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Office of the Attorney General of the State of Delaware

Attorney General Opinion No. 26-IB46

August 6, 2026

Via Email

Ken Grant
ken.grant7@gmail.com

Re: FOIA Petition Regarding the City of Wilmington

Dear Mr. Grant:

We write in response to your correspondence alleging that the City of Wilmington 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 did not violate FOIA by failing to produce the additional data you sought in your request.

Background

On May 22, 2026, you submitted a FOIA request to the City seeking "all information available on vehicles towed by the [C]ity of Wilmington between January 1, 2020 and December 31, 2025, including but not limited to: date of tow; reason for tow; time of tow; location of tow; tow release fee paid; any and all additional money paid for fines, fees, or any other charges; any appeals filed; outcome of any appeals filed; and for 2025, number of tickets dismissed because tow company kept vehicle."¹ The City subsequently produced records and sent you a table showing the tow release fees collected by fiscal year, noting that calendar year totals are not recorded. Following receipt of this production, you replied, alleging that the production was incomplete and asking the City to confirm whether records exist or are exempt by category. You noted that you were not asking the City to create new records. This Petition followed.

¹ Petition.

In the Petition, you state that the production contained no responsive records for the following categories, nor were they otherwise addressed in the City's response: 1) outstanding citation amounts and other money collected at tow release, 2) per-vehicle tow release fee data, 3) location of tow, 4) appeals filed and their outcomes, 5) 2025 tickets dismissed due to vehicle retention by the tow company, and 6) reason for tow. You argue that the City violated FOIA because "[w]hen a requester identifies categories of responsive records that were not produced and asks the public body to either produce them or cite the applicable exemption, the public body must respond; failing to do so is itself a violation."² Further, you assert that to the extent that City asserted no responsive records existed or are exempt, the City was required to state that in writing with a specific citation as to each category.

On July 17, 2026, the City, through its legal counsel, responded to this Petition ("Response"). The City included an affidavit from the City's Parking Services Manager. The Manager attests that "[t]here is no single database or other record which reflects all of the data requested by [you] in [your] May 22, 2026 FOIA request."³ The Manager also states that she performed a data export from the Towbook database for each year requested, but it excludes the personally identifiable information of vehicle owners. The Manager attests that this is the most reliable way to produce the requested data, but it does not include parking or red-light violations, including amounts owed and dismissals. In addition, it does not include the tow appeals. She also stated that the Towbook data includes tow location and reason in the individual vehicle records but that information cannot be exported in bulk data reports as you requested, and regarding tow release fees, the fields of "total" and "balance due" are filled out by the City's towing contractor and not reflective of the outstanding citations owed to the City or the contractor. The Manager states that the appeal records are in hard copy and payment of tow release fees are a separate database called MUNIS and assigned a number not cross referenced with any other data. For the tow release fees, the Manager explains under oath that each tow release is processed individually, and any administrative fee or outstanding citation balance is calculated at the time of the owner requests a vehicle release by reviewing the City's parking and red-light violation databases to ensure an accurate total is provided; vehicle owners may pay in total or make payments, or some fees may be waived.

Against this factual background, the City argues that its response to you was appropriate. The City first notes that one of the requested items you believe are missing was already provided in response to one of your earlier FOIA requests; the City attached a copy of its response showing it gave you the "number of tickets waived in calendar year 2025 because the vehicle was lost to the towing contractor."⁴ For the remaining items, the City argues that it is not required to keep its records in any specific format, nor is the City required to query numerous databases and after extracting data from the separate databases, compile those records and perform a manual review. In this case, the City states that the requested data is contained in separate databases and hard copy

² Petition.

³ Response.

⁴ *Id.*

format. The City argues, consistent with its sworn statements, that it does not have the tow locations, tow release fees, records related to the issuance of red light and parking citations, and towing appeals together in one location, but the information is separately maintained in distinct databases, which cannot be produced in a single data export as requested.

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."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

In this matter, you allege the response is incomplete because six categories of records were missing. The City states that it already responded in February with the number of tickets waived in calendar year 2025 because the vehicle was lost to the towing contractor. The City reattached this information to the Response, so this issue is moot.⁹

Regarding the remaining items, we do not believe that the City had an obligation to produce them. A public body is not required to create a new document in response to a FOIA request, but producing "easily disclosable information stored in a computer system does not require the creation of a new record."¹⁰ In this request, you sought "all information available on vehicles towed by the [C]ity of Wilmington between January 1, 2020 and December 31, 2025" and specified the categories of information you wanted included.¹¹ However, the City provided sworn statements that there is no single record or database with all the requested data and your request cannot be fulfilled through a bulk data export regarding towed vehicles. Instead, the City asserts that this request would require compilation from separate databases and hard copy documents. We

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 *See, e.g., Flowers v. Office of the Governor*, 167 A.3d 530, 546 (Del. Super. 2017); *Chem. Indus. Council of Del., Inc. v. State Coastal Zone Indus. Control Bd.*, 1994 WL 274295, at *13 (Del. Ch. May 19, 1994); *Del. Op. Att'y Gen.* 18-IB30, 2018 WL 3118433, at *2 (Jun. 7, 2018); *Del. Op. Att'y Gen.* 17-IB35, 2017 WL 3426275, n. 3 (July 31, 2017) (citing *The Library, Inc. v. AFG Enter., Inc.*, 1998 WL 474159, at *2 (Del. Ch. July 27, 1998)).

¹⁰ *Vanella v. Duran*, 2024 WL 5201305, at *9 (Del. Super. Dec. 23, 2024).

¹¹ Petition.

do not believe that FOIA requires a public body to manually assemble and integrate information from different databases and hard copies into a format responsive to a request.¹²

Based on those sworn representations, we find no violation of FOIA. However, as the City explained in detail its recordkeeping regarding the items in your request, you are free to seek any of these existing individual data categories, as appropriate under FOIA.

Conclusion

For the reasons set forth above, we conclude that the City did not violate FOIA by failing to produce the additional data you sought in your request.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: John D. Hawley, Assistant City Solicitor

¹² See, e.g., *id.* (“Granted, FOIA does not require a public body to produce records that do not exist, nor does it require the creation of a new record in response to a FOIA request.”); *Del. Op. Att’y Gen.* 22-IB26, 2022 WL 3702294, at *1 (Aug. 12, 2022) (“The City has presented sworn testimony that there is no single record that is fully responsive to your request, and in order to create such a document, the City would have to extract the relevant information and manually update the spreadsheet. FOIA does not require the creation of a new document to respond to a request, and therefore, we find that no violation of FOIA occurred.”); *Del. Op. Att’y Gen.* 96-IB28, 1996 WL 517455, at *2 (Aug. 8, 1996) (upon finding that the public body did not have the requested list, stating “FOIA does not require a public body ‘to create a record’ where the ‘requested record does not exist,’ nor does FOIA require a public body ‘to compile the requested data from’ other public records that may exist.”).