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-IB66

October 23, 2026

Via Email

Ken Grant
ken.grant7@gmail.com

Re: FOIA Petition Regarding the City of Wilmington

Dear Ken Grant:

We write in response to your correspondence alleging that the City of Wilmington violated Delaware's Freedom of Information Act, 29 *Del. C.* §§ 10001-10008 ("FOIA"). We treat this 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. As discussed more fully herein, we determine that the City did not violate FOIA by withholding access to the requested records, failing to certify nonexempt portions were produced, or format its response as specified.

Background

On August 27, 2026, you submitted a FOIA request to the City seeking certain records for the period of January 1, 2020 to the present, which concern "any instance in which the City, the Wilmington Police Department, or the Department of Finance directed, authorized, or requested that the City's towing provider" tow, retrieve, or transport a vehicle from a location outside the corporate limits of the City of Wilmington, but within New Castle County; outside New Castle County but within the State; and/or outside the State.[1] The City denied the request under the investigatory files exemption.

You objected to this response on several grounds, including that several categories of records you describe as "ordinary-course records," specifically "(1) tow dispatch, authorization,

[1] Petition.

or request records, including entries in the towing contractor's Towbook system; (2) contractor invoices, tickets, and billing records; (3) vehicle release forms and impound-log entries — records the Police Department provides to vehicle owners over the counter in the ordinary course; (4) policies, procedures, mutual-aid agreements, and contract provisions addressing such tows; and (5) correspondence with the towing contractor concerning such tows."[2] The City sent a follow up email, stating that City of Wilmington officials only call for vehicles located outside the corporate limits in relation to active criminal investigations and that the City does not tow vehicles located on private property or outside the corporate limits of the City for parking enforcement or any other purpose. The City further asserted, because all vehicles located outside the City that are ordered to be towed are part of ongoing criminal investigations, the records are exempt. This Petition followed.

In the Petition, you allege that the City misapplied the investigatory files exemption because it does not cover "records created and maintained for billing, dispatch, and administration of the City's towing program."[3] In addition, you argue that the City failed to make a category-specific statement for each category of documents you requested. Finally, you assert that the City failed to confirm that a "segregability review" occurred at your request.[4]

The City, through its legal counsel, replied to this Petition and enclosed an affidavit from the Major of Investigative Operations for the Police Department and the Parking Services Manager of the Department of Finance. The City argues that these affidavits establish the criminal investigatory files exemption was appropriate here. The Parking Services Manager attests that the "City of Wilmington Department of Finance does not direct the City's towing contractor to tow, retrieve, or transport vehicles from any location outside the corporate limits of the City of Wilmington."[5] The Major attests to being the supervising officer of the Investigative Operations branch, including the Records Unit. The Major attests that the Records Unit maintains the records of all vehicles towed at the direction of the Police Department, and vehicles towed at the direction of Police Department from locations outside the City exclusively in furtherance of criminal investigations. The Major states under oath "[r]ecords of vehicles towed at the direction of the Wilmington Police Department are maintained as part of the investigative files associated with each criminal investigation."[6] The City states you misrepresent past City responses regarding the towing contract and includes a copy of the contract, along with a link to the City's police policies and procedures online. The City also points out that FOIA does not require it to answer requests in an individualized format or perform a segregability analysis, as all the items in the request were exempt.

---

2 *Id.*

3 *Id.*

4 *Id.*

5 Response.

6 *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."[7] FOIA requires that citizens be provided reasonable access to and reasonable facilities for the copying of public records.[8] The public body has the burden of proof to justify its denial of access to records.[9] In certain circumstances, a sworn affidavit may be required to meet that burden.[10]

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." In this case, the City has provided sworn statements from the City staff with the relevant knowledge of how these records are maintained. The City provided access to the towing contract and policies, and the affiants confirm that the remaining responsive records to your requests would be maintained in the City's criminal investigation files, as any towing or retrieval occurs in connection with a criminal investigation. Based on these sworn representations, we find that the investigatory file exemption applies to the withheld records, and the remaining claims regarding segregability and the response format are also without merit.[11]

Conclusion

For the reasons set forth above, we conclude that the City did not violate FOIA as alleged in the Petition.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

---

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

8 29 *Del. C.* § 10003(a).

9 29 *Del. C.* § 10005(c).

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

11 The towing contract and policies were produced with the Response. Although the issues regarding these records are mooted by their production, we caution the City to give careful consideration to its initial responses.

/s/ Patricia A. Davis

_____

Patricia A. Davis
State Solicitor

cc: John D. Hawley, Assistant City Solicitor