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Office of the Attorney General of the State of Delaware

Attorney General Opinion No. 26-IB47

August 7, 2026

Via Email

Derrek Dunn
dbdunn1968@gmail.com

RE: FOIA Petition Regarding the Delaware State University

Dear Mr. Dunn:

We write in response to your correspondence alleging that Delaware State University violated Delaware's Freedom of Information Act, 29 *Del. C.* §§ 10001-10008 ("FOIA"). We treat your 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. For the reasons set forth below, we determine that the University did not violate FOIA by denying access to the requested records.

Background

On May 26, 2026, you submitted a FOIA request to the University seeking the emails, draft emails, and attachments sent between an employee of the University and another individual from January 1, 2017 to May 26, 2026.¹ On June 10, 2026, the University denied your request, stating that the requested records were not public records under Section 10002(l), which provides that the University's public records are limited to "university documents related to the expenditure of public funds."² Because the records you sought do not pertain to public funds, the University denied the request. This Petition followed.

In the Petition, you contend that the University improperly denied the request. You assert that the FOIA statute provides for the examination of public records, and the only public body

¹ Petition.

² *Id.*

exempt from the release of emails is the Delaware General Assembly under Section 10002(o)(16). This section exempts emails received or sent by members of the General Assembly or their staff.

On July 16, 2026, the University, through its legal counsel, replied to the Petition (“Response”). The University argues that its denial was appropriate, as the request sought all emails, drafts, and attachments between two individuals for a nine-year period. The University notes the request is based solely on the identity of the senders and recipients and did not include a subject matter; thus, the request does not seek records related to the expenditure of public funds. The University asserts only records pertaining to the University’s expenditure of public funds are publicly available under FOIA. In addition, the University points out that your request and Petition indicate that you are not a citizen of the State of Delaware, and the University is not obliged to provide access to records to noncitizens.

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.”³ In Attorney General Opinion No. 16-IB20, this Office concluded that the term, “citizen,” as used in 29 *Del. C.* § 10003(a) refers to a citizen of Delaware and that Delaware’s FOIA statute only guarantees access to public records to citizens of Delaware.⁴ The factual record indicates that you are not a citizen of Delaware. The University does not have a legal obligation to provide access to public records in response to a FOIA request from a noncitizen. As the request is not subject to FOIA, we find that the University did not violate FOIA in denying the requested records.⁵

Conclusion

For the foregoing reasons, we conclude that the University did not violate FOIA by denying access to the requested records.

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

⁴ *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).

⁵ While we have decided to issue a determination here as a courtesy, we note that as a noncitizen, you also may not have the right to utilize the provisions in Section 10005, including the petition process.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: Kenisha L. Ringgold, Deputy General Counsel & Chief Risk Officer