



KATHLEEN JENNINGS
ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
820 NORTH FRENCH STREET
WILMINGTON, DELAWARE 19801

CIVIL DIVISION: (302) 577-8400
CRIMINAL DIVISION: (302) 577-8500
FAMILY DIVISION: (302) 577-8400
FRAUD DIVISION: (302) 577-8600
DIVISION OF CIVIL RIGHTS & PUBLIC TRUST: (302) 577-5400
FAX: (302) 577-2610

Office of the Attorney General of the State of Delaware

Attorney General Opinion No. 26-IB60

October 12, 2026

Via Email

Samuel Larkin
skl6284@hotmail.com

RE: FOIA Petition Regarding New Castle County

Dear Samuel Larkin:

We write in response to your correspondence alleging that New Castle County 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 County did not violate FOIA by failing to produce the requested records.

Background

On September 7, 2026, you submitted a FOIA request to New Castle County seeking the phone records related to 911 calls you made in connection with a certain stop sign in 2025 and 2026. The County denied your request, citing 29 *Del. C.* § 10002(o)(6), which exempts records that are excluded from public disclosure by statute or common law and the relevant statutory prohibition in 16 *Del. C.* § 10010. This Petition followed, challenging this decision and requesting disclosure of these call records to help improve road safety.

The County, through its legal counsel, replied to the Petition ("Response"). The County argues its response was appropriate and points out the recently enacted legislation specifically addressing the confidentiality of 911 calls. The County included an affidavit from the Assistant Chief of the County's Emergency Communications Division, who attested that the requested 911 call information is confidential under 29 *Del. C.* § 10002(o)(6) and 16 *Del. C.* § 10010 and that your circumstances do not meet any of the exceptions in the statute providing for limited release.

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."¹ FOIA requires that citizens be provided reasonable access to and reasonable facilities for the copying of public records.² The public body has the burden of proof to justify its denial of access to records.³ In certain circumstances, a sworn affidavit may be required to meet that burden.⁴

Under 29 *Del. C.* § 10002(o)(6), records exempted from public disclosure by statute or common law are not "public records." In this case, the County cites a recently enacted statute specifically addressing 911 calls. The County's affidavit affirms that the requested 911 call records fall under this statutory prohibition. This statute states that "[t]ext and audio recordings of 911 calls are confidential and may not be disclosed except as provided in this subsection," and "[a]ll 911 calls and information furnished in the call or investigative process are confidential and are exempt from the Delaware Freedom of Information Act, Chapter 100 of Title 29."⁵ The statute also lists instances in which the Delaware Department of Safety and Homeland Security or a public safety answering point may release call information, such as through a court order, to emergency responders for purposes of processing calls and providing emergency services, and to criminal justice agencies for purposes of administering criminal justice related to a 911 call. We determine that the requested call records are exempt, and the County has met its burden of demonstrating the withholding of these records is appropriate under FOIA.

Conclusion

For the foregoing reasons, we conclude that the County did not violate FOIA by failing to produce the requested records.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

¹ *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996, 1004 (Del. 2021).

² 29 *Del. C.* § 10003(a).

³ 29 *Del. C.* § 10005(c).

⁴ *Judicial Watch, Inc.*, 267 A.3d at 1008-1012.

⁵ 16 *Del. C.* § 10010(c).

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: Colleen K. Norris, Assistant County Attorney