice, or a record is in storage or archived.¹⁴ The public body must inform the requesting party of the authorized reason for the extension and give a good faith estimate of how much additional time is needed to fulfill the request.¹⁵ If authorized fees are necessary to process the request, the public body may present a requesting party with a cost estimate in accordance with Section 10003.

The first three claims in the Petition pertain to the delays in processing this request. FOIA contemplates that the public bodies may need additional time beyond the fifteen business days to process certain FOIA requests. For a time extension, the public body must give one of the permitted reasons and provide a good faith estimate of the time needed to fulfill the request. In its April 9, 2026 response, the DOC indicates it needs additional time for legal review of the provided emails, and the DOC’s staff will devote 12 hours per week to the review, but provided no estimate of how long it would take DOC to complete the request working at this pace. This notice does not satisfy FOIA’s requirements, as a good faith estimate of the time to fulfill the request is not provided. Accordingly, we find a violation occurred and recommend that the DOC, in fifteen business days, provide you with a supplemental response that complies with the statute’s requirements for asserting additional time is needed, including a good faith estimate of the time to fulfill the request.

For the fourth claim, you allege that the DOC has not addressed the remaining parts of your three requests that do not relate to the emails retrieved from the DTI. The communications from the DOC center on the emails, but the three requests seek multiple items that are not specific to emails, such as various logs and policies. The DOC provided the annual death totals requested in February, but the factual record does not show the remaining items have been addressed through a substantive response or a compliant notice of additional time. As the DOC has not fully addressed the three requests in full through one of the authorized responses, we find a violation in this regard and recommend that within fifteen business days, the DOC provide a response to the remaining items or give notice of the need for additional time, compliant with Section 10003(h).

¹¹ 29 Del. C. § 10005(c).

¹² *Judicial Watch, Inc.*, 267 A.3d at 1012.

¹³ 29 Del. C. § 10003(h)(1).

¹⁴ *Id.*; see Del. Op. Att’y Gen. 20-IB09, 2020 WL 1234452, at *3 (Feb. 27, 2020).

¹⁵ 29 Del. C. § 10003(h)(1).

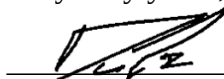
If additional fees are anticipated to fulfill the remaining items in the request, a cost estimate also may be provided within this timeframe.

The fifth claim questions the propriety of the DOC's indication that fees will be charged for the legal review of emails. The DOC's April 9, 2026 email stated that the DOC staff "is currently reviewing the contents in order to redact any information that is not public or releasable under the purview of FOIA" and "[t]hese documents will also be reviewed by DOC legal counsel prior to release to you."¹⁶ The DOC stated that there "will be fees associated with the review of documents and any redactions that may occur by DOC staff[;] these are [at] the hourly rate of the authorized employee billable after the first hour of time."¹⁷ However, FOIA provides that fees may not be assessed for "the public body's legal review of whether any portion of the requested records is exempt from FOIA,"¹⁸ and these types of fees are not permissible, even when a non-attorney is conducting the review for exempt information.¹⁹ Thus, we find that the DOC violated FOIA by indicating it will charge for legal review and recommend that the DOC provide a cost estimate within fifteen business days for any additional fees it intends to charge for its remaining review of the emails, excluding any fees for legal review.²⁰

Conclusion

For the foregoing reasons, we conclude that the DOC violated FOIA by failing to comply with the statute's requirements for asserting the need for additional time related to the email processing and by failing to fully address the three requests. The DOC also violated FOIA by indicating it will charge for legal review fees, which are not permissible under Section 10003(m).

Very truly yours,



Daniel Logan

Chief Deputy Attorney General

cc: Abigail de Uriarte, Deputy Attorney General
Dorey L. Cole, Deputy Attorney General

¹⁶ Petition.

¹⁷ *Id.*

¹⁸ 29 *Del. C.* § 10003(m)(2).

¹⁹ *Del. Op. Att'y Gen.* 16-IB19, 2016 WL 5888771, at *13 (Sept. 30, 2016) ("Given the context in which this statute applies, we believe the meaning of 'legal review' is plain: A requesting party may not be charged administrative fees for the time it takes 'the public body to review a record for the purpose of assessing the applicability of FOIA's exemptions, no matter who is conducting that review.'").

²⁰ The timing of the cost estimate was not raised and is thus not addressed herein.