



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-IB45

August 4, 2026

Via Email

Alexis Malone
respect_love_peace@hotmail.com

Re: FOIA Petition Regarding the Wilmington Housing Authority

Dear Ms. Malone:

We write in response to your correspondence alleging that the Wilmington Housing Authority 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 Authority violated FOIA by failing to meet its burden to demonstrate that an adequate search for records was conducted. The remaining allegations are not violations of FOIA.

Background

You submitted a FOIA request to the Authority seeking the following categories of records regarding your residence: the full work order history, internal maintenance notes and communications, inspection reports, environmental reports, and photographs or documentation regarding the unit's condition.¹ You allege in your Petition that the request was sent December 1, 2025, but the Authority alleges that the request was first received by the Executive Director on or around January 14, 2026. The Authority states that its FOIA coordinator made available to you an initial document production, consisting of 504 pages. The Authority states that on or around June 15, 2026, the Authority produced an additional 75 pages. This Petition followed.

¹ Petition.

In the Petition, you make five claims. In the first three claims, you allege that the Authority failed to produce documents regarding repairs on your unit, handwritten and typed maintenance records, missing correspondence, such as FOIA requests, and tenant file documents. Your fourth claim is that the records were produced in multiple installments over several months, but they should have been produced together. For the fifth claim, you allege that you have not received a complete explanation from the Authority regarding what searches were conducted, which departments were searched for records, whether records were unavailable, whether any records are being withheld, and the legal basis for any withholding.

On July 16, 2026, the Authority, through its legal counsel, replied to this Petition (“Response”). Initially, the Authority notes that certain records referenced in the Petition were not covered by the scope of the original request, and these additional requests are not subject to this Petition. The Authority asserts that it conducted a diligent search of its records where responsive documents are likely to be located. In the affidavit of the Executive Director, he stated that the FOIA coordinator “searched all relevant files for any documents [the Authority] may be in possession of that would be responsive to the [r]equest.”² The Director attests that between January to June, you requested documents from the Housing Manager, including records from your tenant file, which were not made as FOIA requests. The Director attests that the Housing Manager confirmed she was providing an additional 75 pages of documents from the tenant file, including those not contained in the original request. The Director stated under oath that the Housing Manager indicated to you that the records produced as of June 15, 2026 represent the complete production of responsive documents available to “our office” and that the categories of records referenced in the request which were not included in the production “are those to which [the Authority] does not have access, are not maintained within [the Authority’s] files, or no responsive records were located within the scope of the search.”³ The affidavit further states that the documents provided to you were “(1) Work Order History; (2) Internal Communications, to the extent such records existed; (3) Inspection Reports; and (4) Environmental Testing Records and asserts that “[a]ll photographs, videos, or written observations made by [the Authority] staff, inspectors, or contractors regarding the condition of the unit’ was provided to the extent such documents existed in the form of housekeeping inspection forms, documents relating to annual inspections, and correspondence contained in [your] tenant file.”⁴ The affidavit states you were also provided recertification documents. Thus, the Director reiterated that all files likely to contain responsive records, if such records existed, were searched.

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

² Response, Ex. F.

³ *Id.*

⁴ *Id.*

bodies, as well as access to the public records of those entities.”⁵ FOIA requires that citizens be provided reasonable access to and reasonable facilities for the copying of public records.⁶ The public body has the burden of proof to justify its denial of access to records.⁷ In certain circumstances, a sworn affidavit may be required to meet that burden.⁸

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.”⁹ “[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.”¹⁰ Generalized assertions in the affidavit will not meet the burden.¹¹ For example, the Superior Court of Delaware determined that a public body’s affidavit outlining that legal counsel, acting as the FOIA coordinator, inquired with the public body’s officials about several issues, without indicating who was consulted, when the inquiries were made, and what, if any documents, were reviewed, was too generalized to meet this standard.¹² In addition to these standards, when records are withheld, the reasons for withholding the records must be stated in the response to the requesting party.¹³ Depending on the asserted exemptions, an affidavit may be required to support the assertion of the exemptions.¹⁴

⁵ *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996, 1004 (Del. 2021).

⁶ 29 Del. C. § 10003(a).

⁷ 29 Del. C. § 10005(c).

⁸ *See Judicial Watch, Inc.*, 267 A.3d at 1008-1012.

⁹ *Id.* at 1010.

¹⁰ *Id.* at 1012.

¹¹ *Judicial Watch, Inc. v. Univ. of Del.*, 2022 WL 2037923, at *3 (Del. Super. Jun. 7, 2022) (“The Court finds that the generalized statements in the Affidavit do not meet ‘the burden to create a record from which the Superior Court can determine whether the University performed an adequate search for responsive documents.’”).

¹² *Id.*

¹³ 29 Del. C. § 10003(h)(2).

¹⁴ *See Flowers v. Office of the Governor*, 167 A.3d 530, 549 (Del. Super. 2017); *see also Judicial Watch, Inc.*, 267 A.3d at 1010-11.

In the first three claims, you allege that the Authority's production of records was incomplete. It is not clear on their face that the requested items were not subject to FOIA, so the Authority has the burden to establish under oath the efforts taken to determine whether there are responsive records and the results of those efforts. In response to your Petition, the Executive Director attested that the FOIA coordinator searched all relevant files and that the Housing Manager stated to you that the last production marks the "complete production of responsive records available to our office" and any categories of records "which were not included in the production are those to which [the Authority] does not have access, are not maintained within [the Authority's] files, or no responsive records were located within the scope of the search."¹⁵ We find that this sworn evidence is not sufficiently specific to meet the *Judicial Watch* standard regarding the Authority's search and recommend that the Authority, in compliance with the timeframes set forth in Section 10003, review its records and supplement its response with any additional records, responses, or information, if appropriate under FOIA.

The fourth claim alleging that the Authority's piecemeal production of records violates FOIA is without merit. There is nothing in the FOIA statute preventing a public body from making separate productions of records. The fifth claim is that the Authority failed to give adequate explanations for several items, including information about the search conducted and records that were unavailable or withheld. When denying a FOIA request in whole or part, a public body must "indicate the reasons for the denial" but is not "required to provide an index, or any other compilation, as to each record or part of a record denied."¹⁶ In its response, the Authority was not required to describe the search or compile a log of the records withheld. If the Authority withheld records, it would have been required under FOIA to state a rationale for that withholding, but the Authority's Response indicates no responsive records were withheld. As such, we find that the Authority did not violate FOIA in this regard.

Conclusion

For the reasons set forth above, we conclude that the Authority violated FOIA by failing to meet its burden to demonstrate that an adequate search for records was conducted. The remaining allegations are not violations of FOIA.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

¹⁵ Response, Ex. F.

¹⁶ 29 Del. C. § 10003(h)(2).

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: Alpa V. Bhatia, Attorney for the Wilmington Housing Authority