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Office of the Attorney General of the State of Delaware

Attorney General Opinion No. 26-IB51

August 24, 2026

Via Email

Marie Collins
mariepatriciacollins@msn.com

Re: FOIA Petition Regarding the Delaware State Police, Department of Safety and Homeland Security

Dear Ms. Collins:

We write in response to your correspondence alleging that the Delaware State Police, Department of Safety and Homeland Security (“DSP”) 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 DSP did not violate FOIA by denying access to the requested records.

Background

On May 15, 2026, you submitted a FOIA request to the DSP with the questions: “[w]hat was the immigration/citizenship status of the individual on December 23, 2025 and what was his immigration/citizenship history?”¹ The request described the incident and an individual alleged to be involved in a murder on that date. On May 26, 2026, the DSP denied this request pursuant to 29 *Del. C.* § 10002(o)(3), citing the investigatory file records exemption for criminal law enforcement. The DSP also stated that FOIA does not require public bodies to compile data from other public records, answer questions in a written or spoken format, or create records that do not exist. This Petition followed.

¹ Petition.

In the Petition, you contend that the DSP improperly denied your request, because the DSP routinely releases information about suspects in criminal investigations including their demographic information. You further note that this information should be disclosed because the investigation has been closed. You contend that nondisclosure is contrary to the purpose of FOIA, and because the FOIA statute only applies to Delaware citizens, citizenship of requesting parties must already be confirmed through FOIA. You further argue that the State has access to this information, and citizens have a right to know this immigration and citizenship status information; it should be available to allow citizens to monitor policy decisions of State officials.

On July 29, 2026, the DSP, through its legal counsel, replied to the Petition (“Response”). The DSP contends that it is well established that any records pertaining to law enforcement incidents, including police reports and the information in police reports, fall within the investigatory files exemption. The DSP argues that the information you requested clearly falls within the investigatory files exemption, and this exemption applies after the investigation is closed. The DSP also asserts that because public bodies are not required to answer questions, the DSP is not obligated to answer this request, which does not seek records but rather seeks answers to inquiries.

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

Section 10002(o)(3) exempts “[i]nvestigatory files compiled for civil or criminal law-enforcement purposes including pending investigative files, pretrial and presentence investigations and child custody and adoption files where there is no criminal complaint at issue.” “[T]he investigatory exemption attaches as soon as an agency is first made aware of a potential issue.”⁶ This exemption is not limited to pending investigations and continues to apply after an

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 *Judicial Watch, Inc.*, 267 A.3d at 1012.

⁶ *Del. Op. Att’y Gen.* 17-IB05, 2017 WL 1317847, at *3 (March 10, 2017).

investigation is closed.⁷ Here, the request seeks information about an individual involved in a DSP criminal law enforcement response and investigation; such records, on their face, pertain to an investigation for criminal law enforcement purposes.⁸ Thus, the requested records are considered part of law enforcement investigatory files and are exempt from disclosure pursuant to 29 *Del. C.* § 10002(o)(3).

Conclusion

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

Very truly yours,



Daniel Logan
Chief Deputy Attorney General

cc: Joseph C. Handlon, Deputy Attorney General
Dorey L. Cole, Deputy Attorney General

⁷ *News-Journal Co. v. Billingsley*, 1980 WL 3043, at *2-3 (Del. Ch. Nov. 20, 1980) (determining that the investigatory files exemption attaches as soon as a public body is made aware of a potential issue and the exemption survives after the investigation is completed); *see also Del. Op. Att’y Gen.* 17-IB47, 2017 WL 4652343, at *1 (Sept. 22, 2017); *Del. Op. Att’y Gen.* 05-IB16, 2005 WL 2334345, at *2 (Jun. 22, 2005); *Del. Op. Att’y Gen.* 98-IB13, 1998 WL 910199, at *1 (Dec. 8, 1998).

⁸ *Del. Op. Att’y Gen.* 25-IB14, 2025 WL 818783, at *2 (Feb. 28, 2025) (“The DSP’s denial of these photographs and video footage under the investigatory files exemption is proper, as these records involve a law enforcement encounter precipitating a police investigation.”); *Del. Op. Att’y Gen.* 24-IB11, 2024 WL 1132324, at *2 (Feb. 23, 2024) (“This request seeks information regarding the date and type of calls for service to the DSP from a particular residence, which on its face, would initiate police investigation. Thus, the requested records are exempt from disclosure pursuant to 29 *Del. C.* § 10002(o)(3).”).