



**MATTHEW P. DENN**  
ATTORNEY GENERAL

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**OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE**

**Attorney General Opinion No. 18-IB11**

**February 22, 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 February 15, 2018 correspondence, wherein you allege 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. We received a response from Laurel and your reply thereto (“Reply”) on February 20, 2018.<sup>1</sup> 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 failing to provide a timely response to your January 24, 2018 FOIA request for a copy of a recording between yourself, a Laurel police officer and another individual in connection with a criminal matter. Specifically, you alleged that Laurel failed to provide a response to your request within 15 business days as required by FOIA. In response to the Petition, Laurel provided a copy of a letter, dated February 13, 2018, and stated that Chief Dan Wright hand delivered a copy of the letter to your residence on February 13, 2018. In your Reply, you acknowledged that you had since located the February 13, 2018 letter in a parcel box on your front porch. You alleged that the response was not “delivered” as required by FOIA because the box on your front porch states that it is for packages only and requests that letters and flyers be placed in the mail slot.

Pursuant to 29 *Del. C.* § 10003(h)(1), “[t]he public body shall respond to a FOIA request as soon as possible, but in any event within 15 business days after receipt thereof, either by

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<sup>1</sup> Your Reply included two separate email correspondences.

providing access to the requested records, denying access to the records or parts of them, or by advising that additional time is needed . . .” Here, the record demonstrates that Chief Dan Wright hand delivered a response to your FOIA request on February 13, 2018, within 15 business days of your request. As such, and notwithstanding your argument to the contrary, we are satisfied that Laurel provided a timely response to your January 24, 2018 request as required by FOIA.


Finally, we note that you wish to challenge Laurel’s denial of your FOIA request. While we would ordinarily inform you that such a challenge would form the basis of a new petition, we address that allegation as a matter of efficiency and because the record here is sufficient for us to do so. Here, Laurel has denied your request on the basis that the requested record is exempted from FOIA pursuant to 29 *Del. C.* § 10002(1)(3), which exempts “[i]nvestigatory files compiled for civil or criminal law-enforcement purposes . . .” As we are satisfied that the requested record is in fact part of an investigatory file compiled for civil or criminal law-enforcement purposes, we believe that Laurel was permitted to deny your request on that basis. Indeed, any entitlement that you may have to the requested record has no basis in Delaware’s FOIA.

Based upon the foregoing, it is our determination that Laurel did not violate FOIA in connection with your January 24, 2018 FOIA request.<sup>2</sup>

Very truly yours,

  
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Michelle E. Whalen  
Deputy Attorney General

APPROVED BY:

  
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Allison E. Reardon, State Solicitor

cc: James F. Waehler (via email)

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<sup>2</sup> We note that you also allege discovery violations and misconduct on the part of certain individuals. However, as those allegations are outside the scope of FOIA, they are not addressed herein. You may wish to consult with an attorney regarding those allegations if you have not done so already.