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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 17-IB65

December 29, 2017

VIA U.S. MAIL AND EMAIL

George Flowers
305 Park Avenue
New Castle, DE 19720
gnkflow@comcast.net

RE: December 18, 2017 FOIA Correspondence Regarding the City of Wilmington

Dear Mr. Flowers:

We write regarding your correspondence, received December 18, 2017, alleging that the City of Wilmington (the "City") violated the Delaware Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 ("FOIA"). We treat your correspondence as a petition for a determination pursuant to 29 *Del. C.* § 10005(e) regarding whether a violation of FOIA has occurred or is about to occur ("Petition"). We invited the City to submit a written response to the Petition.¹ We received the City's response on December 21, 2017 and your reply on December 22, 2017. As set forth more fully below, it is our determination that the City violated FOIA by failing to provide a timely response to your November 13, 2017 FOIA request as alleged.

In your Petition, you alleged that the City violated FOIA by failing to respond to your November 13, 2017 FOIA request for "[a]ll reports and documentation submitted by the Prince Advisory Services for services th[e] company provided to the City of Wilmington, Department of Public Works, and all reports generated and filed by the same for any services related to Mediation, Conflict Resolution, and Coaching Efficiency." You stated that you followed up on your request on December 7, 2017 by calling the City's Law Department and were "told to give it until Monday December 11, 2017" but still had not received a response from the City.²

¹ We did not, as you have suggested, direct the City to provide a response to your November 13, 2017 request.

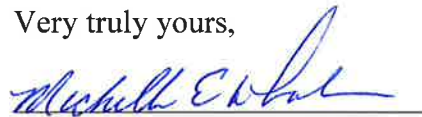
² You also note that you are a City employee and allege that the City is ignoring your request because the requested records "contain information that supports and verifies the fact that the Water Division Director of Public Works has engaged [sic] in behavior which constitutes

In its Response Letter, the City acknowledged that it failed to provide a response to your request within 15 business days as required by FOIA. The City argued, however, that your Petition is moot, as Acting Commissioner of Public Works Kelly Williams provided a response to your request on December 20, 2017.³


Under the circumstances, it is our determination that the City violated FOIA by failing to provide a timely response to your November 13, 2017 request.⁴ As you have since received a response, we do not believe remediation for this FOIA violation to be necessary. The City has nevertheless stated that it “will emphasize the importance of timely responses to FOIA requests, when it conducts annual training for department FOIA coordinators in early 2018.”

Finally, we note that this determination is limited to the single issue raised in your Petition, which is whether the City violated FOIA by failing to provide a timely response to your request. As such, we need not address the question of whether the requested information is a “public record” under FOIA. To the extent you wish to challenge the City’s December 20, 2017 response, you are free to submit a new petition.⁵

Very truly yours,


Michelle E. Whalen
Deputy Attorney General

APPROVED BY:


Stacey X. Stewart, Deputy Attorney General
on behalf of Aaron R. Goldstein, State Solicitor

cc: Aaron R. Goldstein, State Solicitor (via email)
Luke W. Mette, Esq. (via email)

malfeasance of Government.” However, as those allegations fall outside the scope of FOIA, they are not addressed herein.

³ The City included a copy of its December 20, 2017 response.

⁴ See 29 Del. C. § 10003(h)(1) (“The public body shall respond to a FOIA request as soon as possible, but in any event within 15 business days after the receipt thereof, either by providing access to the requested records, denying access to the records or parts of them, or by advising that additional time is needed because the request is for voluminous records, requires legal advice, or a record is in storage or archived. If access cannot be provided within 15 business days, the public body shall cite 1 of the reasons hereunder why more time is needed and provide a good-faith estimate of how much additional time is required to fulfill the request.”).

⁵ See Del. Op. Att’y Gen. 17-IB36, 2017 WL 3426276, at *1 (Aug. 3, 2017); Del. Op. Att’y Gen. 17-IB30, 2017 WL 3426270, at *1 (July 24, 2017).