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Office of the Attorney General of the State of Delaware

Attorney General Opinion No. 26-IB54

September 16, 2026

Via Email

Xerxes Wilson
The News Journal
xwilson@delawareonline.com

Re: FOIA Petition Regarding the Delaware Department of State

Dear Mr. Wilson:

We write in response to your correspondence alleging that the Delaware Department of State 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 Department did not violate FOIA by denying access to the requested records.

Background

On June 25, 2026, you submitted a FOIA request to the Department seeking, in part, "any lists created by the [D]epartment pursuant to 8 *Del. C.* § 503(c)" since December 1, 2019.¹ On July 17, 2026, the Department denied this item in the request pursuant to 29 *Del. C.* § 10002(o)(6), which exempts records that are exempted from disclosure by statute or common law. The Department asserted that this list of "large corporate filers" is exempt from disclosure under 8 *Del. C.* §§ 502(a)(7) and 502(e), as the list would reveal nonpublic tax information. This Petition followed.

In the Petition, you contend that the FOIA exemptions must be narrowly construed and the Department applied an overly broad interpretation of Section 502(e). Section 502(e) states that

¹ Petition.

the Secretary of State must keep all reports open to inspection as provided in the FOIA statute, only excluding any tax information contained on the annual franchise tax reports after tax year 2006. You allege that this exclusion for tax information does not cover the whole report and demonstrates the General Assembly's intent to make a limited subset of the report nonpublic, leaving the balance subject to FOIA's presumption of access. You also assert that a "large corporate filer" is defined by "whether the corporation has a class or series of stock listed on a national securities exchange and whether its most recent annual report filed with the Securities and Exchange Commission or a comparable foreign regulator shows specified revenue and asset thresholds under GAAP or IFRS," and those "annual reports are publicly available through the SEC's EDGAR filing systems."² In sum, you contend that the Department seeks to turn a narrow exemption for tax submissions into a broad exemption covering a different government record that the General Assembly did not intend to protect from disclosure.

On August 26, 2026, the Department, through its legal counsel, replied to the Petition ("Response"). The Department attached the affidavit of the Chief Deputy Secretary and Director of the Division of Corporations in support of its Response, who attests to reviewing the Department's response and verifying its accuracy. The Chief Deputy, who oversees the Franchise Tax Section, attests that the Division compiles a list of "large corporate filers" pursuant to 8 Del. C. § 503(c), which is created from the information provided to the Division by entities on annual franchise reports submitted pursuant to Section 502(a)(7). The Chief Deputy states under oath that every large corporate filer pays the same \$250,000 franchise tax to the State, and this list has been treated as highly confidential tax information and has never been shared outside of the Departments of State and Finance.

The Department argues that as the Section 502(e) provides that any tax information provided by a corporation on its Annual Report pursuant to paragraph (a)(7) therein 'shall not be deemed public,'" and "[b]ecause every corporation on the 503(c) List pays the same amount of franchise taxes, in the case of 'large corporate filers,' the only information that can be withheld from the public in order to protect these corporations' 'tax information' pursuant to Section 502(e), are the names of the corporations on the 503(c) List."³ The Department asserts that the Petition fails to recognize that the "the information provided by corporations on Annual Reports pursuant to Section 502(a)(7) is the very information the Secretary uses to calculate whether a corporation should be included in a 503(c) List."⁴ Making this list public, the Department contends, would render the tax protection contemplated by Section 503(c) inapplicable to any large corporate filer. Finally, the Department notes that the 503(c) list does not exist as a publicly available federal record, and the availability of some data through the SEC does not negate the protection of tax information that the General Assembly has provided for.

² *Id.*

³ Response.

⁴ *Id.*

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

Under 29 *Del. C.* § 10002(o)(6), records exempted from public disclosure by statute or common law are not "public records." The Department has appropriately demonstrated that this list of large corporate filers you seek is exempt from disclosure pursuant to 8 *Del. C.* §§ 502(a)(7) and 502(e). The list is compiled pursuant to 8 *Del. C.* § 503(c) and contains every corporation meeting the definition of "large corporate filer." Each of these large corporate filers pays the same annual franchise tax amount.⁹ Section 502(e) provides that the "Secretary of State shall safely keep all reports returned in such manner as they may be open to the inspection of all persons pursuant to the provisions set forth in Chapter 100 of Title 29, and "[a]ny tax information provided pursuant to paragraph (a)(7) of this section, contained on annual franchise tax reports filed after tax year 2006 shall not be deemed public." The Chief Deputy Secretary of State attests that the Division creates this list of "large corporate filers" "using the information provided to the Division of Corporations by entities on annual franchise reports pursuant to 8 *Del. C.* § 502(a)(7)."¹⁰ As such, this list of large corporate filers is statutorily exempt from disclosure pursuant to 8 *Del. C.* § 502(e), and the Department did not violate FOIA in refusing access to these lists.

Conclusion

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

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

⁹ Response; 8 *Del. C.* § 503(c).

¹⁰ Response.

Very truly yours,

A handwritten signature in black ink, appearing to be 'DL', written over a horizontal line.

Daniel Logan
Chief Deputy Attorney General

cc: Caroline M. McDonough, Deputy Attorney General
Dorey L. Cole, Deputy Attorney General