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Office of the Attorney General of the State of Delaware

Attorney General Opinion No. 26-IB42

July 27, 2026

Via Email

Madeleine Overturf
Coast TV News
moverturf@wrde.com

Re: FOIA Petition Regarding the City of Lewes

Dear Ms. Overturf:

We write in response to your correspondence alleging that the City of Lewes 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 failing to demonstrate that the requested records were appropriately withheld under FOIA.

Background

On June 10, 2026, you submitted a FOIA request to the City of Lewes, seeking copies of two grievances filed by the Lewes Police Department union in 2025, one filed in June 2025 and a second filed on July 28, 2025.¹ The City denied the request, stating that the requested records "concern personnel matters, including employee promotions, employment practices, and internal personnel issues" and are exempt under 29 *Del. C.* § 10002(o)(1).² This Petition followed.

In the Petition, you allege that the requested grievances are not part of the personnel files of individual employees, and you are not seeking evaluations, disciplinary records, medical information, or other records traditionally protected under the personnel file exemption. Rather,

¹ Petition.

² *Id.*

you assert that the requested grievances are filed by the police department union against the City administration and concern “the operation and administration of a public law enforcement agency.”³ You argue that “the fact that a grievance may discuss employment-related issues does not automatically render the grievance itself a personnel record.”⁴

On July 8, 2026, the City, through its legal counsel, responded to this Petition (“Response”). The Response enclosed the affidavit of the City’s FOIA coordinator, who attests that the factual statements in the Response are accurate. The City states that in the summer of 2025, the Lewes Fraternal Order of Police Lodge 22 filed two collective bargaining grievances alleging conduct in violation of the City’s personnel manual, and those matters were fully resolved. The City argues that the requested records fit squarely within the personnel files exemption because a personnel file has been defined as “a file containing information that would, under ordinary circumstances, be used in deciding whether an individual should be promoted, demoted, given a raise, transferred, reassigned, dismissed, or subject to such other traditional personnel actions.”⁵ The City argues that a grievance document that invokes alleged violations of a personnel manual by city employees falls within this definition and would violate the personal privacy of City employees and chill the willingness of employees to report workplace misconduct.

In addition, the City argues that the Section 10002(o)(8) applies, which exempts “any records involving labor negotiations or collective bargaining.” Further, the City asserts that its personnel manual has been adopted by City Council and referenced in the City Code, and this personnel manual has confidentiality provisions, including requirements for investigation confidentiality, which support the denial of the records. Finally, the City asserts that the Law Enforcement Officers’ Bill of Rights (“LEOBOR”) is applicable, as this statute provides that “records compiled as a result of any investigation subject to the provisions of this chapter and/or a contractual disciplinary grievance procedure shall be and remain confidential and shall not be released to the public.”⁶ The City argues that because these grievances were filed by a police union, they are protected by this provision.

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

³ *Id.*

⁴ *Id.*

⁵ Response.

⁶ *Id.*

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

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 circumstances, a sworn affidavit may be required to meet that burden.¹⁰

In this case, the City specifies, by sworn statements, that the grievances at issue were filed by this police union alleging violations of the City's personnel manual against the City. Section 10002(o)(1)'s exception for the personnel files has two parts: the records must be part of a personnel file and disclosing the records must constitute an invasion of personal privacy.¹¹ For this first prong, this Office has determined that a personnel file is "a file containing information that would, under ordinary circumstances, be used in deciding whether an individual should be promoted, demoted, given a raise, transferred, reassigned, dismissed, or subject to such other traditional personnel actions."¹² The mere location of the personnel record is not determinative; instead, we must consider the record's content.¹³ "[A] public body may not restrict access to records otherwise disclosable under FOIA merely by placing them in a personnel file."¹⁴ Here, it is unclear based on the City's sworn statements that these union grievances are part of the individual employees' personnel files; the City does not explain how the content of these union grievances would subject the individual employees in the union to traditional personnel action. Thus, we find that the first prong of this exemption is not satisfied and determine that the City has not demonstrated the applicability of the personnel file exemption.

The City next points to Section 10002(o)(8), which exempts any "records involving labor negotiations or collective bargaining." This exemption, however, is inapplicable, as the record does not indicate the requested records are part of any labor negotiations or collective bargaining

⁸ 29 Del. C. § 10003(a).

⁹ 29 Del. C. § 10005(c).

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

¹¹ *Vanella v. Duran*, 2024 WL 5201305, at *7 (Del. Super. Dec. 23, 2024).

¹² *Id.* at *10 ("FOIA does not define what a 'personnel file' is, however. To fill that gap, the Department of Justice adopted the following definition through an AG Opinion: 'a file containing information that would, under ordinary circumstances, be used in deciding whether an individual should be promoted, demoted, given a raise, transferred, reassigned, dismissed, or subject to such other traditional personnel actions.' Delaware Call also relied on that definition so the Court will do the same.") (internal citations omitted).

¹³ *Id.* at *11.

¹⁴ *Id.*

process.¹⁵ Additionally, the City's claim that the personnel manual, which was adopted by the City, requires the nondisclosure of these records is not compelling, as a personnel policy adopted by the municipality cannot create exceptions to disclosure requirements under the state FOIA law.¹⁶ The City also does not sufficiently allege these grievances are confidential under LEOBOR; specifically, the City does not assert any investigation subject to the provisions of LEOBOR or a contractual disciplinary grievance procedure is related to the grievances. Thus, we find that the City has not supported that these union grievances are fully exempt from disclosure and recommend that the City produce these grievances, after making all appropriate redactions under FOIA, including but not limited to, any redactions necessary to protect the involved employees' privacy.

Conclusion

For the reasons set forth above, we conclude that the City violated FOIA by failing to demonstrate that the requested records were appropriately withheld under FOIA.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: Alexander C. Burns, City Solicitor

¹⁵ *Del. Op. Att'y Gen.* 10-IB07, 2010 WL 3303364, at *2 (Aug. 9, 2010) ("If a record is involved in collective bargaining, it is not a public record, pursuant to 29 *Del. C.* § 10002(g)(8), and therefore failure to produce it is not an unfair labor practice, pursuant to 19 *Del. C.* § 1307(a)(8). If the exception to FOIA is read expansively, any record that a union requests of a public employer in connection with the collective bargaining process is unobtainable.").

¹⁶ *See, e.g.,* 22 *Del. C.* § 802 ("Delaware's Home Rule Provision"); *State v. City of Seaford*, 278 A.3d 1149, 1160 (Del. Ch. 2022) ("If a state law and a municipal ordinance directly conflict, then the state law prevails. A conflict exists '[i]f the ordinance expressly permits what a statute expressly forbids, or vice versa.'") (internal citations omitted).