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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 18-IB06

February 7, 2018

VIA U.S. MAIL AND EMAIL

Richard McVey
505 S. Central Avenue
Laurel, DE 19956
mcveyjr@gmail.com

RE: FOIA Correspondence Regarding the Laurel Police Department

Dear Mr. McVey:

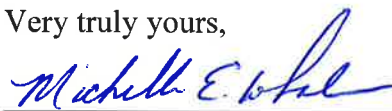
We write regarding your correspondence alleging that the Laurel Police Department (“Laurel”) violated the Delaware Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 (“FOIA”). We treat your correspondence as a petition for a determination pursuant to 29 *Del. C.* § 10005(e) regarding whether a violation of FOIA has occurred or is about to occur (“Petition”). We invited Laurel to submit a written response to the Petition and received a response from Laurel Police Chief Dan Wright on January 26, 2018. As set forth more fully below, it is our determination that Laurel did not violate FOIA in connection with your December 22, 2017 FOIA request.

In your Petition, you alleged that Laurel violated FOIA by providing only a partial response to your three-part FOIA request. Specifically, you alleged “part of the request was provided by the other 2 items in the request were completely ignored.” In response, Chief Wright acknowledged that he failed to provide a response to each of the items you requested and provided a more specific response to each of the items that you had requested. Specifically, Chief Wright stated that the items either did not exist or no longer existed at the time of your FOIA request.

Under the circumstances, it is our determination that Laurel did not violate FOIA as alleged. Pursuant to 29 *Del. C.* § 10003(h)(2), “[i]f a public body denies a request in whole or in part, the public body’s response shall indicate the reasons for the denial.” Here, the record demonstrates that Laurel did not deny your request. Rather, Laurel provided you with the only

existing record responsive to your request.¹ As such, while we encourage Laurel to be more specific when responding to FOIA requests when possible, we cannot conclude that Laurel committed a *per se* FOIA violation by failing to inform you that the requested records did not exist.

Very truly yours,



Michelle E. Whalen
Deputy Attorney General

APPROVED BY:



Allison E. Reardon, State Solicitor

cc: James F. Waehler (via email)

¹ As this determination is limited to the single issue raised in your Petition, which is whether Laurel violated FOIA when it “completely ignored” two items in your December 22, 2017 FOIA request, we need not address the question of whether the record Laurel provided to you is a “public record” subject to disclosure under FOIA.