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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 18-IB12

March 2, 2018

VIA EMAIL

Mr. John Flaherty
Delaware Coalition to Keep Bus Service on Rodney Square
Jdf0000@aol.com

Re: FOIA Correspondence Concerning the Delaware Transit Corporation

Dear Mr. Flaherty:

I write in response to your correspondence alleging that the Delaware Transit Corporation (“DTC”) violated the public records provisions of Delaware’s Freedom of Information Act, 29 *Del. C.* §§10001-10007 (“FOIA”). I treat your correspondence as a petition for a determination pursuant to 29 *Del. C.* §10005 regarding whether a violation of FOIA has occurred or is about to occur (“Petition”). Specifically, you allege that DTC violated FOIA by failing to provide a response to your December 24, 2017 request for records. We invited DTC to submit a response to the Petition. We received DTC’s response (“Response Letter”) on February 19, 2018.¹ For the reasons set forth below, it is my determination that DTC did not violate FOIA as alleged.

DTC is a division of DelDOT. On December 24, 2017, you sent FOIA requests to DTC and the Delaware Department of Transportation (“DelDOT”) “to inspect copies of all communications prior to September 13, 2017 regarding DART bus service on Rodney Square and specific communications and information regarding the development of the proposal to remove bus routes serving Rodney Square.” You sent one request to DelDOT through DelDOT’s FOIA email address and sent the same request² to DTC FOIA through the DART First State Website

¹ Following our receipt of the Petition, the parties copied this Office on several email communications amongst themselves. However, as we did not request those communications and they were not specifically directed to this Office, they are not considered part of the record here.

² The requests differed only inasmuch as they stated which other entities and individuals to whom you had sent separate requests.

Comment Portal.³ On December 26, 2017, you sent the same request via email to DTC’s Chief Executive Officer, John Sisson. On December 28, 2017, a DelDOT representative sent you an email stating that DelDOT was in receipt of your December 24 FOIA request and that it would respond within the timeframe provided by FOIA. On January 17, 2018, a second DelDOT representative sent you an email stating that your request was in legal review and that she anticipated such review to be completed in approximately 15 business days. On January 19, 2018, the second DelDOT representative sent you a cost estimate for your request. The cost estimate indicated – in separate paragraphs – the number of DTC employees believed to have responsive records and the number of DelDOT employees believed to have responsive records. The cost estimate further stated: “PLEASE NOTE: if payment is not received within 10 days of the date of this email, the request will be deemed to be withdrawn.” On January 31, 2018, the second DelDOT representative informed you that your request had been closed because ten days had passed and you had not submitted payment.

In your Petition, you allege that DTC ignored your request. In its Response Letter DTC notes that it is a division of DelDOT and shares a FOIA submission portal and FOIA log with DelDOT.⁴ DTC states: “Due to the combined nature of the FOIA log, and the fact that many FOIA requests ask for documents that cost many DelDOT divisions, a response to a FOIA to DTC may come from either a DTC or a DelDOT employee.”⁵ DTC maintains that each of DelDOT’s responses was sent on behalf of both DelDOT and DTC.⁶ In doing so, DTC notes that the requests were for exactly the same documents and that the January 19, 2018 cost estimate specifically identified DTC employees believed to have responsive records.⁷

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 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 is archived.” Here, because your requests were made on December 24, 2017, DelDOT and DTC were required to respond as required by 29 *Del. C.* § 10003(h)(1) no later than January 17, 2018.⁸ Both DelDOT and DTC’s websites reasonably inform the public that FOIA requests to DTC will be handled through the same means as its parent agency DelDOT. Indeed, the January 19, 2018 correspondence made clear that it was being sent

³ DTC’s website contains a link for FOIA Requests, which, when clicked, redirects visitors to the DelDOT FOIA information page. *See* <https://www.dartfirststate.com/> (last visited March 1, 2018).

⁴ Response Letter at 2.

⁵ *Id.*

⁶ *Id.* at 3.

⁷ *Id.*

⁸ December 25, 2017, January 1, 2018, and January 15, 2018 were legal holidays.

on behalf of both DeIDOT and DTC. While this Petition might have been avoided if DeIDOT had more clearly indicated in its January 17, 2018 response that it was responding on behalf of DeIDOT *and* DTC as a division thereof, it is my determination that DTC's failure to do so did not violate FOIA.

Very truly yours,

A handwritten signature in black ink, appearing to read 'A. Goldstein', written over a horizontal line.

Aaron R. Goldstein
Chief Deputy Attorney General

cc: Aleine Cohen, Deputy Attorney General
Annie Cordo, Deputy Attorney General
Michelle E. Whalen, Deputy Attorney General