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Office of the Attorney General of the State of Delaware

Attorney General Opinion No. 26-IB36

June 25, 2026

Via Email

Chase Barnett
chaseschool999@gmail.com

RE: FOIA Petition Regarding the Delaware State Police, Department of Safety and Homeland Security

Dear Mr. Barnett:

We write in response to your correspondence alleging that the Delaware State Police, Department of Safety and Homeland Security (“DSP”) 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 DSP did not violate FOIA by denying access to the requested records.

Background

On February 23, 2026, you submitted a FOIA request to the DSP for records related to a specific case number and your electronic device, which was given to the DSP under a voluntary authorization.¹ The request states that the investigation of this matter did not result in any filed charges and that the DSP uses Cellebrite software for forensic extractions of devices. The request sought the following: (1) search warrant, including probable cause affidavit; (2) Cellebrite extraction report generated from examination of your device, reflecting data extracted, recovered, or analyzed; (3) version number and build information for Cellebrite software used in extraction and analysis of this device; (4) name, badge number, and unit assignment of the DSP examiner who conducted the analysis and extraction; (5) all forensic examination or session logs or audit

¹ Petition.

trails generated during the analysis and extraction; (6) forensic examination reports, summaries, or analytical conclusions prepared from data extracted from my device; (7) complete chain of custody record for your device beginning October 11, 2025 through the date of its current location; and (8) the complete DSP internal policy, directive, order, standard operating procedure, or guidance document governing the disposition of electronic devices related to the accusation or outcomes of this case number, including the date the policy's issuance or effectiveness; the name, title, and authority of the individual who authorized the policy; and any subsequent revisions to the policy, including the dates and individuals who authorized them.

The DSP denied this request, citing the exemptions for investigatory file records for criminal law enforcement purposes under 29 *Del. C.* § 10002(o)(3); intelligence file records under 29 *Del. C.* § 10002(o)(5); and records exempt from disclosure by statute under 29 *Del. C.* § 10002(o)(6), specifically Title 11, Chapters 85 and 86 of the Delaware Code, and 29 *Del. C.* § 10002(o)(9) for pending or potential litigation. This Petition followed.

In the Petition, you state that you voluntarily surrendered your device, and you were informed that information was extracted after receiving a warrant; the DSP officer also advised that the DSP's policy required your device to be wiped before being returned or the DSP would destroy it. You contend that the DSP's denial of this FOIA request is improper for several reasons. You allege that the investigatory files exemption is not applicable, as your rights in your personal property are at issue here and you surrendered this device voluntarily. You also allege that this exemption does not apply to the non-investigatory record requested – the policy requiring the device to be factory reset or destroyed. You further argue that the build and version number of Cellebrite is not an investigatory technique, and there is no investigative interest in withholding the version used, as it is a matter of public record that the DSP uses this software, due to advertised trainings on Cellebrite's website.

You contend that Title 11, Chapters 85 and 86 of the Delaware Code are inapplicable to this request, and even if they were, the confidentiality provisions would not override your rights as owner of the device. You also allege that "intelligence files" is a term of art referring to proactive intelligence-gathering activities developed through intelligence operations for purposes of addressing threats of communal harm, and these items relating to an investigation into a single complaint do not qualify for this exemption. You argue that Section 10002(o)(9) for pending or potential litigation is also inappropriate as there is no pending litigation; potential litigation cannot refer to the request filing itself, as every request would be a potential lawsuit. You also allege that if the DSP knows of potential or pending litigation, it must identify it specifically. When two plausible readings of the statute exist, you argue that they must be interpreted to preserve a citizen's ability to vindicate federal constitutional rights, and you argue that the FOIA statute must be read to preserve your rights under the Fourth Amendment, Fourteenth Amendment due process, and the First Amendment right to petition. The Petition also includes a preservation notice for all records, data, devices, logs, and materials related to this case number.² Finally, you assert the response's boilerplate assertions do not meet FOIA's requirements, as it failed to address your request's language which anticipated and rebutted the DSP's exemptions.

² A notice of preservation of evidence is outside the scope of this Office's authority and is not considered herein. 29 *Del. C.* § 10005(e).

On June 4, 2026, the DSP, through its legal counsel, replied to the Petition (“Response”). The DSP argues that as this request pertains to a particular case and investigation, the request is facially seeking investigatory file records. The DSP also argues that the pending or potential litigation exemption was also appropriate, as your mother stated to a DSP officer that you were actively seeking legal counsel over the matter of returning your device, and the DSP therefore anticipates litigation over this matter. Because the request pertains to digital forensic software, the DSP asserts it appropriately asserted the investigative and intelligence file exemptions. Moreover, the DSP argues that the request itself seeks answers to questions, and FOIA does not require a public body to answer questions. Finally, the DSP alleges that you do not have standing, as the Petition was not technically filed by you but was emailed by your mother. The DSP also points out that the Petition frequently refers to you in third person; the Petition merely contains your electronic signature, while the request had a wet signature; and your mother followed up on the request repeatedly via telephone calls. The DSP included the affidavit of its FOIA coordinator with the Response, who attests that a report contained your mother’s statement regarding seeking counsel and attests to the dates of the phone calls received from your mother about the request.

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.”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

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.”⁷ “[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.”⁸ In this case, the requested records are exempt on their face. Section 10002(o)(3) exempts “[i]nvestigatory files

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

⁸ *Id.* at 1012.

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.”⁹ This exemption is not limited to pending investigations and continues to apply after an investigation is closed.¹⁰ Here, this request seeks records related to a law enforcement investigation; such records, on their face, pertain to an investigation for civil or criminal law enforcement purposes.¹¹ 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).¹²

Conclusion

For the foregoing reasons, we conclude that the DSP did not violate FOIA by denying access to the requested records.

⁹ *Del. Op. Att’y Gen.* 17-IB05, 2017 WL 1317847, at *3 (March 10, 2017).

¹⁰ *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).

¹¹ *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).”).

¹² Items 3 and 8 are not seeking general operational information; rather, they are seeking information about this investigation – the software information used for analyzing your device during the investigation and any policy or other type of guidance document used in this case to determine disposition of the device related to this investigation. Both items are specific to this investigation file and therefore fall under this exemption. We also note that public bodies are not required to answer questions through the FOIA request process. *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). Item 8 seeks to have DSP identify the case-specific policy or guidance documents that the officer relied on to formulate the conclusion that your device must be destroyed or factory reset before its return. This type of request is akin to requiring a public body to answer a question.

Very truly yours,

A handwritten signature in black ink, appearing to read "DL", is written over a horizontal line.

Daniel Logan
Chief Deputy Attorney General

cc: Joseph C. Handlon, Deputy Attorney General
Dorey L. Cole, Deputy Attorney General