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Office of the Attorney General of the State of Delaware

Attorney General Opinion No. 26-IB59

October 12, 2026

Via Email

Martha Chase
mlchase111@gmail.com

RE: FOIA Petition Regarding the City of Rehoboth Beach

Dear Martha Chase:

We write in response to your correspondence, alleging that the City of Rehoboth Beach 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 City did not violate FOIA, as it demonstrated an adequate search for the requested records.

Background

On July 16, 2026, you submitted a request to the City seeking "all records relied upon by the City in determining that the grassy area adjacent to [a specified property] is a public right-of-way or otherwise subject to City control."¹ You asked for any "deeds, plats, easements, dedications, or right-of-way documents affecting this area," any "right-of-way maps," and any "records relied upon by the Code Enforcement Officer for removing political signs."² If the City's position is that this area is a public right-of-way, you ask the City to identify the specific records supporting that determination, including the document and recording information. You stated that request is for the underlying public records themselves, rather than opinions or interpretations.

¹ Petition.

² *Id.*

The City responded on July 24, 2026, enclosing a production of records. The City also stated that portions of this request seek explanations, legal interpretations, or answers to questions rather than existing public records. The City notes these inquiries are not permissible under FOIA, and states that the City is producing the existing public records it has, but nothing in the response should be construed as the City taking any position or making a determination on the matters in the request. This Petition followed.

In the Petition, you allege that the production of documents included a GIS snapshot, your deed, and a draft survey you had previously submitted; you contend that the City’s search failed to “identify or provide any municipal records establishing or supporting its claim.”³ You ask this Office to determine whether the City complied with FOIA when it failed to identify or provide municipal records establishing or supporting its claim. You request the City be required to conduct a thorough search and provide the records for your review or “state under oath no such legal authorization exists in the City’s inventory.”⁴

The City, through its legal counsel, replied to the Petition (“Response”). The City argues that it is compliant with FOIA’s requirements. The City alleges that FOIA does not require producing legal analysis, answering questions, or creating a record in response to a request; and you are asking the City to identify the records supporting a legal claim or state that no legal authorization exists. The City points out that “[b]oth demands require the City to take and defend a legal position.”⁵ The City states the Petition seeks records not mentioned in the request and only the request, as submitted, should be considered.

In addition, the City asserts that it conducted an adequate search of its City Solicitor and Code Enforcement offices for responsive records. The City included affidavits from two members of staff who have the requisite familiarity with the response process. The first affidavit, from the FOIA Coordinator, states under oath that the Coordinator met with the City Solicitor regarding the request and received that day three responsive records – surveys and recorded deed of the property and a parcel snapshot. The Coordinator attests to receiving the remaining four records, including a notice of violation, code enforcement communications, and a City ordinance from the Code Enforcement Officer. The second affidavit from the Code Enforcement Officer indicates that the Officer maintains the City’s code enforcement records, including case files, correspondence, photographs, and related materials; the Officer attests to searching the code enforcement case file and property file for the subject property and the Officer’s email account for responsive records. The Code Enforcement officer states under oath that all records in his possession, custody, or control that were responsive were provided to the FOIA Coordinator. Further, the Code Enforcement Officer attests that the Officer is not aware of any other location in his files where responsive records are likely to be found. Both affiants gave specific dates for when records were searched and provided.

³ *Id.*

⁴ *Id.*

⁵ Response.

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 justify its denial of access to records.⁸ In certain circumstances, a sworn affidavit may be required to meet that burden.⁹

In this matter, the Petition challenges the adequacy of the City's search, as municipal records you expected to be included were not produced. The request seeks the City's records supporting a legal position and asks for deeds, plats, easements, dedications, or right-of-way documents affecting this area, any right-of-way maps, and any records relied upon by the Code Enforcement Officer for removing political signs. FOIA is intended to allow citizens access to existing public records and requires those records sought to be described with sufficient specificity.¹⁰ FOIA does not require a public body to create a record in response to questions or to provide a legal analysis in response to a request.¹¹ In this case, the item asking for records supporting a legal position is not a sufficiently articulated request. For the remaining items, the City's affidavits demonstrate that it conducted an adequate search for the records requested, and we find that the City did not violate FOIA in that regard.¹²

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

⁷ 29 Del. C. § 10003(a).

⁸ 29 Del. C. § 10005(c).

⁹ *Judicial Watch, Inc.*, 267 A.3d at 1008-1012.

¹⁰ 29 Del. C. § 10003; *see also Vanella v. Duran*, 2024 WL 5201305, at *6 (Del. Super. Dec. 23, 2024).

¹¹ *See Del. Op. Att'y Gen.* 26-IB30, 2026 WL 2731030, at *2 (Jun. 10, 2026) ("We also determine that the request for certain policies or guidance in item 6 does not sufficiently identify those records as required by 29 Del. C. § 10003(f)(2), nor would the City be required to answer questions or create a legal analysis in response to a FOIA request"); *Del. Op. Att'y Gen.* 17-IB05, 2017 WL 1317847, at *3 (Mar. 10, 2017); *Del. Op. Att'y Gen.* 17-IB04, 2017 WL 1317846, at *2 (Mar. 8, 2017); *Del. Op. Att'y Gen.* 08-IB05, 2008 WL 1727613, at *1 (Feb. 22, 2008).

¹² *Judicial Watch v. Univ. of Del.*, 2022 WL 10788530 (Del. Super. Oct. 19, 2022) (determining that an affidavit from the University FOIA Coordinator, supplemented with additional information, was sufficient).

Conclusion

For the foregoing reasons, we conclude that the City did not violate FOIA, as the request for the City's records supporting a legal position is not sufficiently articulated under FOIA and the City demonstrated an adequate search for the remaining requested records.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: Lisa Borin Ogden, City Solicitor