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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 18-IB17

April 2, 2018

VIA EMAIL

Shannon Marvel McNaught
shannon.marvel@doverpost.com

RE: FOIA Correspondence Regarding the Town of Dewey Beach

Dear Ms. McNaught:

We write regarding your correspondence, received on March 26, 2018, alleging that the Town of Dewey Beach (“Town”) 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”). For the reasons set forth below, we conclude that your Petition is moot.

On March 9, 2018, you submitted a FOIA request to the Town for “any information provided to the town, or any of its employees or elected officials, by the TGM Group.” On March 26, 2018, at 8:59 AM, Ms. Ashleigh Hudson, the Town’s Clerk and FOIA Coordinator, sent you an email requesting that you call her. At 9:03 AM, and presumably following a call with Ms. Hudson, you sent an email to Ms. Hudson stating: “Please amend my request to include only the agreed upon procedures manual.” At 12:55 PM, Ms. Hudson sent you a copy of a December 19, 2017 engagement letter, which included agreed-upon-procedures. Ms. Hudson also stated: “Please do not hesitate to let me know if you have any questions.” At 1:33 PM, you replied: “Confused as to why the report itself wasn’t included?” At 6:30 PM, you sent an email to this Office alleging that the Town violated FOIA by failing to provide a copy of a completed report regarding agreed-upon procedures.

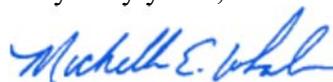
On March 27, 2018, we sent an email correspondence to you, Ms. Hudson, and the Town’s counsel requesting the parties’ position regarding whether this matter was ripe for determination. We noted Ms. Hudson’s invitation that you follow-up with any questions, the short period of time between your last email to Ms. Hudson and your correspondence with this Office, and that the Town’s deadline for a response had not yet run.¹ We requested the parties’ positions regarding

¹ 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

the ripeness of this matter on or before March 28, 2018. Hours later, you responded that Ms. Hudson “was well aware of what exactly I was interested in” following your phone conversation. On March 28, 2018, with twenty-four hours of your follow-up to her, Ms. Hudson sent you a copy of the completed report. In a subsequent correspondence, you argued that the Town’s failure to provide this report with its original response amounted to a FOIA violation and request that this Office “act on this complaint to deter Dewey Beach from withholding documents in the future.”²

Under the circumstances, we have determined that your Petition is moot, as you are now in possession of the information you sought in your March 9, 2018 request, as amended on March 26, 2018.³ We express no opinion regarding whether the requested records are, in whole or in part, “public records” as defined by FOIA. Of course, to the extent you believe prospective relief beyond this Office’s jurisdiction to be warranted, you may seek judicial review of your claim.⁴

Very truly yours,



Michelle E. Whalen
Deputy Attorney General

APPROVED BY:



Allison E. Reardon, State Solicitor

cc: Fred A. Townsend, III, Esq.

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.”).

² The Town’s counsel provided a substantive response to your Petition. However, under the circumstances, we do not believe a response from either party to be necessary to this determination beyond those specifically requested and discussed herein.

³ See *Flowers v. Office of the Governor*, 167 A.3d 530, 546 (Del. Super. 2017) (“[T]he Court finds that any claimed violation regarding the Sample E-mails is moot because Appellants already possess them.”); *Chem. Indus. Council of Del., Inc. v. State Coastal Zone Indus. Bd.*, 1994 WL 274295, at *13 (“Because the documents that are the subject of [plaintiffs’] FOIA requests were turned over to the plaintiffs on August 13, 1993, that claim is moot.”).

⁴ See 29 Del. C. § 10005(d) (“Remedies permitted by this section include an injunction, a declaratory judgment, writ of mandamus and/or other appropriate relief. *The court* may award attorney fees and costs to a successful plaintiff of any action brought under this section.”).