EFiled: Jun 21 2024 03:02PM EDT
Transaction ID 73456601
Case No. K24A-02-002 JJC

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
FOR KENT COUNTY

ROBERT E. VANELLA, on behalf of THE DELAWARE CALL

Petitioner Below – Appellant,

v.

CHRISTINA DURAN, In her official capacity as FOIA Coordinator for DELAWARE DEPARTMENT OF SAFETY AND HOMELAND SECURITY, DELAWARE STATE POLICE

Respondent Below – Appellee.

C.A. No. K24A-02-002 JJC

Appeal from Attorney General Opinion No. 24-IB01

APPELLANT'S REPLY BRIEF IN SUPPORT OF THEIR APPEAL FROM ATTORNEY GENERAL OPINION 24-IB01

Dated: June 21, 2024

/s/ Dwayne J. Bensing
Dwayne J. Bensing (#6754)
ACLU of Delaware
100 W. 10th Street, Suite #706
Wilmington, DE 19801
Phone: (302) 295-2113
Email: dbensing@aclu-de.org

/s/ Casey L. Danoff
Casey L. Danoff (PA #334399)
Pro Hac Vice
ACLU of Delaware
Penn Catalyst Legal Fellow
100 W. 10th Street, Suite #706
Wilmington, DE 19801
Phone: (302) 467-3916
Email: cdanoff@aclu-de.org

Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Attorney General Opinions

Other Authorities

QUESTIONS PRESENTED

1. Was 29 *Del. C.* § 10002(o)(17) ("the public safety exception") wrongly invoked to deny Appellant's FOIA request?

2. Was 29 *Del. C.* § 10002(o)(1) ("the personnel records exception") wrongly invoked to withhold responsive records containing officer resumes, certification statuses, and demographic information?

3. Were 29 *Del. C.* § 10002(o)(6) and the Law Enforcement Officer Bill of Rights ("LEOBOR") wrongly invoked to deny access to records containing officer certification statuses and demographic information?

ARGUMENT

Delaware's Freedom of Information Act ("FOIA") empowers the public to observe and monitor the performance of taxpayer-funded government officials. At its best, FOIA is a critical mechanism to promote government transparency and accountability. However, in denying Appellant's entire request ("the Request," CR 06) for surface level data about the Delaware State Police ("DSP"), the State asks the Court to adopt an over-broad reading of the limited exceptions to FOIA that swallow the statute's overarching pro-disclosure purpose. The consequences of DSP's interpretation of FOIA's narrow exceptions extend beyond the present Request, giving state agencies free-reign to withhold public data where it is convenient, rather than in the limited circumstances set forth in the statute.

Appellant recognizes that law enforcement officers do not, and should not, sacrifice all privacy and security interests upon volunteering to serve in a public position. Nevertheless, in denying Appellant's entire Request, including

information as basic as officer names, DSP argues that Delaware law enforcement officers should be allowed to operate behind a veil of total anonymity — an Orwellian outcome antithetical to FOIA's core objectives.[1]

For the reasons set forth in the Opening Brief and argued below, the public records sought by the Request are subject to FOIA and must be disclosed.

I. DSP'S AMORPHOUS FEARS ABOUT OFFICER SAFETY ARE UNRELATED TO APPELLANT'S REQUEST.

In light of the Answering Brief's repeated concerns about officer morale and safety, Appellant reiterates, for the avoidance of any doubt, what the Request actually seeks, and more importantly, what it does not seek.

Appellant's Request *only* seeks records sufficient to show the following:

1) **Names** of all certified law enforcement officers,
2) The current annual **salary** of each certified officer,
3) The current employing state **agency** and rank of each certified officer,

---

[1] The vast majority of states disclose data about police officer certification and work location, including Delaware's neighbors, Maryland and New Jersey, which disclosed analogous records through their States' FOIAs. *See* Sam Stecklow, *Delaware opened up access to some police misconduct records – but still denies requests for basic police data,* DELAWARE CALL (Mar. 14, 2024), https://delawarecall.com/2024/03/14/delaware-opened-up-access-to-some-police-misconduct-records-but-still-denies-requests-for-basic-police-data/. Several other states affirmatively publish similar data. *See, e.g,* Ohio (https://opota.ohioattorneygeneral.gov/PublicRecords); Illinois (https://www.ptb.illinois.gov/resources/officer-lookup/); Oregon (https://www.bpl-orsnapshot.net/PublicInquiry_CJ/EmployeeSearch.aspx); Minnesota (https://mnit.force.com/POSTLicenseSearch/s/); Massachusetts (https://www.mass.gov/lists/data-and-reports#certified-law-enforcement-officers); and Colorado (https://post.coag.gov/s/?tabset-1eada=4b5ff).

4) The **past employers** and job titles of each certified officer,
5) **Resumes** of each certified officer,
6) A list of all formerly certified officers and their **current status**,
7) And **the age, sex, and race** of each certified officer. Opening Brief ("OB"), 3 (**emphasis** added).

DSP fails to demonstrate a causal, or even correlative, nexus between the parade of horribles it warns of and the precise data sought here. While the Answering Brief is rife with case citations, Attorney General opinions, and news stories that hinge on making certain data publicly available (i.e., officer addresses, birth dates, email addresses, or similarly invasive data points), *none* of that is information that the Request seeks. Answering Brief ("AB"), 7.[2] DSP cites no evidence linking the disclosure of officer names, salary information, job qualifications, certification statuses, and demographic information to a national police shortage or low officer morale. For example, the Fox News article regarding officer recruitment challenges, AB 7, does not even mention a perceived lack of privacy as a factor in this trend. *Id*. Instead, the article focuses

[2] "In response to FOIA requests from Delaware Call, many departments released records showing lists of employee names, and often other information like job titles or salaries, without issue. These departments include those for larger jurisdictions like New Castle County and small towns like Delmar, Camden, Laurel, and Milton." Stecklow, *supra* note 1, at 14.

on shifting attitudes toward police officers before and after the killing of George Floyd in 2020, where officers explain that they feel a lack of appreciation.[3]

Similarly, DSP fails to demonstrate any nexus between disclosure of Appellant's Request and an increase in attacks against police officers. *See* AB 9-10 (citing an article that shares statistics on the upward trend in officer attacks, without any claim explaining why that increase has occurred); AB 10 (citing a link to the DOJ webpage detailing all use of force investigations conducted by the AG's office, without reference to the data sought in the Request). Even DSP's Affidavits, describing the presence of a threatening canine and more frequent "concerning" calls to the department, fail to show that these occurrences have anything to do with the disclosure of the requested information. OB 13-14; CR 65.

DSP cites, instead, a series of opinions that, again, hinge on easily distinguishable factual circumstances or data requests and often result in disclosure of the very data sought here. *See, e.g*., Op. Att'y Gen. 94-I019 (Mar. 7, 1994) (permitting disclosure of public employee's title, agency, and salary, but not birth date); *Gonzalez v. U.S. Citizenship & Immigr. Servs.,* 475 F. Supp. 3d 334, 352 (S.D.N.Y. 2020) (denying disclosure of specific officers involved in requester's

---

[3] *See* Kendall Tietz, *Police shortages reported nationwide amid record-low morale and recruitment,* FOX NEWS, (Sep. 19, 2023), https://www.foxnews.com/media/police-shortages-reported-nationwide-amid-record-low-morale-recruitment.

ICE proceeding where danger was described "with reasonable specificity"); *D.C. v. Fraternal Ord. of Police, Metro. Police Dep't Lab. Comm.,* 75 A.3d 259 (D.C. 2013) (redacting names and email addresses on disclosed emails); Op. Att'y Gen., 17-IB53 (Oct. 10, 2017) (denying disclosure of specific candidate's pre-employment background check and investigation based on the investigatory exception); *Reyes v. Freeberry,* No. 02-1283-KAJ, 2005 WL 3560724 (D. Del. Dec. 29, 2005) (clarifying enforcement of a jointly entered civil protective order); *Clymer v. City of Cedar Rapids*, 601 N.W.2d 42, 44 (Iowa 1999) (requiring disclosure of name, employment, and salary information, but limiting disclosure of address, birth date, and gender); *Rataj v. City of Romulus*, 306 Mich. App. 735 (2014) (denying disclosure of home addresses, birth dates, and telephone numbers, but requiring disclosure of the videorecording and names of the citizen and officer involved in an incident); Op. Att'y Gen., 13-IB03 (July 12, 2013) (denying disclosure of information about a security detail where salary information and employment selection information was provided to satisfy the relevant public interest); Op. Att'y Gen., 24-IB09 (Feb. 19, 2024) (denying disclosure of Department of Correction policies and procedures). Stripped of these irrelevant cases, DSP is left with little binding, let alone persuasive, support for their contention that disclosing the public records requested here would threaten public safety or invade personal privacy.

Members of Delaware's General Assembly have also introduced legislation pertaining to what data does, and does not, threaten officer privacy. H.B. 412, as DSP explains, would allow police departments to remove personal information about their officers from public websites upon request. H.B. 412, 152 Gen. Assemb. (Del. 2024); AB 4. In defining what constitutes "personal information," however, H.B. 412 enumerates 14 datapoints, *none of which* overlap with Appellant's Request.[4] Del. H.B. 412. That is, in directly addressing DSP's concerns with the disclosure of personal information, the General Assembly implicitly reiterates that the data sought in Appellant's Request is not personal, much less does it threaten officer privacy.

Delaware's FOIA statute does not prevent disclosure of public information based on an agency's generalized fear. DSP fails to demonstrate how the information Appellant seeks is linked to threats against officers. As such, DSP should be ordered to disclose the information responsive to Appellant's Request.

---

[4] *See* Del. H.B. 412, https://legis.delaware.gov/BillDetail?LegislationId=141422 (last visited June 20, 2024) (defining "personal information" as birth record, checking and savings account number, credit card number, debit card number, direct telephone number, federal tax identification number, home address, home telephone number, identity of minor children, marital record, mobile telephone number, personal email address, property tax record, and social security number).

II. 29 *DEL. C.* § 10001 UNAMBIGUOUSLY REQUIRES DISCLOSURE OF THE REQUESTED RECORDS.

The core purpose of FOIA is to promote "easy access" to public records, so that the public can "observe the performance of public officials" and "monitor the decisions that are made by such officials. 29 *Del. C.* § 10001. The statute defines a "public record" in expansive terms, explaining that it is information of *any* kind, maintained by *any* public body, relating in *any way* to public business. 29 *Del. C.* § 10002(o). In reviewing a FOIA request, agencies are directed that "all documents shall be considered public records *unless subject to one of the exceptions* set forth in §10002 of this title…" (emphasis added). 29 *Del. C.* § 10003(k). FOIA contains the crucial presumption that *all* records maintained by *all* public bodies are public records, unless specifically exempted by the narrow terms of an enumerated exception. *See ACLU v. Danberg,* No. 06C–08–067, 2007 WL 901592, at *3 (Del. Super. Mar. 15, 2007) (explaining that the exceptions to FOIA "pose a barrier to the public's right to access and are, therefore, narrowly construed."). FOIA unequivocally promotes disclosure, and the plain text of FOIA's exceptions does not cover the information Appellant seeks.

III. THE NARROW EXCEPTIONS TO 29 *DEL. C.* § 10001 MUST BE READ IN HARMONY WITH THE STATUTE'S PRO-DISCLOSURE PURPOSE.

If this court finds that Delaware's FOIA statute "is reasonably susceptible to different conclusions or interpretations," *Protech Minerals, Inc. v. Dugout Team,*

LLC, 284 A.3d 369, 375 (Del. 2022), "Delaware's statutory principles require statutory language to be interpreted in a way that promotes the statute's purpose." *Jud. Watch, Inc. v. Univ. of Delaware*, 267 A.3d 996, 1005 (Del. 2021); *Noranda Aluminum Holding Corporation v. XL Insurance America, Inc.,* 269 A.3d 974, 977-78 (Del. 2021). Further, "a literal interpretation [] lead[ing] to unjust and mischievous consequences . . . must give way to the general intent." *Nationwide Mut. Ins. Co*. v. *Krongold,* 318 A.2d 606, 609 (Del. 1974); AB 12. FOIA should be interpreted holistically to "promote[] the statute's purpose" of disclosure. *Nationwide,* 318 A.2d at 609; AB 11.

DSP errs in extrapolating the general intent of the statute from its limited exceptions rather than from its explicit and paramount purpose: facilitating disclosure. In this contortion, DSP reaches the puzzling conclusion that where an agency seeks to withhold records that do not satisfy the full terms of a specific exception, the agency may concoct a hybrid FOIA exception based on the flavor of neighboring exceptions. AB 11, 15, 16, 23, 24.

For example, in defending its application of the public safety exception to a complete roster of officer names, DSP states that the existence of FOIA's exceptions pertaining to personnel and intelligence files generally informs that the public safety exception applies, without independently demonstrating that the precise terms of the public safety exception are satisfied in full. AB 11. But the

FOIA statute makes clear that to be exempted from the presumption of disclosure, one entire exception must be satisfied; several partially satisfied exceptions cannot craft a whole. *See* §10003(k) (explaining that all documents should be considered public records unless subject to one whole exception explicitly set forth in § 10002).

FOIA's general intent is to promote disclosure, not to withhold records. A proper reading *in pari materia* would resolve any ambiguities in favor of disclosure. Here, where none of the exceptions are satisfied, disclosure is required; DSP cannot create new exceptions. DSP's statutory interpretation allows the "mischievous consequence" of permitting the narrow anti-disclosure exceptions to swallow the pro-disclosure rule. *Nationwide Mut. Ins. Co.,* 318 A.2d at 609.

IV. THE PUBLIC SAFETY EXCEPTION DOES NOT APPLY TO OFFICER NAMES OR EMPLOYMENT INFORMATION.

DSP's reliance upon the requester's motive and the agency's "primary purpose" to deny disclosure of officer names and employment information is misplaced. Instead, the characteristics of the records themselves are what dictate whether disclosure is exempted. None of the records here implicate those narrow exceptions.

A. DSP erroneously analyzes the requester's motive, rather than the purpose of the requested record itself.

DSP alleges throughout its brief that because Appellant seeks to "track"[5] and "monitor" officers, the Request must be denied to protect officers from the dangers inherent in disclosure.[6] Not only does this argument lack factual backing based on the specific records at issue here, *see* Section I *infra.*, but it also has no bearing on the applicability of FOIA exceptions. *See Danberg,* 2007 WL 901592, at *3 (explaining that the motives of the requester are generally not relevant.)

Rather than looking to the unknowable motives of the requester, the plain text of the public safety exception requires that an agency look to the purpose of

---

[5] Appellant does not use the word "track" with nefarious intent. Here, the word is analogous with the word "monitor," stated as a core purpose of FOIA. §10001. Any monitoring that Appellant seeks to conduct regards officer public accountability, rather than surveillance of an officer's private life, evidenced by the public nature of the data sought. Such monitoring could help address the prevalence of "wandering officers," who leave one department after committing misconduct and rehired in another. *See* Stecklow, *supra* note 1 at 7-10.

[6] To support this alleged "threat", DSP relies on *Hearst*, a case Appellant cited to demonstrate a New York Court's finding that a police department's concern about exposing a list of officers who serve or would serve in intelligence or undercover capacities was immaterial because 1) even the department could not identify from the list who would serve undercover, and 2) individuals undercover seldom operate under their real names. *Hearst Corp. v. New York State Div. of Crim. Just. Servs.,* No. 901527-23 (N.Y.Sup.Ct. July 31, 2023); AB 15; OB 14-15. While DSP cites the Judge's concern about the safety risk inherent in the public's ability to discern the location of an officer's residence, DSP ignores the rest of the Judge's reasoning, which explains that the safety threat diminishes when only the officers name and employment location is requested. *Id.* Ultimately, *Hearst* ruled in favor of disclosure of data far more extensive than the Request at issue here.

the requested record. Acknowledging that agencies are unlikely to know whether a requester seeks a particular record for terroristic motives, FOIA instead requires an agency to determine why they maintain the requested record, what purpose that record serves, and whether that purpose is enumerated in Section 10002(o)(17).

As explained in the Opening Brief, to fall within the public safety exception, the record must be one that, if disclosed, could "jeopardize the security of any structure owned by the state or any of its political subdivisions, or could facilitate the planning of a terrorist attack, or could endanger the life or physical safety of an individual." §10002(o)(17). The exception then defines the types of documents that fall within this category in seven specific groupings, including documents like building plans, blueprints, information about alarm systems and storage facilities, emergency response plans, and information technology infrastructure details—none of which are at-issue here. §10002(o)(17)(a)(1)-(7).

Relevant to the present case is Section 10002(o)(17)(a)(5), which covers "[t]hose *portions* of records assembled, prepared or maintained to prevent, mitigate or respond to criminal acts, the disclosure of which would have a substantial likelihood of threatening public safety." (emphasis added). §10002(o)(17)(a)(5). Note that this provision does not exempt full records, such as a complete list of department names, but only relevant *portions* of records. Section 10002(o)(17)(a)(5) then states that it *only* protects "specific and unique

vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected *in preparation of or essential to* the assessments or to the response or deployment plans." (emphasis added). §10002(o)(17)(a)(15)(A).

Thus, the relevant inquiry here is whether a complete list of all certified officer names, in its entirety, is underlying data compiled in preparation of or essential to *specific and unique* vulnerability assessments or deployment plans. *Id.* The roster of all certified officers—including individuals hired at multiple points to various divisions with wide-ranging and distinct responsibilities over the span of the agency's existence—is in no way essential to a specific and unique deployment plan, much less prepared for some specific and unique plan.

B. An agency's "primary purpose" is irrelevant to FOIA analysis.

An agency's primary purpose does not dictate the primary purpose of every document it touches. DSP claims, without any basis, that its "primary purpose" is preventing, mitigating, and responding to criminal acts, and that therefore the list of all trooper names must also be in service of that primary purpose.[7] AB 5, 9, 12,

[7] The basis for DSP's insistence that its primary purpose is solely to "prevent, mitigate, and respond to criminal acts" remains unclear. While some DSP officers may perform these functions, DSP's purpose is not limited to "anti-terror" work. Officer responsibilities may include "directing traffic, assisting lost, stranded or disabled motorists, approaching motorists on routine or non-routine violations, making arrests, processing prisoners, controlling crowds, and supporting other

13. This reasoning distorts the narrow applicability of FOIA's public safety exception.

Under DSP's faulty logic, all DSP records would be exempted from FOIA disclosure due to the fact that all records are related to its anti-crime purpose. However, DSP, as an agency, regardless of its unique job responsibilities, is *not* exempted from FOIA; to the contrary, the General Assembly has recently increased transparency of police records. AB 12. Section 10002(k) defines "public body" as, "*unless specifically excluded, any* regulatory, administrative, advisory, executive, appointive or legislative body of the state…including, but not limited to, any board, bureau, commission, department, agency…" which "(1) is supported in whole or in part by any public funds; or (2) expends or disburses any public funds…; or, (3) is impliedly or specifically charged by any other public official, body, or agency to advise or make open reports, investigations, or recommendations." 29 *Del. C.* § 10002(k). Although DSP contends that it is not

---

troopers in stressful situations" and "inspecting and safeguarding property, responding to bank alarms, chasing violators on foot, and checking buildings at night for burglaries." Further, "assignments are varied and may include testifying in court, securing major disaster areas, participating in community and public relations programs, escorting dignitaries, conducting speeches or lectures, training recruits and or counseling youth." *About the Job,* DEL. STATE POLICE, https://dsp.delaware.gov/about-the-job/ (last accessed June 17, 2024). Further, there are 35 subdivisions of DSP, only a fraction of which have descriptions that might overlap with DSP's purpose of "preventing, mitigating, or responding to criminal activity." *Units and Sections,* DEL. STATE POLICE, https://dsp.delaware.gov/units/ (last accessed June 17, 2024).

"any employer," and therefore requires special analysis that considers DSP's unique job responsibilities, DSP falls squarely within the definition of a public body subject to FOIA.[8] AB 12.

Regardless of DSP's stated primary purpose, it is a public body subject to FOIA, and records are only exempted under the public safety exception if the *record,* not the agency at large, falls within the specific enumerated circumstances set forth in Section 10002(o)(17)(a)(5)(A), as is relevant here. Because DSP has failed to demonstrate that a complete list of officer names and employment information was compiled in preparation of or essential to specific and unique vulnerability assessments or deployment plans, the requested records must be disclosed.

V. DISCLOSURE OF OFFICERS' RESUMES, CERTIFICATION STATUSES, DEMOGRAPHIC INFORMATION, AND SALARIES DOES NOT INVADE PERSONAL PRIVACY.

In applying Section 10002(o)(1), DSP ignores the plain text and the requisite balancing test in evaluating whether a record invades personal privacy. Instead, DSP assumes that the exception applies whenever any privacy interest is implicated in any record. This is not so.

[8] While FOIA explicitly exempts any caucus of the House of Representatives or Senate of the State from the definition of "public body" subject to FOIA, DSP is notably not excluded. §10002(k).

A. Demographic information is not a "personnel file."

The personnel records exception requires a two-step inquiry. First, the records must be determined to be a "personnel, medical, or pupil file." §10002(o)(1). Next, the disclosure of that file must "constitute an invasion of personal privacy." *Id.* For an invasion of privacy to exist, the individual's privacy interests in non-disclosure must *outweigh* legitimate public interests in disclosure, discussed at length in the Opening Brief. OB 23-27.

While DSP dismisses the Opening Brief's citations to support its stated definition of personnel record, the AG Opinion Appellant relies upon is consistently cited by the State as the leading definition. AB 16. A personnel record is defined as "any application for employment, wage or salary information, notices of commendations, warning or discipline, authorization for a deduction or withholding of pay, fringe benefit information, leave records, employment history with the employer, including salary information, job title, dates of changes, retirement record, attendance records, performance evaluations and medical records." *See* Op. Att'y Gen., 02-IB24 (Oct. 1, 2002); *See also* Op. Att'y Gen., 23-IB30 (Nov. 8, 2023); Op. Att'y Gen., 18-IB34 (July 20, 2018); Op. Att'y Gen., 17-IB19 (July 12, 2017); Op. Att'y Gen., 13-IB03 (July 30, 2013); Op. Att'y Gen., 12-

IIB10 (July 27, 2012).[9] DSP has not provided evidence to rebut that demographic information is plainly not information that would be used in deciding whether an individual should be subject to personnel actions. OB 16; Op. Att'y Gen., 02-IB24 (Oct 1, 2002). Because demographic information is not a personnel record and the first step of the two-step inquiry is not satisfied, demographic information is not subject to §10002(o)(1).[10]

B. The legitimate public interests in disclosure outweigh the relatively minor privacy interests at stake.

Even if resumes are personnel records that implicate some privacy interests, the inquiry does not end there, as DSP proposes. Instead, privacy interests must outweigh legitimate public interests in disclosure — a balancing test that DSP fails to apply. Rather than explain why relevant privacy interests are not outweighed by legitimate public interests, DSP solely mischaracterizes the Opening Brief's use of case law and reiterates that privacy interests are invoked.

For example, Appellant does not argue, as DSP alleges, that resumes are "always" subject to disclosure. *Grimaldi v. New Castle Cty.,* No. CV 15C-12-096,

---

[9] *See also Discussion of Each Exemption,* REPORTERS COMM. FOR FREEDOM OF THE PRESS, at II.A.2, https://www.rcfp.org/open-government-guide/delaware/#n-personnel-records (last accessed June 17, 2024).

[10] DSP then refutes a phantom argument that resumes and certification statuses are not personnel records. However, the Opening Brief concedes this point and applies the relevant standard, weighing the interests. OB 18; AB 17.

2016 WL 4411329 at *9 (Del. Super. Ct. Aug. 18, 2016); OB 21; AB 18. Instead, *Grimaldi* demonstrates that the public has a legitimate interest in "knowing information about the candidate who got the job," and that this interest *can* outweigh "the privacy interest of the successful applicant." *Grimaldi,* 2016 WL at *9; OB 21; AB 18. Next, AG Opinion 18-IB34 does not require that resumes *only* be disclosed where there is an analogous public record available online. Op. Att'y Gen., 18-IB34 (July 20, 2018); OB 20; AB 18. Rather, the AG Opinion explains that where records are already available online, privacy interests are *further* diminished. *Gannett* similarly demonstrates that where information is already made public, privacy interests are diminished, and further clarifies that exceptions to disclosure "must be read in light of the concern about privacy, not a concern about officer safety that does not appear in the statute." *Gannett Co. v. Bd. Of Managers of the Del. Criminal Justice Info. Sys.*, 840 A.2d 1232, 1239 (Del. 2003); OB 20; AB 19. DSP fails to conduct the necessary balancing test to show that the diminished privacy interests in officer resumes outweigh the legitimate public interest in disclosure. As such, the resumes ought be disclosed.

C. Salary information of public employees, including police, is public information.

While the Opening Brief briefly explains that DSP's link to "Open the Books" is not a satisfactory record for salary disclosure, DSP again relies on "Open the Books," without any further justification for its failure to provide responsive

government records. AB 2. Open the Books is not a satisfactory record because it is a non-government, third-party website with outdated and incomplete data. OB 4. Further, DSP concedes that it has not verified the data on the website. AB 19. While salary information is considered a personnel record, the privacy interests in a public official's salary are outweighed by the immense public interests at play.

This Court recognizes that the taxpayer-funded salaries of public employees are public records subject to FOIA disclosure. In *Gannett Co., Inc. v. Christian,* this Court held that the school district was required to disclose school administrator salaries pursuant to FOIA, despite the district's invocation of the personnel records exception. *See Gannett Co. v. Colonial School District,* Civ. A. No. 82M-DE-26, 1983 WL 473048 (Del. Super., Aug. 19, 1983) (holding that "although some might feel that the amount of their salary is personal, it is generally recognized that the public has a legitimate interest in knowing the salaries of persons who are paid with public funds and public employees have no right of privacy in this information.") Similarly here, officers have no right of privacy in their taxpayer-funded salaries. This privacy interest is even further diminished where much of the information is already public, as DSP contends it is through their continuous referral to "Open the Books." AB 2; Op. Att'y Gen., 18-IB34. Therefore, DSP must disclose salary information.

Because the Answering Brief not only mischaracterizes the Opening Brief's citations, but also fails to balance any relevant public interests against the privacy interests it asserts, the personnel records exception does not apply to officer demographic information, resumes, certification statuses, and salaries.

VI. LEOBOR IS INAPPLICABLE TO PUBLIC RECORDS REQUESTS.

In addition to LEOBOR's general purpose that is limited to the rights of officers undergoing internal disciplinary proceedings or investigations, a context irrelevant to citizen-sought public records requests, Section 9200(d) specifically does not apply here because a FOIA request is not a civil proceeding.[11] OB 28-32; 11 *Del. C.* § 9200(d) ("Unless otherwise required by this chapter, no law-enforcement agency shall be required to disclose *in any civil proceeding*…") (emphasis added). While the Answering Brief describes Appellant's argument as a "remarkable proposition" and scoffs at the Opening Brief's reliance on a Delaware

[11] DSP concedes that Section 9200(c)(12) is not at issue here. *See RBAHTDSR, LLC v. Project 64 LLC*, 2020 WL 2748027, at *4 n.2 (D. Del. May 27, 2020) ("[W]hen one side files a motion raising an issue, and the other side does not respond, the other side is considered to have conceded the point."); *Shaw v. New Castle Cnty.*, 2021 WL 4125648, at *2 (D. Del. Sept. 9, 2021) (holding that the plaintiff's failure to address the defendant's arguments for dismissal constitutes an abandonment of those claims).

Court opinion[12] and Black's Law Dictionary,[13] DSP provides no countervailing citations or support to the contrary. AB 23.

The definitions explored in the Opening Brief stand on their own. Black's Law Dictionary defines a civil proceeding as "a judicial hearing, session, or lawsuit in which the purpose is to decide or delineate private rights and remedies, as in a dispute between litigants in a matter relating to torts, contracts, property, or family law."[14] The Court states that definitionally, a "civil proceeding" requires "some sort of forum and some sort of decision maker involved." *See In re K.M.*, 2017 WL 1148198 at *3 (Del. Fam. Ct. 2017) (noting that this reading is also consistent with *Raymond James Financial Services, Inc. v. Phillips*, 126 So.3d 186 (Fla.2013) and *Altman Contractors, Inc. v. Crum & Forster Specialty Ins. Co.*, 124

[12] *See In re K.M.*, 2017 WL 1148198 (Del. Fam. Ct. 2017) (discussing the legal definition of "proceeding."), cited on OB 31.

[13] While the Answering Brief attempts to dispose of Black's Law Dictionary as "a dictionary," the source is one of considerable repute in the legal world. AB 23; *See Metro Storage Int'l LLC v. Harron,* 275 A.3d 810, 874 (Del. Ch. 2022), judgment entered sub nom. *In re Metro Storage Int'l LLC v. Harron* (Del. Ch. 2022) (citing Black's Law Dictionary, and stating that "under well-settled case law, Delaware courts look to dictionaries for assistance in determining the plain meaning of terms which are not defined in a contract."); *see also Shiffman v. Auto Source Wholesale, LLC*, No. 339291, 2018 WL 3863471, at *4 (Mich. Ct. App. Aug. 14, 2018) ("In the context of defining a term, Black's Law Dictionary is among the "most useful and authoritative for the English language generally and for law."); *United States v. Geiser*, 527 F.3d 288, 294 (3d Cir. 2008) ("We refer to standard reference works such as legal and general dictionaries in order to ascertain the ordinary meaning of words.").

[14] CIVIL PROCEEDING, Black's Law Dictionary (11th ed. 2019).

F, Supp. 3d 1272, 1280 (S.D. Fla. 2015)). A FOIA Request is not a civil proceeding because it is not a dispute, nor is there a forum or a decisionmaker to delineate private rights and remedies. Instead, a FOIA request is an administrative request to a state agency. OB 31-32.

It is not the case, as DSP cautions, that adhering to the Opening Brief's definition of "civil proceeding" would open the floodgates to an ever-expanding carve out to LEOBOR, even if the Court agrees that a FOIA Request is not definitionally a civil proceeding. AB 24. A FOIA Request is distinct from the examples DSP sets forth as demonstrations of the Opening Brief's logical conclusion. AB 24. For example, a charge filed with the Equal Employment Opportunity Commission, a hypothetical posited by DSP, would certainly be considered a civil proceeding; the charge itself is a dispute regarding the adverse party's discriminatory behavior, and the question is brought before the EEOC as a third-party forum and decisionmaker to delineate the rights and remedies involved. The same cannot be said about a FOIA Request, where one party asks another to satisfy an administrative request for public information. DSP's attempt to elucidate a slippery slope instead highlights the contrast between several circumstances that are civil proceedings subject to Section 9200(d), and a FOIA Request, which is not.

Therefore, LEOBOR, as invoked through Section 10002(o)(6) does not apply to the present FOIA Request for officer certification status and demographic information.

CONCLUSION

For the reasons set forth in the Opening Brief and above, DSP has failed to justify its total denial of Appellant's Request for public records pursuant to FOIA. This denial not only deprives Appellant of records that he is statutorily owed, but, if upheld, creates a startling precedent that expands FOIA's narrow exceptions to engulf the pro-disclosure rule. Therefore, Appellant respectfully requests that this Court reverse the legal errors below and order disclosure of all responsive documents.