

SUPERIOR COURT
OF THE
STATE OF DELAWARE

FRED S. SILVERMAN
JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 North King Street, Suite 10400
Wilmington, DE 19801-3733
Telephone (302) 255-0669

September 27, 2012

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RE: *American Civil Liberties Union v. City of Wilmington*
C.A. No.: 11M-10-071 FSS

Dear Counsel:

For now, the court holds that Plaintiff, a corporate citizen, has standing to make a FOIA request. The Public Defender case¹ is not helpful because the Public Defender is a state agency, not a citizen, and the Public Defender was attempting to use FOIA for an unauthorized purpose. Otherwise, FOIA does not distinguish

¹ *Office of the Public Defender v. Delaware State Police*, 2003 WL 1769758 (Del. Super. Mar. 31, 2003) (Silverman, J.).

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American Civil Liberties Union v. City of Wilmington
C.A. No. 11M-10-071 FSS
Letter/Order
September 27, 2012
Page 2

between human and corporate citizens. Meanwhile, there is no claim here that Plaintiff is not acting in FOIA's spirit, nor is there a claim that someone is using the corporate form to circumvent FOIA's requirements, or to do anything prohibited by FOIA. This court appreciates that corporations do not have the same rights as humans,² but the request here furthers the ACLU's corporate purposes and it is consistent with FOIA's purpose. Thus, the ACLU has standing in this case.

The court also holds that the FOIA request is timely. The City's argument that this petition is barred by the equitable defense of laches and 29 *Del. C.* § 10005(b) is incorrect, even assuming this court can apply laches. The City does not even bother to argue a change in position. More importantly, the use of TASERS and other electronic control devices is on-going. The same goes for cell phone tracking, so it seems.

Although the ACLU has standing and this petition is timely, the court is not satisfied that the record supports summary judgment. Clearly, the ACLU is entitled to something. Based on other agencies' responses, however, it appears there is room to argue the ACLU's request is too broad, looking into police matters outside FOIA's view.

The parties must attempt to resolve this matter cooperatively, in the public's best interest, as other agencies have. If that does not happen, then, at least, ACLU must explain why the City must disclose more than the State Police. Also, if the court must consider whether the request interferes with or compromises police

²See, e.g., *Braswell v. U.S.*, 487 U.S. 99, 104 (1988) (reiterating "long recognized [rule] that, for purposes of the Fifth Amendment, corporations . . . are treated differently from individuals."); compare *Citizens United v. Federal Election Com'n*, 558 U.S. 310 (2010) (holding corporations have First Amendment rights.).

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C.A. No. 11M-10-071 FSS
Letter/Order
September 27, 2012
Page 3

operations, which is not a proper use of FOIA, the State's position would be helpful. Simply put, the court is interested in the Attorney General's participation. The outcome may have statewide implications.

For the foregoing reasons, the City's motion to dismiss is **DENIED**. ACLU's motion for summary judgment is **DENIED, without prejudice**.

IT IS SO ORDERED.

Very truly yours,

/s/ Fred S. Silverman

FSS: mes
oc: Prothonotary (Civil)