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Office of the Attorney General of the State of Delaware

Attorney General Opinion No. 26-IB68

October 29, 2026

Via Email

James Puddicombe
jpudd2006@gmail.com

RE: FOIA Petition Regarding the City of Milford

Dear James Puddicombe:

We write in response to your correspondence alleging that the City of Milford 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 by withholding access to the requested footage.

Background

On August 21, 2026, you submitted a FOIA request to the City seeking "body cam footage from Feb. 11 event around 1pm regarding attempt to collect personal belongings per agreement at motion to compel."[1] The City denied this request, stating that this incident involved an officer's response to a complaint for criminal trespassing and the requested records were exempt pursuant to Section 10002(o)(3) for investigatory files. This Petition followed, alleging that the City's response was not appropriate because the matter does not concern criminal trespass.

The City, through its legal counsel, responded to the Petition ("Response"). In the affidavit enclosed with the Response, the Chief of Police attests that all the statements of fact in the Response are true and correct to the best of her knowledge. The City asserts that no agreement

[1] Petition.

was made to produce the footage as the result of a motion to compel. The City states that on February 11, 2025, the City police responded to a complaint of criminal trespass on City property. The City states that the "criminal complaint was made to the Milford Police Department that involved [you] in a criminal related response and investigation."[2]

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

The City alleges that the requested footage is a nonpublic record pursuant to Section 10002(o)(3), which 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." "[T]he investigatory exemption attaches as soon as an agency is first made aware of a potential issue."[7] This exemption is not limited to pending investigations and continues to apply after an investigation is closed.[8] Here, the City's sworn statements establish that the footage was obtained in the course of a criminal investigation; such records, on their face, pertain to an investigation for criminal law enforcement

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2 Response.

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

4 29 *Del. C.* § 10003(a).

5 29 *Del. C.* § 10005(c).

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

7 *Del. Op. Att'y Gen.* 17-IB05, 2017 WL 1317847, at *3 (March 10, 2017).

8 *News-Journal Co. v. Billingsley*, 1980 WL 3043, at *2-3 (Del. Ch. Nov. 20, 1980) (determining that the investigatory files exemption attaches as soon as a public body is made aware of a potential issue and the exemption survives after the investigation is completed); *see also Del. Op. Att'y Gen.* 17-IB47, 2017 WL 4652343, at *1 (Sept. 22, 2017); *Del. Op. Att'y Gen.* 05-IB16, 2005 WL 2334345, at *2 (Jun. 22, 2005); *Del. Op. Att'y Gen.* 98-IB13, 1998 WL 910199, at *1 (Dec. 8, 1998).

purposes.[9] Thus, the requested footage is considered part of a law enforcement investigatory file and is exempt from disclosure pursuant to 29 *Del. C.* § 10002(o)(3).

Conclusion

For the foregoing reasons, we conclude that the City did not violate FOIA by withholding access to the requested footage.

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, City Solicitor

[9] *Del. Op. Att'y Gen.* 25-IB14, 2025 WL 818783, at *2 (Feb. 28, 2025) ("The DSP's denial of these photographs and video footage under the investigatory files exemption is proper, as these records involve a law enforcement encounter precipitating a police investigation."); *Del. Op. Att'y Gen.* 24-IB11, 2024 WL 1132324, at *2 (Feb. 23, 2024) ("This request seeks information regarding the date and type of calls for service to the DSP from a particular residence, which on its face, would initiate police investigation. Thus, the requested records are exempt from disclosure pursuant to 29 *Del. C.* § 10002(o)(3).").