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Office of the Attorney General of the State of Delaware

Attorney General Opinion No. 26-IB40

July 15, 2026

Via Email

Katherine McColl
katmccoll@comcast.net

RE: FOIA Petition Regarding the Town of Frederica

Dear Ms. McColl:

We write in response to your correspondence alleging that the Town of Frederica 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 Town did not violate FOIA by failing to respond to these requests within the requisite timeframe.

Background

In this Petition, you state that on April 6, 2026 and April 10, 2026, you submitted multiple FOIA requests to the Town seeking the fence permit and HOA approval for various properties. You allege that the Town has not responded to the requests. You state that you emailed the FOIA processing website for confirmation of receipt on May 11, 2026, but you did not receive a response. You also indicate you have filed another complaint with the Delaware Department of Justice regarding a code compliance officer.¹

On June 16, 2026, the Town, through its legal counsel, responded to this Petition, stating it did not violate FOIA ("Response"). The Town included an affidavit from the Town Clerk attesting that she responded to these requests on April 15, 2026 by explaining that the Town needed

¹ As this Office's authority is limited to determining allegations of FOIA violations in this process, this other complaint is not addressed. 29 *Del. C.* § 10005(e).

to search both electronic and physical files and providing a cost estimate; this email was retransmitted on May 12, 2026. The Town Clerk states under oath that she received your June 9, 2026 email advising you had not received a response, and she replied to you via email by providing copies of the emails previously sent on April 15, 2026 and May 12, 2026. In addition, the Town Clerk attests that she sent copies of the same information by certified mail on June 10, 2026.

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."² FOIA requires that citizens be provided reasonable access to and reasonable facilities for the copying of public records.³ The public body has the burden of proof to justify its denial of access to records.⁴ In certain circumstances, a sworn affidavit may be required to meet that burden.⁵

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."⁶ 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.⁷ 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.⁸ If allowable processing fees are expected to be incurred, the public body must provide a cost estimate to the requesting party in advance, and the requesting party may then decide to proceed with, cancel, or modify the request.⁹

In this case, the Petition alleges that the Town did not respond to your requests within the requisite timeframe. However, the Town provided the sworn statements of the Town Clerk that she sent the reply to your requests with a cost estimate within fifteen business days, and upon

² *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996, 1004 (Del. 2021).

³ 29 Del. C. § 10003(a).

⁴ 29 Del. C. § 10005(c).

⁵ *See Judicial Watch, Inc.*, 267 A.3d at 1008-1012.

⁶ 29 Del. C. § 10003(h)(1).

⁷ *Id.*; *see Del. Op. Att'y Gen.* 20-IB09, 2020 WL 1234452, at *3 (Feb. 27, 2020).

⁸ 29 Del. C. § 10003(h)(1).

⁹ 29 Del. C. § 10003(m).

receiving notice that you did not receive the reply, the Clerk then re-sent it. Based on this sworn evidence, we find no violation of FOIA occurred.

Conclusion

For the reasons set forth above, we conclude that the Town did not violate FOIA by failing to respond to these requests within the requisite timeframe.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: Gary E. Junge, Town Solicitor