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-IB65

October 20, 2026

Via Email

Maggie Reynolds
mreynolds@spotlightde.org

RE: FOIA Petition Regarding the City of Dover

Dear Maggie Reynolds:

We write in response to your correspondence alleging that the City of Dover 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 violated FOIA by failing to meet its burden to demonstrate that the requested report was properly withheld.

Background

On May 18, 2026, you submitted a FOIA request to the City seeking a copy of the report provided to members of the city council from 21st Century Policing Solutions' "independent investigation" of the City police department.[1] On May 26, 2026, the City denied your request pursuant to the exemptions for personnel files and investigatory files. This Petition followed.

In the Petition, you contend that the City applied these two exemptions in an overly broad manner. You allege that the City improperly applied the personnel file exemption to a report about City leaders who are under public scrutiny, and due to the public nature of the underlying dispute between the Police Chief and Fraternal Order of Police, the public's right to know outweighs the City's right to keep these matters private. In addition, you allege that the investigatory files

[1] Petition.

exemption is inapplicable, as the report addresses organizational structures in the police department, not pending investigatory files. You contend that the consultant's "contract indicates that the final report . . . does not include any exempt investigatory files," and "[r]ather, it covers an assessment and recommendations for the Police Department and the city based on the documents and interviews conducted."[2] Also, you argue that there are other examples establishing that an investigation of a municipal body completed by a third party is a matter of public interest and not subject to the investigatory files exemption. You note that the City of Lewes Council released the results of an independent investigation in August 2026, and you cite a previous Attorney General Opinion finding that another public body had not met its burden of showing a request for water well sampling information was shielded by the investigatory files exemption.

On September 30, 2026, the City, through its legal counsel, replied to the Petition ("Response"). The City included two affidavits, one from its City Solicitor and one from the Major and Deputy Chief for the police department. The City explains that in September 2025, the President of the FOP lodge representing the City's police filed a complaint with the Internal Affairs Commander against the Police Chief. Because it was the Police Chief, the City sought an outside police agency to perform the investigation but after being unable to secure one, eventually hired an independent entity, 21st Century Policing Solutions, to conduct the investigation. In addition, this entity was asked to investigate a second complaint regarding the Mayor's alleged actions with respect to the FOP. The City Solicitor attests that this consultant's contract indicated the deliverable would be a confidential report for the City Council's consideration in executive session.

The City argues that this report is exempt from disclosure pursuant to both Section 10002(o)(3) and Section 10002(o)(1). The City contends that this investigation is intended to be an internal affairs investigation, and the investigatory file exemption applies because the only reason an independent entity conducted the review, rather than another law enforcement agency, was because the City exhausted all options for finding a law enforcement agency. The City argues that it is well established that the internal affairs investigations are investigatory files exempt from disclosure. The City also asserts that the report is exempt as a personnel file. The City asserts that the allegations against the Chief are "uniquely personnel issues, i.e., claims that the Chief's conduct deviated from the City of Dover employee handbook."[3] The City also argues that the Delaware Law Enforcement Officers Bill of Rights at 11 *Del. C.* § 9200, *et. seq.* ("LEOBOR") exempts personnel files from disclosure in 11 *Del. C.* § 9200(d)(1), and although LEOBOR is intended to apply to sworn officers and not police chiefs, it would be illogical to conclude that personnel files of police officers are exempt, but their file becomes a public record if elevated to police chief. Because LEOBOR was passed nearly a decade after FOIA, the City argues this timing shows the General Assembly intended to provide elevated protections to the personnel files of police officers.

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2 *Id.*

3 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."[4] FOIA requires that citizens be provided reasonable access to and reasonable facilities for the copying of public records.[5] The public body has the burden of proof to justify its denial of access to records.[6] In certain circumstances, a sworn affidavit may be required to meet that burden.[7]

The City's first assertion is that this report is nonpublic pursuant to the investigatory files exemption in Section 10002(o)(3). This exemption applies to "[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." It is not clear on its face how this report pertains to a civil or criminal law enforcement purpose, and although the City mentions allegations against the Police Chief related to employee handbook violations, the City does not explain the civil or criminal law enforcement purpose of investigating the two complaints regarding the Mayor's or the Police Chief's issues. As such, we find that the City did not meet its burden of showing this exemption applies.

The City's invocation of the personnel file exemption is also not appropriately supported. The personnel file exemption pertains to any personnel file, "the disclosure of which would constitute an invasion of personal privacy, under this legislation or under any State or federal law as it relates to personal privacy."[8] To meet this exemption, the public body must meet two requirements: (1) the records must be contained in a personnel file; and (2) disclosing them must constitute an invasion of personal privacy. A personnel file has been defined as "a file containing information that would, under ordinary circumstances, be used in deciding whether an individual should be promoted, demoted, given a raise, transferred, reassigned, dismissed, or subject to such other traditional personnel actions."[9]

In this matter, the City states that this is an internal affairs investigation concerning the Police Chief's vehicle use and secondary employment that allegedly violated the employee handbook. Additionally, the City points to the Delaware Code to demonstrate that a police officer's personnel files are intended to be confidential, asserting that 11 *Del. C.* § 9200(d)(1)

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

5 29 *Del. C.* § 10003(a).

6 29 *Del. C.* § 10005(c).

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

8 29 *Del. C.* § 10002(o)(1).

9 *Vanella v. Duran*, 2026 WL 2473687, at *8 (Del. Supr. Aug. 24, 2026).

specifically exempts from disclosure materials from a personnel file.[10] However, Section 9200(b)(4) explicitly excludes the City's Police Chief from the provisions of Chapter 92 ("Police Officers' Due Process, Accountability, and Transparency"), "except for the disclosures required under § 9210 of this title," stating "this chapter shall not apply . . . to the chief of police of any police force in this State, or to any other officer who is the highest ranking officer in the law-enforcement agency." In addition, the provision exempting police personnel files, Section 9200(d)(1), has been expressly considered by the Supreme Court of Delaware and found not to be an independent statutory basis to withhold an officer's personnel file under FOIA.[11]

Because the City's only bases asserted for the second prong of the personnel file exemption are inapplicable and the complaint related to the Mayor is not addressed in relation to this exemption, we are compelled to find that the City has failed to demonstrate that the personnel file exemption applies to this report.[12] We recommend that the City, in compliance with the timeframes set forth in Section 10003, review its response to determine if it should supplement its response to you with any additional records, responses, or sworn information, as appropriate under FOIA, and if applicable, make any necessary redactions.

Conclusion

For the foregoing reasons, we conclude that the City violated FOIA by failing to meet its burden to demonstrate that this report was appropriately withheld under FOIA.

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[10] Title 11, Chapter 92 of the Delaware Code was renamed from the "Law Enforcement Officers' Bill of Rights" to "Police Officers' Due Process, Accountability, and Transparency." *See* 11 *Del. C.* § 9200, *et. seq.*

[11] *Vanella*, 2026 WL 2473687, at *8 (That leaves DSP's alternative ground for affirming the denial of the Resumé and Demographic Requests. DSP argues that the Statutory Exception incorporates the Police Officers' Due Process, Accountability, and Transparency Act ("PODPAT"), which provides that 'no law-enforcement agency shall be required to disclose in any civil proceeding' the records that PODPAT enumerates, including an officer's personnel file. We disagree. . . . Because a FOIA request is not a 'civil proceeding,' and PODPAT only applies in civil proceedings, PODPAT does not apply to FOIA through the Statutory Exception.") (internal citations omitted).

[12] *Id.* at *7 (finding that "DSP, however, made no showing that disclosure of a trooper's prior law enforcement employers, or the job titles and dates of that employment, would invade anyone's privacy," and remanding the issue for DSP to "either produce the resumés it possesses for currently employed troopers, redacted to disclose only prior law enforcement employers and the job titles and dates of that employment, or support its denial with an affidavit that satisfies *Judicial Watch*").

Very truly yours,

/s/ Dorey L. Cole

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Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

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Patricia A. Davis
State Solicitor

cc: Daniel A. Griffith, City Solicitor