



KATHLEEN JENNINGS
ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
820 NORTH FRENCH STREET
WILMINGTON, DELAWARE 19801

CIVIL DIVISION: (302) 577-8400
CRIMINAL DIVISION: (302) 577-8500
FAMILY DIVISION: (302) 577-8400
FRAUD DIVISION: (302) 577-8600
DIVISION OF CIVIL RIGHTS & PUBLIC TRUST: (302) 577-5400
FAX: (302) 577-2610

Office of the Attorney General of the State of Delaware

Attorney General Opinion No. 26-IB39

July 13, 2026

Via Email

William F. Marshall
Judicial Watch, Inc.
bmarshall@judicialwatch.org

Re: FOIA Petition Regarding New Castle County

Dear Mr. Marshall:

We write in response to your correspondence alleging that New Castle County 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 County did not violate FOIA by withholding access to the requested records.

Background

On December 31, 2025, you submitted a FOIA request to New Castle County seeking all "records related to the New Castle County Police Department response to the discovery of the body of [an individual] on the evening of December 28, 2025 at [the individual's home], including but not limited to: [a]udio/video recordings from police dashcam and body-worn cameras of responding officers; audio and electronic dispatch recordings/entries; incident reports; crime scene photos; officers' handwritten notes; investigative reports; schematics; and all other records."¹ On January 7, 2026, the County denied access to these records, stating that "[b]ecause your return address does not indicate you are a citizen of the State of Delaware, you are not entitled to inspect and copy New Castle County public records under FOIA."² In addition, the County states that

¹ Petition.

² *Id.*

these records are not public pursuant to 29 *Del. C.* § 10002(o)(3), which exempts “[i]nvestigatory files compiled for civil or criminal law enforcement purposes.”³ This Petition followed.

The Petition alleges that the County denied this request because you are not a Delaware resident. You state you wish to appeal this decision because you are “an investigative reporter with a media organization, Judicial Watch, which has circulation of its publications (such as *The Verdict*) in the state of Delaware and, as such, [you are] entitled to request records through the Delaware FOIA.”⁴

On June 17, 2026, the County, through its legal counsel, responded to this Petition (“Response”). The County argues that the Petition is not timely, as 29 *Del. C.* § 10005(b) requires this Petition to be filed within sixty days of the County’s initial denial, and this Petition was filed more than five months after the denial. The County contends it also appropriately denied your request based on State citizenship, as a public body is authorized to deny a request because it is submitted by a non-citizen. The County notes that your request listed a Washington D.C. return address. The County asserts that the requested items are “part of the police response to the discovery of the body . . . , created by the police and are part of the investigatory file.”⁵ The County included the affidavit of the FOIA coordinator for the County Police Division, attesting that the “the requested information . . . is part of the investigatory files compiled for civil or criminal law enforcement purposes as exempted under 29 *Del. C.* § 10002(o)(3).”⁶

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.”⁷ FOIA requires that citizens be provided reasonable access to and reasonable facilities for the copying of public records.⁸ The public body has the burden of proof to justify its denial of access to records.⁹ In certain

³ *Id.*

⁴ *Id.*

⁵ Response.

⁶ *Id.*, Ex. C.

⁷ *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996, 1004 (Del. 2021).

⁸ 29 *Del. C.* § 10003(a).

⁹ 29 *Del. C.* § 10005(c).

circumstances, a sworn affidavit may be required to meet that burden.¹⁰ As a preliminary matter, we find that Section 10005(b)'s sixty-day timeframe for petition filing does not apply here, as that time limit is for a "person denied access to public records by an administrative office or officer, a department head, commission, or instrumentality of state government which the Attorney General is obliged to represent pursuant to § 2504 of [Title 29]," and the County is not an entity that the Attorney General is obliged to represent.

We determine the County's invocation of non-citizenship is appropriate to deny this request. In Attorney General Opinion No. 16-IB20, this Office concluded that Delaware's FOIA statute guarantees access to public records only to citizens of Delaware.¹¹ No facts in the record demonstrate citizenship in Delaware. Your request contains an out of state address, and the Petition does not allege that Judicial Watch, Inc. is incorporated under the Delaware General Corporation Law.¹² As such, the County does not have an obligation to provide access to public records in response to this FOIA request, and we find that the County did not violate FOIA in denying the request on this basis.

In addition, access to these records was appropriately denied pursuant to the investigatory files exemption. 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."¹³ This exemption is not limited to pending investigations and continues to apply after an investigation is closed.¹⁴ Here, this request seeks the records related to this law enforcement response, including audio and video footage, dispatch records, incident reports, crime scene photos, officer notes, investigative reports, and schematics; such records, on their face, pertain to

¹⁰ See *Judicial Watch, Inc.*, 267 A.3d at 1008-1012.

¹¹ *Del. Op. Att'y Gen.* 16-IB20, 2016 WL 5888776, at *5-6 (Sept. 30, 2016) (analyzing Delaware's FOIA statute and the impact of the U.S. Supreme Court case, *McBurney v. Young*, 569 U.S. 221 (2013)); see also *Del. Op. Att'y Gen.* 21-IB11, 2021 WL 2144533, at *2 (May 12, 2021).

¹² *Del. Op. Att'y Gen.* 01-IB04, 2001 WL 1593104, at *2 (Feb. 27, 2001) ("This Office has interpreted the term 'citizen' in FOIA to include companies incorporated under the Delaware General Corporation Law.") (citation omitted).

¹³ *Del. Op. Att'y Gen.* 17-IB05, 2017 WL 1317847, at *3 (March 10, 2017).

¹⁴ *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).

an investigation for civil or criminal law enforcement purposes.¹⁵ Thus, the requested records are considered part of a law enforcement investigatory file and are exempt from disclosure pursuant to 29 *Del. C.* § 10002(o)(3).

Conclusion

For the reasons set forth above, we conclude that the County did not violate FOIA by withholding the requested records.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: Iran J. Garcia Domenech, Assistant County Attorney

¹⁵ See, e.g., *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).”).