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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 18-IB54

December 5, 2018

VIA EMAIL

Mr. Johann Gaebler
Computational Policy Lab
Huang Engineering Center
Room 251
Stanford, CA 94305
comppolicylab@gmail.com

RE: FOIA Petition Regarding the Delaware Criminal Justice Information System
("DELJIS")

Dear Mr. Gaebler:

We write in response to your correspondence alleging that the Delaware Criminal Justice Information System ("DELJIS") 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 with regard to your records requests. For the reasons set forth below, we conclude that DELJIS has not violated FOIA as alleged in your Petition.

BACKGROUND

On September 4, 2018, you submitted a FOIA request to DELJIS for the database entries from the DELJIS Online Wanted Person Review available during June 2018. DELJIS responded by letter that the requested records do not exist and are not in a static file. Additionally, DELJIS noted that FOIA does not require a public body to compile information from various sources to create a document or provide information in a question-and-answer format. You submitted a second FOIA on September 21, 2018 in which you requested a "current snapshot of the Microsoft Access or Microsoft SQL database(s) ("the database") forming the backend of the Delaware Criminal Justice Information System's ("DelJIS") Online Wanted Person Review ("OWPR"; url:

<https://pubsrv.deljjs.delaware.gov/WantedPublic/>.”¹ Although it appears from the parties’ submissions that you did not receive it, DELJIS responded on September 27, 2018 denying this request for several reasons, including that you appear not to be a citizen of Delaware. As the right to access records under FOIA is not guaranteed for non-Delaware citizens, the request was denied on that basis.

You sent a Petition to this Office alleging that DELJIS did not respond to your September 21, 2018 request and arguing the following: the requested records do exist; the records are public by virtue of a statute designating the records as public; and there is no exemption under FOIA for records which are “not static.” You requested that DELJIS be enjoined to provide a response to your September 21, 2018 request and provide the requested database snapshot.

On November 20, 2018, DELJIS submitted a letter (“Response”) stating that DELJIS did, in fact, respond to the September 21, 2018 request and provided a copy of the letter. The Response argued that the request was properly denied because the requested records do not exist; FOIA does not require DELJIS to create a new record, which DELJIS would have to do to create the information requested; the requested records are exempt under 29 *Del. C.* § 10002(1)(17); and you are not entitled to the records, as you appear not to be a Delaware citizen.

DISCUSSION

One of FOIA’s primary purposes is to grant citizens access to public records.² Specifically, the statute provides that “public records shall be open to inspection and copying during regular business hours by the custodian of the records for the appropriate public body” and that “[r]easonable access to and reasonable facilities for copying of these records shall not be denied to any citizen.”³ DELJIS has provided a copy of its response of September 27, 2018, which DELJIS’s counsel affirmed was sent within the statutorily required time. The response denied your records request, in part, as you did not appear to be a Delaware citizen. We also see evidence from your filings that you are not a Delaware citizen. The United States Supreme Court case, *McBurney v. Young*,⁴ affirmed that a citizens-only FOIA statute does not violate the Privileges and Immunities Clause or the dormant Commerce Clause of the U.S. Constitution. In Attorney General Opinion 16-IB20 and subsequent opinions, this Office accepted the reasoning of the *McBurney* case and concluded that the Delaware’s FOIA statute is applicable to Delaware citizens only.⁵

¹ Petition.

² 29 *Del. C.* § 10001.

³ 29 *Del. C.* § 10003(a).

⁴ 569 U.S. 221 (2013).

⁵ See e.g., *Del. Op. Att’y Gen.* 18-IB18, 2018 WL 2267112, at *1 (April 6, 2018); *Del. Op. Att’y Gen.* 17-IB14, 2017 WL 3426252, at *1 (July 6, 2017); *Del. Op. Att’y Gen.* 16-IB20, 2016 WL 5888776, at *1 (Sept. 30, 2016) (determining that public bodies are “only *required* to comply

Therefore, the denial of your September 21, 2018 request was appropriate on that basis, and we need not address the remaining issues.⁶

CONCLUSION

Thus, it is our determination that DELJIS has not violated FOIA as alleged.

Very truly yours,

Aaron Goldstein
Chief Deputy Attorney General

cc: Lisa Morris, Deputy Attorney General
Dorey Cole, Deputy Attorney General

with FOIA when the requesting party is a citizen of the State of Delaware” and noting that “[i]n all other cases, public bodies *may, and are encouraged to fulfill*” otherwise proper FOIA requests) (emphasis in original).

⁶ While we have decided to issue a determination regarding the merits of your claim, we feel compelled to note that you may lack standing to avail yourself of the enforcement provisions contained in 29 *Del. C.* § 10005, including the petition process set forth in Section 10005(e).