

and failing to meet their burden of proof to justify the denial of access to records. *See Id.* § 10003; *Id.* § 10005(c). ACLU-DE asks this Court to order Defendant to produce responsive public documents consistent with the Act.

JURISDICTION AND VENUE

1. This complaint is timely filed within 60 days of the issuance of the denial of information pursuant to 29 *Del. C.* § 10005(b).
2. This Court has jurisdiction over this action pursuant to 10 *Del. C.* § 541, and venue is proper under 29 *Del. C.* § 10005(b) because Plaintiff's address is 100 W 10th Street, Wilmington, DE 19801.

PARTIES

3. ACLU-DE is a private, nonprofit membership corporation founded in 1961 as an affiliate of the national American Civil Liberties Union, with over 5,800 members within the state of Delaware. The mission of ACLU-DE and the common interest of its members is to preserve and protect fundamental constitutional rights. ACLU-DE has been a consistent advocate for policies and mechanisms to hold police accountable to the communities they serve.¹

¹ See ACLU of Delaware, *Police Accountability*, <https://www.aclu-de.org/police-accountability/> (last visited March 12, 2026).

4. Defendant Kate Banaszak is the Town Clerk and designated FOIA coordinator for the Town of Dewey Beach. She is sued in her official capacity.

FACTS

The FOIA Statute

1. The Delaware Freedom of Information Act declares that “[i]t is vital . . . that public business be performed in an open and public manner” so that citizens have “the opportunity to observe the performance of public officials and to monitor the decisions that are made by such officials,” including “easy access to public records.” 29 *Del. C.* §10001.
2. FOIA defines a public record as “information of any kind, owned, made, used, retained, received, produced, composed, drafted or otherwise compiled or collected, by any public body, relating in any way to public business, or in any way of public interest, or in any way related to public purposes, regardless of the physical form or characteristic by which such information is stored, recorded or reproduced.” *Id.* § 10002(o).
3. FOIA further provides that [a]ll public records shall be open to inspection and copying by any citizen of the State.” *Id.* §10003(a).

4. If a public body denies access to records in any action under FOIA, “the public body’s response shall indicate the reasons for the denial.” *Id.* §10003(h)(2).
5. Furthermore, “the burden of proof shall be on the custodian of records to justify the denial of access to records.” *Id.* §10005(c).
6. FOIA provides that some records are not considered public and are exempt from disclosure. Among these exemptions, three were cited by Defendants:
 - a. “Investigatory files compiled for civil or criminal law-enforcement purposes including pending investigative files, pretrial and presentence investigations and child custody and adoption files where there is no criminal complaint at issue.” *Id.* § 10002(o)(3).
 - b. “Criminal files and criminal records, the disclosure of which would constitute an invasion of personal privacy.” *Id.* § 10002(o)(3).
 - c. “Any records specifically exempted from public disclosure by statute or common law.” *Id.* § 10002(o)(6).

Body Camera Footage Request

7. By letter dated January 15, 2026, a copy of which is attached as **Exhibit A**, the ACLU of Delaware, pursuant to FOIA, requested that Defendant provide a copy of body worn camera footage of six named Dewey Police

Department officers from August 25, 2025, between 12:00 a.m. and 3:00 a.m.

8. Pursuant to Delaware’s Mandatory Standards for Use of Body Worn Cameras, access to stored BWC recording is permitted “[t]o comply with any other legal obligation to turn over the recording to a person or entity.” 1 Del. Admin. Code § 801-26.16.6.

FOIA Request Response

9. The same day, Defendant provided a letter, a copy of which is attached as **Exhibit B**, responding to ACLU-DE’s FOIA request.
10. Defendant informed ACLU-DE that the request was denied, citing the exemptions for investigatory files, criminal records, and statute or common law. Exhibit 2.
11. For the statute or common law exemption, Defendant cited broadly to 11 *Del. C.* Chapters 85 and 86. *Id.*
12. Defendant did not explain under oath how the requested records implicated the cited exemptions. *Id.*

COUNT I – VIOLATION OF FOIA

13. Paragraphs 1-12 are incorporated by reference.
14. The enumerated exemptions to FOIA “create a barrier to the public's right to access information and must be narrowly construed.” *Vanella on Behalf of*

Delaware Call v. Duran, 2024 WL 5201305, *4 (Del. Super. 2024)

(citations omitted).

15. The investigatory files exemption has been interpreted by the Delaware Supreme Court as applying to information “gathered during the course of an investigation.” *Lawson v. Meconi*, 897 A.2d 740 (Del. 2006).
16. Definitions of “investigation” and similar terms in the Delaware Code indicate that the term typically refers to the collection of evidence following some allegation or report requiring further information gathering. *See* 16 *Del. C.* § 902(21); *see also* 11 *Del. C.* § 9200(2).
17. Defendant has not indicated that the requested body camera footage was gathered following any allegation or report of activity implicating criminal or civil law-enforcement purposes.
18. Therefore, the investigatory exemption was improperly applied to the requested records.
19. The criminal records exemption requires showing that disclosure of the requested information would constitute an invasion of personal privacy. *Gannett Co. v. Delaware Criminal Justice Info. Sys.*, 768 A.2d 508, 515 n.8 (Del. Super. Ct. 1999), *aff'd sub nom. Gannett Co., Inc. v. Delaware Justice Info. Sys.*, 765 A.2d 951 (Del. 2000).

20. Analysis by a Delaware court of a similar FOIA exemption requiring a showing of an invasion of personal privacy in the context of law enforcement information found that the objecting law enforcement agency must particularly state why the requested information “would invade [the officer’s] personal privacy.” *Vanella on Behalf of Delaware Call v. Duran*, 2024 WL 5201305, *11 (Del. Super. 2024).
21. Defendant has not made any statement regarding how personal privacy would be invaded by disclosure of the requested records, nor could she, considering body camera footage captures officers working in their public capacity on a public boardwalk.
22. Therefore, the criminal records exemption was wrongfully invoked by Defendant.
23. 11 *Del. C.* Chapters 85 and 86, invoked to block access to the requested footage by way of the statute or common law exemption, restrict the dissemination of “criminal history record information” and “criminal justice information” as defined in the chapters. *See* 11 *Del. C.* § 8513(d); 11 *Del. C.* § 8611(b).
24. Criminal history record information, as defined in the chapters, “mean[s] information collected by state or federal criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests,

detentions, indictments, informations or other formal criminal charges and any disposition arising therefrom, sentencing, correctional supervision and release.” 11 *Del. C.* § 8502(4).

25. Criminal justice information, as defined in Chapter 86, includes criminal history record information as well as “biographic data; biometric data; identity history; person, organization, property, or Division of Motor Vehicles data; case or incident history; and other data necessary for authorized agencies to make hiring decisions, perform their mission, and enforce the laws of this State.” 11 *Del. C.* § 8602(11).

26. Defendant has not provided an explanation for how the requested records would fall into either of these definitions, as body camera footage is not inherently swept up in either definition.

27. Therefore, the 11 *Del. C.* Chapters 85 and 86 were wrongfully invoked by the Defendant to block access to the requested records.

28. As none of the exemptions cited by the Defendant are properly applied here, Defendant wrongfully withheld the requested records.

CLAIMS FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Declare that Defendant’s failure to disclose the requested records violates FOIA and is unlawful;

2. Order Defendant to provide requested records to Plaintiff in compliance with the law;
3. Award Plaintiffs' attorneys' fees and costs pursuant to 29 *Del. C.* § 10005(d);
and
4. Grant all other appropriate relief.

Dated: March 12, 2026

**The American Civil Liberties Union
of Delaware**

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