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Attorney General Opinion No. 16-IB08

March 18, 2016

VIA EMAIL & FIRST CLASS MAIL

John N. Papajohn
301 Dutch Road
Rehoboth Beach, DE 19971

Re: FOIA Complaint Concerning the City of Rehoboth Beach

Dear Mr. Papajohn:

On May 11, 2015, the Delaware Department of Justice ("DOJ") received your petition ("Petition") requesting our determination pursuant to the Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 ("FOIA"), of whether the City of Rehoboth Beach (the "City") violated FOIA's public records laws concerning your request for information about certain properties in the City.

Pursuant to our routine process in responding to petitions for determination under FOIA, we invited the City to submit a written response to your Petition. We received the City's response ("Response Letter") on May 26, 2015. We have reviewed your correspondence and the City's Response Letter. For the reasons stated herein, we do not find that the City violated FOIA.

On May 7, 2015, you submitted the following request for public records to the Mayor and Commissioners for the City:

1. My letters to the City dated May 23, 2014, June 25, 2014, and August 26, 2014 (with all relevant attachments);
2. All real estate assessments and changes thereto for the three properties;
3. Recording of my presentation to the Appeals Board on June 19, 2014;
4. All E-mails, letters, written memorandum, and oral discussions by the Mayor, Commissioners, Appraiser, and their staff affecting our three properties' value and subsequent tax assessments.

Letter from John N. Papajohn to Mayor and Commissioners, City of Rehoboth Beach, dated May 7, 2015 (via certified mail) (“FOIA Request”).

On May 28, 2015, you supplemented your request to the City by letter addressed to the Mayor and Commissioners. Letter from John N. Papajohn to Mayor and Commissioners, City of Rehoboth Beach, dated May 28, 2015 (via certified mail) (“Supplemental Request”). The letter purported to be “a formal appeal of the City’s letter dated May 1, 2015,” which provided new assessed values for a property you own, located at 22 Rehoboth Avenue (“Property”).

You have not complained that the City has failed to provide you with the records sought in your May 7, 2015 FOIA Request. Indeed, such a petition would not yet have been ripe, as FOIA affords public bodies up to fifteen business days to respond to a FOIA request and the City “[wa]s diligently responding” to your request as of May 26, 2015. *See 29 Del. C. § 10003(h)*; Response Letter at p. 2, n 1.

Rather, in both your FOIA Request and your Supplemental Request, you allege that the City refused to explain the sources and methods utilized in arriving at its assessment figures. Supplemental Request at ¶ 2. While you did not provide documentation evidencing your initial request for records relating to the property assessments, your August 26, 2014 letter to the City’s Board Members acknowledges that you received “numerous pages delineating hundreds of residential and commercial properties with their values” Letter from John N. Papajohn to Board Members, City of Rehoboth Beach, dated May 28, 2015. Moreover, the City has indicated that it has “provided all the relevant records” and “does not have any other records related to the . . . request.”¹ Response Letter at p. 2. Thus, to the extent you are seeking specific comparable sales which the City has represented were not created as part of the reassessment process, we note that FOIA does not require a public body to create records that do not exist or to provide records in the specific format requested. *See, e.g., Del. Op. Att’y Gen. 15-IB02* (June 17, 2015); *Del. Op. Att’y Gen. 06-IB17* (Aug. 21, 2006) (“There is no requirement on the part of public agencies to create records that are not already in their possession, or to store records in a particular medium in order to provide greater public access to the records.”) (quoting *State ex rel. Margolius v. City of Cleveland*, 584 N.E.2d 665, 559 (Ohio 1992)).

We note that your Petition is primarily concerned with the methods by which the City developed new values for your Property. However, the DOJ does not provide opinion letters on the legality or propriety of property assessments by the City.

¹ In its Response Letter, the City indicates that the records were requested in the context of appeal proceedings and requests that we deem your Petition time-barred. *See* Response Letter at p.2, n. 4; Response Letter at p. 3. Under the circumstances, we decline that invitation and will instead decide the instant Petition on the merits.

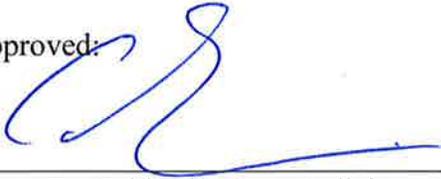
Based upon the foregoing, we conclude that the City of Rehoboth did not violate FOIA as alleged in the Petition.

Very truly yours,



Michelle E. Whalen
Deputy Attorney General

Approved:



Aaron R. Goldstein, State Solicitor

cc: Danielle Gibbs, Chief Deputy Attorney General (via email)
Glenn C. Mandalas, Esq. (via email)