



ROBERT E. VANELLA, on behalf of THE DELAWARE CALL,

Plaintiff-Appellant

v.

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

Defendant-Appellee.

No. 419, 2025

On Appeal from the Superior Court of the State of Delaware, C.A. No. K24A-02-002

**BRIEF OF AMICI CURIAE
UNIVERSITY OF VIRGINIA SCHOOL OF LAW FIRST AMENDMENT CLINIC,
REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS,
AND INVISIBLE INSTITUTE
IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL IN PART**

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IDENTITY AND INTEREST OF AMICI CURIAE

Amici curiae are the University of Virginia School of Law First Amendment Clinic, the Reporters Committee for Freedom of the Press, and the Invisible Institute (collectively, “amici”).

As representatives of the news media, amici have a strong interest in ensuring that journalists and news organizations can rely on state public records laws to investigate and report on law enforcement. This interest includes preserving the press and public’s ability to rely on the Delaware Freedom of Information Act, 29 Del. C. § 10001 (“FOIA”), to gather and report on information of notable importance.

Amici submit this brief specifically to highlight the deep-rooted role members of the press have in keeping the public informed about law enforcement officials and the actions they take in carrying out their duties. Such oversight allows for the public to hold government actors to suitable standards of conduct, and an appropriate reading of the Delaware FOIA is crucial to facilitate this function. First, in holding that state police officer resume and individualized demographic information is exempt under FOIA, the Superior Court subverted the principle of effective government transparency that undergirds the statute. Moreover, in holding that recovery for attorney’s fees and costs are not available for successful administrative appeals, the Superior Court further undercut the

statute's ability to fulfill its purpose. Both of these rulings threaten the press and public's role in democratic oversight of law enforcement in Delaware.

The University of Virginia School of Law First Amendment Clinic is an entity whose mission includes defending the ability of journalists, news organizations, and others to enjoy meaningful access to public records. The Clinic works directly with law students to provide pro bono legal representation, amicus support, and other legal services to members of the media. The Clinic has a strong interest in this case, which concerns an individual's ability to rely on Delaware FOIA to gather and report on information of keen public interest. The Clinic routinely serves as amicus curiae in state public records cases. *See, e.g.,* Br. of Amici Curiae the University of Virginia School of Law First Amendment Clinic in Supp. of Appellant, *Minium v. Hines*, 83 Va.App. 643 (Va. Ct. App. 2025).

The Reporters Committee for Freedom of the Press (the "Reporters Committee") is an unincorporated nonprofit association. It was founded by leading journalists and media lawyers in 1970 when the nation's news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists. In various federal and state courts, the Reporters Committee frequently serves as amicus curiae in cases

involving the availability of records under state and federal public records laws. *See, e.g.*, Br. of Amici Curiae Reporters Comm. for Freedom of the Press, Gannett, Gray Media Group, Indiana Broadcasters Association, E.W. Scripps Co., News/Media Alliance, and Tegna in Supp. of Appellant, *Nardi v. King*, 253 N.E.3d 1098 (Ind. 2025); Br. of Amici Curiae Reporters Comm. for Freedom of the Press and 26 Media Organizations in Supp. of Petitioners-Respondents, *NYP Holdings v. New York City Police Dep't*. 263 N.E.3d 871 (N.Y. 2025).

The Invisible Institute is a nonprofit organization engaged in data journalism with the goal of enhancing the ability of citizens to hold public institutions accountable. *About*, Invisible Institute, <https://perma.cc/U63T-EYLR> (last visited Feb. 22, 2024). Invisible Institute has specifically investigated and reported on police officer certification and misconduct and has a direct interest in accessing records like those at issue in this case. *See, e.g.*, Sam Stecklow, *Delaware Opened Up Access to Some Police Misconduct Records – But Still Denies Requests for Basic Police Data*, Invisible Institute and the 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/>.

RULE 28(c)(4) DISCLOSURE

No party's counsel has authored this brief in whole or in substantial part. Further, no party's counsel has contributed money that was intended either to fund the preparation or submission of this brief. No person other than the amicus curiae, its members, or its counsel has contributed money that was intended to fund the preparation or submission of this brief.

ARGUMENT

The Delaware Freedom of Information Act (“Delaware FOIA”) provides a window for members of the press and public to examine the workings of government. 29 Del. C. § 10001. The Delaware legislature enacted this statute to allow the public to “observe the performance of public officials and to monitor the decisions that are made by such officials” in order “to further the accountability of government to the citizens of this State.” *Id.* And in recognition of this important purpose, the legislature commands that the statute’s provisions “shall be construed” accordingly. *Id.*; *Jud. Watch, Inc. v. Univ. of Delaware*, 267 A.3d 996, 1005 (Del. 2021). Further, the legislature provided a mechanism for fee recovery if a requester’s rights under the statute are violated. 29 Del. C. § 10005(b). In sum, Delaware has established a clear statutory framework targeted to allow meaningful oversight of government action and overcome state secrecy.

The court below, while correctly finding that police officer names and certain other information must be produced pursuant to a Delaware FOIA request, erred in allowing the withholding of officer demographic information and resumes under 29 Del. C. § 10002(o)(1) (the “Personnel File Exception”)¹. *Vanella on Behalf of Delaware Call v. Duran*, No. K24A-02-002, 2024 WL 5201305 at *11,

¹ The Personnel File Exception applies to any information within a personnel file, when the disclosure “would constitute an invasion of personal privacy.” 29 Del. C. § 10002(o)(1).

*13, *14 (Del. Super. Ct. Dec. 23, 2024). This holding limits the ability of the press to effectively oversee police officers, particularly those that may have engaged in prior misconduct—a matter of keen public interest. Further, the court’s holdings that Delaware FOIA neither requires production of redacted records nor allows fee recovery following administrative appeals constitute cramped readings of the statutory text that fundamentally undermine Delaware FOIA’s core purpose, potentially thwarting future requests and enabling the government to act in heightened secrecy.

If left undisturbed, the lower court’s rulings threaten the ability of journalists to rely on Delaware FOIA to illuminate the workings of government, hindering the press’s “paramount public interest in [facilitating] a free flow of information to the people concerning public officials.” *PG Pub. Co. v. Aichele*, 705 F.3d 91, 98 (3d Cir. 2013) (quoting *Pell v. Procunier*, 417 U.S. 817, 832 (1974)).

I. Oversight of law enforcement is an important press function, and understanding the backgrounds of police officers is vitally important to this pursuit.

Delaware entrusts the police with considerable authority, empowering them to enforce the laws of the state, including by means of force in certain situations.² Law enforcement officers are embedded in our communities and constantly interact with members of the public, so potential controversies can arise regarding their exercise of the “unique, coercive authority entrusted [to them] under Delaware law.” *Sherman v. State Dep’t of Pub. Safety*, 190 A.3d 148, 155 (Del. 2018). Indeed, studies show that significant portions of the population have had interactions with the police in recent years. Erika Harrell & Elizabeth Davis, *Contact Between Police and the Public, 2018 – Statistical Tables*, U.S. Department of Justice (Feb. 3, 2023), <https://perma.cc/FR56-9G82> (demonstrating that 24% of U.S. residents ages 16 and older had interactions with police in 2018). Law enforcement is also responsible for a significant expenditure of public funds; in 2020 5.7% of Delaware’s expenditures went towards police and corrections spending. See Ingrid Cruz, *US Budget Analysis: Policing and Corrections Spending by State*, Moneygeek (Feb. 25, 2024), <https://perma.cc/CE48-PG9C>. The public has a clear interest in overseeing the actions of the police, ensuring that officers behave with integrity and that public funds are being spent appropriately.

² 11 Del. C. § 8302.

And it is often the press that acts as the public’s eyes, investigating and reporting on concerning incidents involving law enforcement.³ Without meaningful journalistic oversight, public trust in the police may erode, limiting the ability of the police to function effectively.⁴

One important avenue of law enforcement oversight is examining the backgrounds of police officers, including by identifying places of previous employment and any incidents of prior officer misconduct. In cases like this one, where the state maintains that it lacks specific records regarding the prior employment of its police officers, *Vanella*, 2024 WL 5201305 at *12, resumes provide an important avenue for journalists to piece together an officer’s history. Given the significant authority granted to the police, it is imperative that officers

³ See, e.g., Nick Stonesifer, *Wilmington PD Harassment Lawsuit Raises Questions About Data Management*, Spotlight Del. (June 18, 2024), <https://spotlightdelaware.org/2024/06/18/wilmington-pd-harassment-lawsuit-raises-questions-about-data-management/>; Xiomara Moore, *Police Mutiny in Dover*, Del. Call (Aug. 19, 2025), <https://delawarecall.com/2025/08/19/police-mutiny-in-dover/>.

⁴ See President’s Task Force on 21st Century Policing, Final Report of the President’s Task Force on 21st Century Policing, 26 (2015), <https://www.ojp.gov/ncjrs/virtual-library/abstracts/final-report-presidents-task-force-21st-century-policing> (describing how external supervision of police departments can increase public perceptions of police legitimacy); National Institute of Justice, “Race, Trust and Police Legitimacy,” January 9, 2013, <https://nij.ojp.gov/topics/articles/race-trust-and-police-legitimacy> (describing how perceptions of police lawfulness and legitimacy affect public trust in the police, and how a lack of public trust makes it more difficult for police to function effectively).

behave with competence and professionalism,⁵ and access to resumes enables the press to investigate and report on previous behavior. Moreover, an incident of prior misconduct can indicate the possibility of future issues, and it is important for the public to be informed of concerning patterns in police conduct. *See* Ben Grunwald & John Rappaport, *The Wandering Officer*, 129 Yale L.J. 1676–1760 (2020), at 1734–54 (describing how officers who were fired in the past for misconduct receive 75% more complaints and are fired 50% more often than other officers in future employment).

Without meaningful public oversight of officer backgrounds, police departments may be inclined to look the other way and allow “officers with disturbing records to stay on the force, climb the ranks or move on to other law enforcement jobs.”⁶ To take a local example, Thomas Webster, a former police officer in Dover, Delaware, was accused of several instances of misconduct, including 29 complaints regarding his use of force. *See* Hannah Combs, *Former Greensboro Police Chief Charged with Misconduct*, E. Shore Times Record (Nov.

⁵ President’s Task Force, *supra* note 4, at 9–18 (describing how police legitimacy depends on police upholding procedural justice and acting professionally).

⁶ Ken Armstrong, *Nearly All the Officers in Charge of an Indiana Police Department Have Been Disciplined — Including the Chief Who Keeps Promoting Them*, ProPublica (Nov. 15, 2018), <https://www.propublica.org/article/nearly-all-officers-in-charge-of-elkhart-indiana-police-department-have-been-disciplined>. *See also* *Delaware Office Convicted of Misconduct as Maryland Police Chief*, CBS News (Jan. 21, 2020), <https://www.cbsnews.com/baltimore/news/delaware-office-convicted-of-misconduct-as-maryland-police-chief/>.

13, 2019), https://www.myeasternshoremd.com/times_record/community/news/former-greensboro-police-chief-charged-with-misconduct/article_1d867fcc-34b3-5184-b44a-422c7b1b807d.html. Webster failed to disclose these prior incidents to the state certification board after relocating to Maryland, where he was subsequently involved in the death of 19-year-old Anton Black. *Id.* Michael Petyo, Webster’s former police chief in Maryland, eventually pled guilty to unlawfully hiding his officer’s prior misconduct from the state hiring commission; he had since become Deputy Chief of Police in Camden, Delaware. Sam Stecklow, *Delaware Opened Up Access to Some Police Misconduct Records – but Still Denies Requests for Basic Police Data*, Invisible Institute and the 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/>.

Webster’s story provides an example of why the prior employment information at issue in this case is particularly important. Webster was a “wandering officer” that joined a new police department after receiving accusations of misconduct while working a previous job.⁷ Journalistic

⁷ See Grunwald & Rappaport, *supra* note 8; Sam Stecklow, *Virginia Is In The Minority Of States Keeping Even The Most Basic Police Data Secret*, Invisible Institute for the Virginia Center for Investigative Journalism at WHRO (Feb. 8, 2024), <https://perma.cc/H77K-YFC8>; Eric S. Peterson & Sam Stecklow, *New Data Tool Allows Journalists and the Public to Track ‘Wandering Cops’ in Utah*, Utah Investigative Journalism Project (Sept. 23, 2024),

organizations, including the Invisible Institute, have investigated and identified similar situations, including examples where wandering officers had transferred departments in order to stymie ongoing internal investigations and evade public oversight.⁸ Members of the press have also uncovered other examples of police departments concealing misconduct allegations in exchange for resignations, known as “clean-record agreements,” or even departments paying cops undergoing disciplinary hearings to separate from the force without repercussion.⁹

Reporting by the press is necessary to overcome this type of police secrecy. As the above examples demonstrate, the public cannot rely on the government itself to be forthcoming with pertinent information regarding potential law enforcement misconduct. Indeed, Webster’s prior actions went largely unnoticed until a media report brought it to the public’s attention.¹⁰ Journalists are often

<https://www.utahinvestigative.org/new-data-tool-allows-journalists-and-the-public-to-track-wandering-cops-in-utah/>.

⁸ See *All Investigations*, Invisible Institute, <https://invisible.institute/all-investigations> (last visited Dec. 26, 2025).

⁹ See Katey Rusch & Casey Smith, *This Is the Secret System That Covers Up Police Misconduct — and Ensures Problem Officers Can Get Hired Again*, Berkeley Journalism (Sept. 18, 2024), <https://journalism.berkeley.edu/projects/this-is-the-secret-system-that-covers-up-police-misconduct-and-ensures-problem-officers-can-get-hired-again/>.

¹⁰ See Esteban Parra, *Delaware Officer Michael Petyo Convicted of Misconduct While Greensboro Police Chief*, Del. Online (Jan. 21, 2020), <https://www.delawareonline.com/story/news/2020/01/21/delaware-officer-convicted-misconduct-while-maryland-police-chief/4529189002/>.

those with the time, knowledge, and resources to investigate these issues, including by uncovering and examining public records like resumes.

II. The lower court’s interpretation of Delaware FOIA’s exception for personnel files would unduly limit the ability of the press to access valuable records about law enforcement.

Public records laws facilitate valuable reporting on law enforcement, providing an important mechanism for the press to access information about police officer backgrounds, including information regarding prior employment and misconduct. The Invisible Institute, to take one example, has requested this information from various states and created resources geared towards effectuating police oversight.¹¹ Reporting like this has even contributed to changes in the law governing police actions and oversight—the exact outcome public records laws are intended to facilitate.¹² But the lower court’s holdings threaten to cut off this type of valuable effort. Specifically, the court below incorrectly interpreted the Personnel File Exception in several ways, depriving the public access to demographic data and resumes of police officers.

¹¹ *National Police Index*, Invisible Inst., <https://invisible.institute/national-police-index>.

¹² *See generally*, Hannah Gaskill, *After Years of Legislating, “Anton’s Law” Goes Into Effect*, Md. Matters (Oct. 1, 2021), <https://marylandmatters.org/2021/10/01/after-years-of-legislating-antons-law-goes-into-effect/>; Jerry Mitchell, *Law Enforcement Misconduct Bill Moves Forward in Legislature*, Miss. Today (Mar. 14, 2024), <https://mississippitoday.org/2024/03/14/law-enforcement-misconduct-bill-moves-forward-in-legislature/>; Ken Serrano, *NJ Police Will Now Be Licensed Under New Law Signed by Phil Murphy*, Asbury Park Press (July 21, 2022), <https://www.app.com/story/news/2022/07/21/nj-police-licensing-bill-law-gov-murphy/65379140007/>.

The requested demographic information would not fall under the Personnel File Exception, as its release would not “constitute an invasion of personal privacy.” 29 Del. C. § 10002(o)(1). The lower court clearly misconstrued the scope of this exception in finding that release of demographic information would “significantly compromise” an officer’s personal privacy given that they “may need to serve in an undercover capacity.” *Vanella*, 2024 WL 5201305 at *14. The term personal denotes information “relating to an individual or an individual’s character, conduct, motives, or *private affairs*.” *See Personal*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/personal> (last visited Jan. 6, 2026) (emphasis added). The fact that an officer may go undercover in the future has no relevance to a concept of *personal* privacy—undercover operations constitute a government function, not one connected to an officer’s private life. While other Delaware FOIA exceptions may implicate records involving such professional operations, the Personnel File Exception clearly does not. Indeed, as they largely operate in the public eye, law enforcement officers, if anything, have less interest in maintaining confidentiality over their general demographic information compared to other government employees. *See Gannett Co. v. Bd. of Managers of the Delaware Crim. Just. Info. Sys.*, 840 A.2d 1232, 1239 (Del. 2003) (rejecting claim that officer safety concerns could justify withholding information under the Personnel File Exception and noting that “[w]hich officer conducted an

arrest is a matter of public record”); *cf. Citizens for Resp. & Ethics in Wash. v. Dep’t of Just.*, 746 F.3d 1082, 1092 (D.C. Cir. 2014) (holding that government employees “have a somewhat diminished privacy interest.”); *Lissner v. U.S. Customs Serv.*, 241 F.3d 1220, 1223 (9th Cir. 2001) (holding that law enforcement officer’s “privacy interests are somewhat reduced” and cannot justify denial of a federal FOIA request). The lower court conflates personal privacy and police function in construing this exception, stretching its application far past the plain meaning of the statute.

Moreover, the lower court’s conclusion that safety “should be deemed an aspect and goal of one’s personal privacy,” is overbroad and without statutory support. *Vanella*, 2024 WL 5201305, at *14. There is no definition of “privacy” within the statute that supports this contention, nor is there language within the personnel file exception that ties privacy to safety. 29 Del. C. § 10002(o)(1). Instead, the plain meaning of privacy refers to “secrecy” or “the quality or state of being apart from company or observation.” *Privacy*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/privacy> (last visited Jan. 6, 2026). Police departments routinely disclose the identities of officers who make arrests, testify in court, and interact visibly with the public.¹³ Accordingly, demographic

¹³ *E.g.*, Nichelle Polston, *Delaware Police Connect Wilmington Man to a String of Robberies*, WHYY (June 7, 2016), <https://whyy.org/articles/delaware-police-connect-wilmington-man-to-a-string-of-robberies/>.

information is largely not private, and there is no justification to restrict its production in this context. Again, the legislature enacted other exceptions to Delaware FOIA that are intended to address safety concerns;¹⁴ courts need not distort the Personnel File Exception to achieve this end.

For similar reasons, the production of resumes would also not fall under the Personnel File Exception. By its nature, a resume does not constitute private information. Resumes contain information that an individual voluntarily discloses to potential employers. And even if some portions of a resume were to be considered private, as explained *infra*, these portions could be easily redacted from the requested records. The lower court’s finding of heightened “personal privacy interests of law enforcement officers who serve[] undercover duty or in other highly sensitive roles,”¹⁵ once again conflates personal privacy with police function, and cannot justify withholding under the Personnel File Exception.

Press access to officer demographic information and resumes is essential to ensure that the government is operating in good faith. Demographic information helps journalists determine whether hiring, promotion, and discipline decisions are applied fairly across demographic groups,¹⁶ and it can also help differentiate

¹⁴ 29 Del. C. § 10002(o)(5); 29 Del. C. § 10002(o)(17)(a).

¹⁵ *Vanella*, 2024 WL 5201305, at *13.

¹⁶ George Wood et al., *The Network Structure of Police Misconduct*, 5 *Socius* 1–18 (2019), <https://ccpsa.chicago.gov/wp-content/uploads/2025/09/Wood-et-al-The->

between officers possessing the same name.¹⁷ Importantly, review of officer demographic information also allows the press to determine if the composition of the police force matches that of its served community. *See* John Kelly, et al., *How Much do Police Officers Mirror the Communities They Serve? ABC News Looked at the Data*, ABC News (May 20, 2021), <https://abcnews.go.com/US/police-officers-mirror-communities-serve-abc-news-looked/story?id=77536865>. Indeed, many police departments have recognized the benefits of demographic diversity, already released demographic information, and actively work to align police forces to their broader communities. *Id.* And as explained *supra*, resumes reveal prior employment information that can be key in identifying patterns in police misconduct that are integral to public oversight. Delaware FOIA is a sweeping law; its exceptions should not be strained to limit access to this valuable information.

[Network-Structure-of-Police.pdf](#) (showing that police misconduct is affected by many variables and correlates based on age, gender, and race).

¹⁷ *See generally* William E. Winkler, *Matching and Record Linkage* 13–15 (U.S. Bureau of the Census, Working Paper No. RR-93-08, 1993), <https://www.census.gov/content/dam/Census/library/working-papers/1993/adrm/rr93-8.pdf> (stating that identification in large datasets often requires using many variables, as common names lack discriminatory power).

III. The text and purpose of Delaware FOIA creates an implicit requirement to produce redacted records, and the lower court's holding otherwise may severely restrict future requests and render Delaware an outlier to other states if left undisturbed.

In holding that the government has no responsibility to redact potentially sensitive information from an officer's resume, the court below established a dangerous precedent that could inhibit future Delaware FOIA requests across the board. *Vanella*, WL 5201305 at *13 (“[T]he home address, personal phone number, and email address of the applicant are typically contained within a resume. Taken with the fact that Delaware FOIA has no explicit segregability requirement, ordering such disclosure would constitute an invasion of personal privacy.”). This Court can correct this error by recognizing an implicit requirement for government bodies to release nonexempt information with appropriate redactions. The overall text and purpose of Delaware FOIA and persuasive authority from other states with similarly structured statutes support this approach.

While Delaware FOIA does not contain an explicit segregability requirement, the language of the statute and the explicit statutory purpose call for more robust, rather than limited, production of records. Delaware FOIA was created explicitly “to further the accountability of government to the citizens of this State.” 29 Del. C. § 10001 (moreover stating that “it is vital in a democratic society that public business be performed in an open and public manner”). And while not directly enshrining a duty to redact, the legislature clearly contemplated

the production of redacted records. 29 Del. C. § 10003(K) (describing the state’s obligation to review requested records and stating that “portions of records” could be removed prior to production if covered by an exception). Accountability would not be furthered if the state is free to withhold records in full because some portion of a document may be withheld. This approach would insulate a significant number of records from public inspection and may have catastrophic effects on government accountability, the public trust in institutions, and the press’s ability to conduct crucial oversight of government.

At least one other court in the state has preserved Delaware FOIA’s fundamental purpose by requiring production of redacted documents, rather than condoning blanket withholding. *See Mell v. New Castle Cnty.*, No. CIV.A. 03M-06-030JRS, 2004 WL 1790140, at *5 (Del. Super. Ct. Aug. 4, 2004) (ordering the production of records under Delaware FOIA while allowing “redact[ion] to protect information subject to the attorney-client privilege”). This approach makes sense—it allows the state to withhold certain non-public information in a tailored way, while still allowing the statute to operate as intended.

Persuasive authority from other states counsels towards finding an implicit statutory requirement to produce documents with redactions. Alabama’s public records statute, for example, does not provide an explicit provision requiring release of non-exempt portions of records when they are intermingled with exempt

information. Ala. Code § 36-12-40; § 36-12-41. But Alabama courts have handled this problem in a pragmatic manner, routinely ordering the release of redacted documents. *See Allen v. Barksdale*, 32 So. 3d 1264, 1274 (Ala. 2009) (releasing correctional facility documents with redactions to protect information that could subject a person to a specific threat of harm or jeopardize a pending criminal investigation); *Graham v. Alabama State Emps. Ass’n*, 991 So. 2d 710, 719 (Ala. Civ. App. 2007) (ordering release of state personnel records with redactions of personal information such as social security numbers and addresses). Notably, Alabama courts have only refused to allow for redactions in instances where the needed omissions would be so extreme as to render any released information nonsensical. *See Birmingham News Co. v. Muse*, 669 So. 2d 138, 139 (Ala. 1995) (finding that because protected information was so “intertwined” with the requested records “it would be difficult, if not impossible, to edit out [such information] and release a response that made sense”). These courts have required production of redacted records to facilitate the overall purpose of the Alabama statute, which—like Delaware’s—is to permit the examination of public records. *Allen*, 32 So. 3d at 1274.

Courts in Texas have held similarly, interpreting their public records statute to prevent a public body from completely withholding records on the basis that they contain some exempt information. For example, the Texas Supreme Court

ordered the release of portions of workmen’s compensation claims with redactions of personal information concerning private facts. *Indus. Found. of S. v. Tex. Indus. Acc. Bd.*, 540 S.W.2d 668, 686 (Tex. 1976) (“If the nature of a particular claim is held to be confidential, only that information need be withheld from disclosure.”). This opinion considered the Texas public record statute’s express policy that the government is the “servant and not the master of the people” and that citizens, barring lawful exemptions, are entitled “at all times to complete information about the affairs of government and the official actions of public officials and employees.” Tex. Gov’t Code § 552.001.

And while Maine’s Freedom of Access Act is likewise silent on the issue of segregability, 1 M.R.S.A. §§ 401–410, its courts have previously ordered disclosure of redacted records. *See Guy Gannett Pub. Co. v. Univ. of Me.*, 555 A.2d 470, 470 (Me. 1989) (ordering disclosure of settlement agreement except for “one sentence” pertaining to the public employee’s medical information, which was designated confidential by the statute). Indeed, the facts in *Guy Gannett Pub. Co.* highlight the need for segregability, as a single sentence could have exempted an entire document from public view. Such an outcome clearly cuts against the greater purpose of public records laws in facilitating government transparency and accountability to the public.

The lower court's decision makes Delaware an outlier on a national level; in addition to the those addressed above, many other states have explicitly recognized the need for segregability in their public records laws. *See e.g.* Ark. Code Ann. § 25-19-105(f); Cal. Gov't Code § 7922.525(b); D.C. Code Ann. § 2-534(b); Fla. Stat. § 119.07(1)(d); K.S.A. 45-221(d); Mich. Comp. Laws Ann. § 15.244(2); N.J.S.A. 47:1A-5(g); 51 O.S. § 24A.5(3); Or. Rev. Stat. § 192.338; 65 Pa. Stat. Ann. § 67.706; 1 V.S.A. § 318(e); Va. Code Ann. § 2.2-3704.01; Wis. Stat. § 19.36(6). It is clear that a requirement to produce redacted records is an important factor in facilitating public oversight of government action.

Delaware FOIA's purpose is clear, and even absent explicit text, the general thrust of authority calls for the finding of an implicit segregability requirement. To find otherwise would thwart the statute, leave the press and public in the dark, and make Delaware out of step with other states throughout the country. The essential purpose of Delaware FOIA would be severely undermined.

IV. When properly construed, Delaware FOIA provides for potential fee recovery in cases involving administrative appeal, and the lower court's finding otherwise powerfully disincentivizes members of the press to engage in valuable oversight.

Much like its treatment of segregability, the lower court's strained interpretation of Delaware FOIA's fee recovery provision threatens future reliance on the statute and may significantly undermine public oversight moving forward. The Delaware General Assembly has explicitly allowed for awards of attorney fees in Delaware FOIA cases. 29 Del. C. § 10005 (enabling courts to “award attorney fees and costs to a successful plaintiff of any action brought under this section”). This language is clearly broad, but the lower court interpreted the statute's structure as foreclosing certain requesters from enjoying this benefit—a holding which would inhibit journalists from replying on Delaware FOIA in future reporting.

There are two distinct mechanisms for a requester to challenge an alleged FOIA violation. In some scenarios a requester may directly file a lawsuit to challenge a FOIA denial. 29 Del. C. § 10005(b). But, if the request is submitted to a government entity “which the Attorney General is obliged to represent,” the requester must first petition the Chief Deputy Attorney General to administratively review the denial; once this administrative appeal has finished, the requester can seek review of the Chief Deputy's findings on the record by seeking review by the superior court. 29 Del. C. §§ 10005(b), 10005(e). Importantly, the administrative

appeal procedure was a later addition to the statute, created after the attorney fee provision was established; it was intended to provide a cheaper alternative route for FOIA appeals by avoiding costly litigation. D.I. 44, Senate Debate on S.B. 283 at 1:47, 145th Gen. Assem. (June 29, 2010). While the lower court recognized that fee recovery was available for plaintiffs that went straight to court, it held that no fees were available if a plaintiff first sought administrative appeal—in effect foreclosing any possibility of fee recovery for requesters seeking records from any government entity represented by the Attorney General. *Vanella on Behalf of Delaware Call v. Duran*, No. K24A-02-002, 2025 WL 2549424, at *15 (Del. Super. Ct. Sept. 4, 2025).

The lower court’s holding was based on a misguided examination of the term “plaintiff.” Delaware FOIA’s legislative history makes clear that at the time it was enacted, the term “plaintiff” broadly described all requesters challenging a denial. The attorney fees provision was enacted in 1988—twenty-two years before the administrative appeal process was created. *See* 66 Del. Laws ch. 354, § 1 (1988); 77 Del. Laws ch. 400, §§ 1–3 (2010). Although the word “plaintiff” was not subsequently updated in 2010 to clearly include requesters engaging in administrative appeals, neither was the broad statutory term “any action” pared back. Indeed, other Delaware courts, including the Supreme Court, have implicitly recognized that those appealing to superior court from this administrative process

were considered plaintiffs under Subsection (d). *See Jud. Watch, Inc.*, 267 A.3d at 1013 (explaining that the “[a]ppellants [we]re not entitled to fees” because they “ha[d] not yet succeeded” on their FOIA claims); *Rudenberg v. Chief Deputy Attorney General of Dep’t of Just.*, No. N16A–02–006 RRC, 2017 WL 7000854 at *11 (Del. Super. Ct. Dec. 8, 2017) (exercising discretion not to award fees because requester’s success was only minimal after seeking judicial review of the Attorney General’s determination).

The lower court’s misinterpretation of the fee statute is not simply academic; foreclosing the possibility of fee recovery for plaintiffs that first sought administrative appeal will have real world effects—it makes FOIA more expensive and less effective, in clear opposition to the legislature’s intent. Fee recovery provisions operate on two fronts, both incentivizing public engagement in government oversight and disincentivizing government bodies from skirting their responsibilities under the law. Possible financial recovery encourages those with fewer resources to pursue potentially meritorious FOIA claims in court, allowing more records to come to light and promoting government oversight. *See, e.g.*, S. Rep. No. 854, 93d Cong., 2d. Sess. 1 (1974) (explaining that making attorneys’ fees available in federal FOIA cases were in part designed to “facilitate freer and more expeditious public access to government information”). A similar goal motivated the 2010 General Assembly to enact the administrative appeals

mechanism in the first place, as the legislature was concerned with the high cost of FOIA litigation borne by requesters and sought to allow for a quicker and cheaper resolution to disputes. D.I. 44, Senate Debate on S.B. 283 at 2:01, 145th Gen. Assem. (June 29, 2010). The lower court recognized this history, but it drew the wrong conclusion, holding that attorney fees would not be necessary in an appeal from the administrative mechanism because filing costs would already be cheaper. *Vanella*, 2025 WL 2549424, at *15. But this case illustrates that even though the initial filing fee of an administrative appeal may be affordable, requesters may still need to seek judicial review to compel the production of public records, and this process is expensive. The General Assembly's preoccupation with the prohibitive cost of FOIA litigation *supports* broad fee recovery.

The threat of potential fee recovery also deters government agencies from unreasonably withholding public records under FOIA in the first place. *See, e.g.*, S. Rep. No. 854, 93d Cong., 2d. Sess. 1 (1974) (describing the inclusion of a fee recovery provision in federal FOIA as “encourag[ing] more faithful compliance with the terms and objectives” of the statute). Accordingly, in addition to Delaware, the federal government and most states have statutes allowing courts to award attorney fees to successful plaintiffs. *See* 5 U.S.C. § 552(a)(4)(E); 29 Del. C. § 10005; *see also* Reporters Committee for Freedom of the Press, *Attorneys Fees*, <https://www.rcfp.org/open-government-sections/a-attorney-fees/> (last visited

Nov. 19, 2025) (indicating that forty-five states have statutes or case law that allow courts to award attorney fees to prevailing plaintiffs, depending on varying levels of success and government malfeasance).

The Delaware General Assembly has explained that it is “vital” that citizens in a democracy have “easy access to public records” to “further the accountability of government” and monitor the activities of its public officials, and that its FOIA statute should be interpreted in accordance with these objectives. 29 Del. C. § 10001. Allowing courts to provide successful FOIA plaintiffs with attorney fees is integral to promoting a system of government accountability and openness to the public.¹⁸ Fee recovery is especially important to the press. News organizations and journalists are essential to providing government oversight by investigating and reporting on the working of the government to the greater public. However, reporting on these matters requires access to public records under FOIA, which can entail both litigation fees and FOIA production fees that may be cost prohibitive if too high. The FOIA Project Staff, *Scrutinizing Attorney Fee Awards in FOIA*

¹⁸ Importantly, allowing fee recovery in administrative appeals would not *require* courts to award fees; rather, Subsection (d) says “the court *may* award attorney fees to a successful plaintiff” at its own discretion. 29 Del. C. § 10005(d) (emphasis added). Extending Subsection (d) to include administrative appeals would not release a floodgate of attorney fees awards but would instead allow courts to award them when deemed appropriate, regardless of the FOIA challenge mechanism used.

Litigation, The FOIA Project (Dec. 19, 2018),

<https://foiaproject.org/2018/12/19/attorney-fee-awards-foia-litigation/#f11>. The lower court's ruling on fees is contrary to the purpose of Delaware FOIA and should be corrected.

CONCLUSION

For the foregoing reasons, and for those stated in Appellants' brief, amici urge this court to reverse in part the judgment below.

Respectfully submitted,

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Dated: January 27, 2026