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Office of the Attorney General of the State of Delaware

Attorney General Opinion No. 26-IB56

September 22, 2026

Via Email

Shannon Marvel McNaught
shannon.marvel@doverpost.com

RE: FOIA Petition Regarding the Town of Dagsboro

Dear Ms. McNaught:

We write in response to your correspondence alleging that the Town of Dagsboro 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 Town violated FOIA by failing to meet its burden to demonstrate that the three aspects of the cost estimate you identified comply with FOIA.

Background

On May 25, 2026, you submitted a FOIA request to the Town of Dagsboro, seeking "all emails between police and email addresses ending in @fbi.gov and @ice.dhs.gov between Jan. 1, 2024 and May 25, 2026."¹ The Town denied access to the requested records. After a petition was filed, this Office issued Attorney General Opinion No. 26-IB34, determining that the Town violated FOIA by failing to demonstrate its withholding of records was permitted under FOIA. Following this opinion, the Town contacted the Delaware Department of Technology and Information ("DTI") to perform a search, and you paid DTI for this search. The Town next provided you with a cost estimate assessing fees for the department staff and the Town's third-party contractor to "process" the emails before they would be provided. The Town indicated it

¹ *Del. Op. Att'y Gen.* 26-IB34 (Jun. 17, 2026).

would be hiring a contractor to conduct this work. The estimated cost for the contractor’s “review and redactions” was based on 12 hours at \$60.00 per hour; the estimate for the department’s “review” was based on 12 hours at \$60.00 per hour; and the file processing and delivery fee was 1.5 hours at \$60.00 per hour.² The total estimated amount was \$1,530.00. After receiving this estimate, you considered narrowing your request by shortening the timeframe from January 1, 2025 to April 1, 2026. However, you asked the Town for more information about these charges. The Town answered your inquiries and submitted a revised estimate with a total of \$1,290.00 for your narrowed request; the contractor’s hours for “review and redactions” were reduced to 10 hours, and the department’s “review and redactions” was estimated at 10 hours. The remainder of the revised estimate was the same. This Petition followed.

In the Petition, you contend that the Town improperly charged for reviews and redactions, which constitute legal review; the FOIA statute does not permit the assessment of fees for legal review. You also state that charging for reviews by both contractor and department staff is redundant and an unnecessary expense. Finally, you allege that the delivery fee is improper, because 1.5 hours for “a few clicks” is unreasonable.

On September 1, 2026, the Town, through its legal counsel, replied to the Petition (“Response”). The Town Solicitor states that none of his time for legal review has been included and asserts that neither the review by the police department nor the review by the contractor are for legal review. The Response included a separate response and affidavit from the Police Chief. The Town argues that the review time for the department would be “strictly billable administrative time under 29 *Del. C.* § 10003(m)(2) to provide the underlying factual foundation.”³ The Town argues that the department and contractor fees are not redundant because the third-party contractor is conducting “bulk technical processing, file reformatting, and preliminary data extraction” because the department lacks specialized in-house IT capabilities. Because this contractor is not a law enforcement officer, the Town contends that the sworn officers must then review the contractor’s work to ensure compliance with “data security protocols” and prevent improper release of restricted operational data. The Town also contends that its \$60.00 per hour fee is appropriate because the police department must utilize off-shift time to complete this request due to the five active officers being fully committed to daily law enforcement and administrative duties; the \$60.00 is the hourly contractor rate, but the department adopted this \$60.00 contractor rate, as it is less than their \$80.00 overtime rate.⁴

In the provided affidavit, the Chief asserts under oath that the “10 hours of department review included in the August 12, 2026 cost estimate is strictly for administrative sorting, factual verification, line-by-line technical oversight, and application of non-legal specialized law

² Petition.

³ Response, Ex. A.

⁴ As the Petition did not raise the issue of the amount of fees, the Town’s method of calculating fees in this instance is not addressed.

enforcement expertise.”⁵ The Chief asserts that the department’s review is required to: (1) protect Criminal Justice Information Systems data under DELJIS standards; (2) verify the accuracy of file extractions provided by DTI; and (3) perform data completeness quality assurance to ensure the contractor did not inadvertently drop or corrupt non-exempt public records. The Chief states that the file processing and delivery charge was necessary because transmitting the DTI-extracted files to the contractor failed due to formatting issues, and an officer had to format the files, load them on a flash drive, and hand deliver this drive to the contractor.

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.”⁶ FOIA requires that citizens be provided reasonable access to and reasonable facilities for the copying of public records.⁷ The public body has the burden of proof to demonstrate compliance with the FOIA statute. When presenting the facts essential to supporting its legal position, the Town must submit those factual representations under oath.⁸

FOIA permits a public body to charge citizens certain fees for processing FOIA requests. “Prior to fulfilling any request that would require a requesting party to incur administrative fees, the public body shall provide an itemized written cost estimate of such fees to the requesting party, listing all charges expected to be incurred in retrieving such records.”⁹ In determining fees, the statute provides that “[c]harges for administrative fees may include staff time associated with processing FOIA requests, including, without limitation: identifying records; monitoring file reviews; and generating computer records (electronic or print-outs).”¹⁰ However, administrative fees may not include any cost associated with the public body’s legal review of whether any portion

⁵ *Id.*

⁶ *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996, 1004 (Del. 2021).

⁷ 29 Del. C. § 10003(a).

⁸ *Judicial Watch, Inc.*, 267 A.3d at 1010-11 (“Thus, the University is asking this Court to determine that it has met its burden of proof, fully resolving the dispute, based solely on these factual representations. But the resolution of a legal action must rest on competent, reliable evidence. And the Court has held that when an attorney seeks to establish facts based on personal knowledge, those facts must be asserted under oath. A statement made under oath, like a sworn affidavit, will ensure that the court’s determination regarding the public body’s satisfaction of the burden of proof is based on competent evidence.”).

⁹ 29 Del. C. § 10003(m).

¹⁰ *Id.*

of the requested records is exempt from FOIA. Further, the public body is obliged to “make every effort to ensure that administrative fees are minimized, and may only assess such charges as shall be reasonable[y] required to process FOIA requests” and must “minimize the use of nonadministrative personnel in processing FOIA requests, to the extent possible.”¹¹ Administrative fees must be billed at the “current hourly pay grade (prorated for quarter hour increments) of the lowest-paid employee capable of performing the service.”¹² The public body is to waive one hour of the administrative fees incurred for processing the request.¹³ “Upon receipt of the estimate, the requesting party may decide whether to proceed with, cancel, or modify the request.”¹⁴

The Petition raises three claims regarding the Town’s estimate. The first claim is that the Town’s estimate improperly included fees for legal review. FOIA permits public bodies to charge various administrative fees, such as fees for identifying records, monitoring file reviews, and generating computer records; FOIA does not permit any charges associated with the public body’s legal review of whether any portion of the requested records is exempt from FOIA.¹⁵ This Office has stated that “[d]etermining whether a record may or must be withheld based upon an exemption listed in FOIA . . . constitutes legal review.”¹⁶ “[T]he meaning of ‘legal review’ is plain: [a] requesting party may not be charged administrative fees for the time it takes ‘the public body’ to review a record for the purpose of assessing the applicability of FOIA’s exemptions, no matter who is conducting that review.”¹⁷ Thus, even if a non-attorney reviews the records to determine if an exemption applies, the review is still considered legal review under the FOIA statute and the costs of such review may not be charged to the requesting party.¹⁸

¹¹ *Id.*

¹² *Id.*

¹³ *Del. Op. Att’y Gen.* 25-IB11, 2025 WL 627019, at *2 (Feb. 19, 2025); *Del. Op. Att’y Gen.* 24-IB02, 2024 WL 629389, at *4 (Jan. 17, 2024); *Del. Op. Att’y Gen.* 22-IB08, 2022 WL 1125018, at *2 (Apr. 4, 2022).

¹⁴ 29 *Del. C.* § 10003(m)(2).

¹⁵ *Id.*

¹⁶ *Del. Op. Att’y Gen.* 16-IB19, 2016 WL 5888771, at *13 (Sept. 30, 2016) (quoting *Del. Op. Att’y Gen.* 15-IB03, 2015 WL 4394195, at *6 (June 12, 2015)).

¹⁷ *Id.*

¹⁸ *Id.*; *but cf.* *Del. Op. Att’y Gen.* 16-IB09, 2016 WL 2619612, at *3 (Apr. 7, 2016) (concluding that a police department lieutenant’s review of its policy manual to determine the underlying factual basis for asserting the public safety exemption was an administrative review, not “a legal review to determine if exemptions apply”).

In its Response, the Town's Chief attests that the estimated 10 hours of departmental review would be for "administrative sorting, factual verification, line-by-line technical oversight, and application of non-legal specialized law enforcement expertise" and these activities are alleged to be needed to "protect restricted Criminal Justice Information Systems data under DELJIS standards," "verify the accuracy of file extractions provided by DTI," and "perform data completeness quality assurance to ensure that the contractor did not inadvertently drop or corrupt non-exempt public records."¹⁹ This "administrative sorting" based on DELJIS protections is no different from a legal review determining what information is exempt, and the Town has not sufficiently described the scope of and need for these other processing activities to prepare the requested emails for production. The contractor's scope of services included in the 10-hour estimate is not described in the affidavit provided. Thus, we find that the Town's descriptions submitted under oath do not sufficiently demonstrate compliance with FOIA and as such, determine that the Town failed to meet the burden of demonstrating the department's and contractor's fees are appropriate under Section 10003.

The second claim alleges that the department and contractor's reviews are redundant. As noted above, the contractor's scope of services is not described in the Town's provided affidavit. Without sworn factual representations to demonstrate the contractor's services in processing this request and the lack of redundancy with other services, this Office must find a violation regarding this claim.

The third claim challenges the propriety of the file processing and delivery fee. The Town alleges that due to a failed attempt to email the DTI records to its contractor, an officer had to format files for loading on a flash drive and hand deliver the flash drive to the contractor. A public body must demonstrate that the administrative fees are minimized to the extent possible and the lowest paid employee performed the service. It is not clear what file processing issues led to the need for a physical delivery and whether the officer's rate, at \$60.00 per hour, was the rate of the lowest paid Town employee capable of performing the delivery. As such, we also find that the Town violated FOIA in this regard, as it failed to meet its burden to demonstrate this fee was appropriate. To remediate these violations, this Office recommends that the Town review and revise its cost estimate, as appropriate under FOIA.

Conclusion

For the foregoing reasons, we conclude that the Town violated FOIA by failing to meet its burden to demonstrate that the three identified aspects of the cost estimate comply with FOIA.

¹⁹ Response, Ex. B.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: Gregory A. Morris, Town Solicitor