IN THE SUPREME COURT OF THE STATE OF DELAWARE

| | | |
|---|---|---|
| ROBERT E. VANELLA, on behalf of THE DELAWARE CALL, | § | |
| | § | |
| Petitioner Below, Appellant, | § | No. 419, 2025 |
| | § | |
| v. | § | Court Below: Superior Court of the State of Delaware |
| | § | |
| CHRISTINA DURAN, in her official capacity as FOIA Coordinator for the DELAWARE DEPARTMENT OF SAFETY AND HOMELAND SECURITY, DELAWARE STATE POLICE, | § | C.A. No. K24A-02-002 |
| | § | |
| Respondent Below, Appellee. | § | |

Submitted: May 6, 2026
Decided: August 24, 2026

Before **SEITZ**, Chief Justice; **TRAYNOR**, **LEGROW**, and **GRIFFITHS**, Justices; and **DANBERG**, Chief Judge,[1] constituting the Court *en Banc*.

Upon appeal from the Superior Court. **AFFIRMED in part, REVERSED in part and REMANDED.**

Jared Silberglied, Esquire (*argued*), and Andrew Bernstein, Esquire, ACLU FOUNDATION OF DELAWARE, INC., Wilmington, Delaware, *Attorneys for Petitioner Below/Appellant Robert E. Vanella and The Delaware Call*.

Joseph C. Handlon, Esquire (*argued*), and Erica K. Sefton, Esquire, DELAWARE DEPARTMENT OF JUSTICE, Wilmington, Delaware, *Attorneys for Respondent*

---

[1] Sitting by designation under DEL. CONST. art. IV, § 12 and Supreme Court Rules 2(a) and 4(a) to complete the quorum.

*Below/Appellee Christina Duran, in her official capacity as FOIA Coordinator for the Delaware Department of Safety and Homeland Security, Delaware State Police.*

Karen E. Keller, Esquire, SHAW KELLER LLP, Wilmington, Delaware; Ian Kalish, Esquire, UNIVERSITY OF VIRGINIA SCHOOL OF LAW FIRST AMENDMENT CLINIC, Charlottesville, Virginia, *Attorneys for Amici Curiae University of Virginia Law School First Amendment Clinic, Reports Committee for Freedom of the Press, and Invisible Institute*.

Jeffrey M. Weiner, Esquire, Wilmington, Delaware, *Attorney for Amicus Curiae Delaware State Troopers Association*.

**GRIFFITHS**, Justice, for the Majority:

This appeal requires us to resolve two principal issues: whether the Delaware State Police ("DSP") met its burden to justify denying a citizen access to public records, and whether a citizen who prevails in an appeal under Delaware's Freedom of Information Act ("FOIA") may recover attorney fees and costs. We answer both questions in the negative.

Robert E. Vanella, on behalf of The Delaware Call, a news organization, asked DSP for seven categories of records concerning its troopers, including their employment histories with other law enforcement agencies, their résumés, and demographic information. DSP denied the requests in their entirety. After petitioning the Chief Deputy Attorney General (the "Chief Deputy"), who found no FOIA violation, Vanella appealed to the Superior Court. That court ordered DSP to produce trooper names, ranks, and salaries, upheld the denials in all other respects, and later denied Vanella's motion for attorney fees and costs. We conclude that DSP did not carry its statutory burden to justify the contested denials and that FOIA does not authorize a fee award in an on-the-record appeal. We therefore **AFFIRM** in part, **REVERSE** in part, and **REMAND**.

I

On October 3, 2023, Vanella sent a FOIA request to DSP seeking seven categories of records concerning "certified law enforcement officers" (collectively, the "Requests").[2] The Requests sought: (1) the names of all actively certified law enforcement officers, which "may take the form of a roster" (the "Roster Request"); (2) the current annual salary of each certified officer (the "Salary Request"); (3) the current employing state agency and rank of each certified officer (the "Rank Request"); (4) the past employers of each certified officer and the job titles associated with each such employment (the "Employment-History Request"); (5) résumés of each certified officer (the "Résumé Request"); (6) a list of all formerly certified officers and their current status (the "Former-Officer Request"); and (7) the age, sex, and race of each certified officer (the "Demographic Request"). In his cover letter, Vanella stated that, if DSP believed that "a portion of the document is exempt from disclosure[,]" it should "redact those documents and produce those portions which are responsive and non-exempt."[3]

On November 3, 2023, after a brief extension, DSP denied the Requests in their entirety by email from a Deputy Attorney General (the "Denial").[4] DSP responded that it possesses no records for law enforcement officers other than its

[2] Unless otherwise noted, the recited facts are taken from the Superior Court's December 23, 2024 Opinion. *See Vanella, on Behalf of Del. Call v. Duran*, 2024 WL 5201305 (Del. Super. Dec. 23, 2024) [hereinafter the "Opinion at __"]. The Delaware Call describes itself as an "independent media group that engages in investigative journalism, political analysis, and Delaware-focused commentary." *See* App. to Appellant's Opening Br. at A9 (FOIA Request).

[3] App. to Appellant's Opening Br. at A9 (FOIA Request).

[4] *Id.* at A12–14 (Denial); *see* App. to Appellee's Answering Br. at B1 (Dep't Official Resp. at 1) (noting that DSP responded on November 3, 2023, "after Petitioner agreed to a brief extension").

own troopers; that it has no existing roster of trooper names, and that such a list would in any event be exempt under 29 *Del. C.* § 10002(o)(17) (the "Public Safety Exception");[5] that salary information for all state employees is available on a third-party website; that DSP has no database or document containing its troopers' past employers and job titles; that DSP does not maintain résumés for all of its troopers, and that regardless any résumés would be exempt under 29 *Del. C.* § 10002(o)(1) (the "Personnel File Exception");[6] and that the Former-Officer and Demographic Requests sought records exempt under 29 *Del. C.* § 10002(o)(6) (the "Statutory Exception")[7] and 11 *Del. C.* ch. 92, the Police Officers' Due Process, Accountability, and Transparency Act.[8]

On November 7, 2023, Vanella challenged the Denial by filing a petition with the Attorney General's Office (the "Petition"), the mandatory first step when a citizen seeks to challenge a FOIA response by a public body or official that the

---

[5] 29 *Del. C.* § 10002(o)(17) excludes from the definition of "public record" "[t]hose portions of records assembled, prepared or maintained to prevent, mitigate or respond to criminal acts, the public disclosure of which would have a substantial likelihood of threatening public safety," and limits the exception's protection to "[s]pecific 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."

[6] 29 *Del. C.* § 10002(o)(1) excludes from the definition of "public record" "[a]ny personnel, medical or pupil file, the disclosure of which would constitute an invasion of personal privacy, under this legislation or under any State or federal law as it relates to personal privacy."

[7] 29 *Del. C.* § 10002(o)(6) excludes from the definition of "public record" "[a]ny records specifically exempted from public disclosure by statute or common law."

[8] App. to Appellant's Opening Br. at A12–14 (Denial).

Attorney General is obliged to represent under Delaware law (hereinafter, a "State Agency").[9] The Office referred the Petition to the Chief Deputy. While preparing a response to the Petition, the Deputy Attorney General representing DSP asked Vanella whether he would accept "some demographical and other statistical information (without trooper names) to resolve the matter."[10] Vanella responded that, as to the Demographic Request, he could "accept a unique ID or position number that masks trooper names, but would allow us to match the record to other records"; the balance of the Requests "would still stand."[11] The parties did not reach a compromise.[12]

On November 16, 2023, DSP responded to the Petition, standing on the Denial and attaching two affidavits (the "Response").[13] The first affidavit, signed by DSP's Director of Human Resources, Captain James P. Doherty (the "Doherty Affidavit"),

---

[9] 29 *Del. C.* § 10005(b) (a person denied access to public records by an agency that the Attorney General is obliged to represent under § 2504 "must within 60 days of denial, present a petition and all supporting documentation to the Chief Deputy"); *see Vanella, on Behalf of Del. Call v. Duran*, 2025 WL 2549424, at *7–8 (Del. Super. Sept. 4, 2025) [hereinafter the "Attorney Fees Opinion at __"].

[10] App. to Appellant's Opening Br. at A46 (Email from Deputy Att'y Gen. to Robert Vanella (Nov. 13, 2023)); *see* Opinion at *2.

[11] App. to Appellant's Opening Br. at A45–46 (Email from Robert Vanella to Deputy Att'y Gen. (Nov. 13, 2023)); *see* Opinion at *2.

[12] App. to Appellant's Opening Br. at A45 (Email from Deputy Att'y Gen. to Robert Vanella (Nov. 14, 2023)) ("Guess we were hoping, as a compromise, we could provide stats without names (at all), but that doesn't look like a possibility.").

[13] Opinion at *2; App. to Appellee's Answering Br. at B1–6 (Dep't Official Resp. (Nov. 16, 2023)).

stated that DSP "maintains computer systems that include trooper names, ranks, assignments and pedigree information," that these systems "contain highly confidential information," and that DSP "treats [these records] as personnel files of its employees."[14] Doherty further averred that "a résumé is not a document required to be provided to DSP as part of an application package"; that "[t]o the extent DSP HR has any résumés, they would be contained in, and therefore considered part of, their DSP personnel file"; and that "DSP maintains in electronic form only a limited portion of former troopers since current record keeping practices began in 2012."[15] Finally, Doherty stated that disclosing the names of all troopers "would necessarily include officers who are or will act in an undercover capacity," which "could subject them to potential harassment or danger."[16]

The second affidavit, signed by DSP's Chief Public Information Officer, India Sturgis, stated that DSP had received "concerning messages" from the public since approximately January 2023. Sturgis described an incident in which an individual walked a "threatening canine" around DSP headquarters, and Sturgis averred that disclosure would "create a significant officer-safety issue" because "[m]any DSP troopers serve in undercover and other intelligence roles."[17]

---

[14] Opinion at *2.

[15] App. to Appellant's Opening Br. at A17 (Doherty Aff. ¶¶ 4–5).

[16] *Id.* at A17–18 (Doherty Aff. ¶ 6); *see* Opinion at *10 n.77.

[17] App. to Appellant's Opening Br. at A20–21 (India Sturgis Aff. ¶ 2).

In January 2024, the Chief Deputy denied the Petition. Addressing only the Roster Request, the Chief Deputy determined that a roster of troopers was exempt under the Public Safety Exception, citing risks to troopers in undercover and intelligence roles.[18] Because, in the Chief Deputy's view, the remaining Requests "hinge on releasing the identities of the DSP troopers," he further determined that DSP did not violate FOIA by denying the remaining Requests.[19]

Vanella appealed the Chief Deputy's decision on the record to the Superior Court. After briefing and a hearing, the court issued an opinion affirming in part and reversing in part the Chief Deputy's decision. The court ordered DSP to produce "a listing by name of all currently employed DSP troopers," their ranks, and their salary information, and upheld the denial of the Employment-History, Résumé, Former-Officer, and Demographic Requests.[20]

As to the Roster, Salary, and Rank Requests, the court found DSP's assertion that no responsive records exist contradicted the Doherty Affidavit's acknowledgment that DSP "maintains computer systems that include trooper names, ranks, assignments and pedigree information." The court reasoned that "[p]roducing easily disclosable information stored in a computer system does not require the

---

[18] Opinion at *2–3.

[19] *Id.* at *3.

[20] *Id.* at *15. DSP did not cross-appeal the rulings ordering production of trooper names, ranks, and salary information.

creation of a new record."[21] The court further held that the affidavits' generalized safety concerns did not carry DSP's burden under the Public Safety Exception, that disclosing the names of troopers—who "wear their names on their uniforms"—would not invade personal privacy, and that referring Vanella to a third-party salary website did not discharge DSP's obligations under FOIA.[22] The court therefore ordered DSP to produce a roster of its current troopers, together with their ranks and salary information.

The court upheld the denials of the Employment-History and Former-Officer Requests, accepting DSP's representations—contained in the Denial and through the Doherty Affidavit—that DSP does not maintain the records sought.

The court also upheld the denial of the Résumé Request. DSP explained that it does not require résumés in its application process. Any résumés DSP happens to possess, the court held, are exempt in their entirety under the Personnel File Exception. Résumés "typically contain" personal information such as a home address, phone number, and email address, the court reasoned, and "Delaware FOIA has no explicit segregability requirement" under which that information could be

[21] *Id.* at *9.

[22] *Id.* at *10–12.

redacted.[23] The court added that the privacy interests of officers serving undercover or in "other highly sensitive roles are often heightened."[24]

Finally, the court upheld the denial of the Demographic Request. It held that trooper age, sex, and race are contained within personnel files, and their disclosure would compromise the privacy of troopers who may serve in undercover roles, as well as their safety, which the court deemed "an aspect and goal of one's personal privacy."[25]

Vanella then moved for the attorney fees and costs he incurred in the appeal from the Chief Deputy's decision, invoking 29 *Del. C.* § 10005(d), which provides that a court "may award attorney fees and costs to a successful plaintiff of any action brought under this section."[26] In its Attorney Fees Opinion, the Superior Court denied Vanella's motion. The court held that Section 10005(d) is ambiguous because "action" could reasonably be read to include an on-the-record appeal, but "plaintiff" is not synonymous with "appellant." The court also examined the legislative history of the 1988 amendment, which added the fee-shifting provision

---

[23] *Id.* at *13.

[24] Opinion at *13 & nn.94, 104.

[25] *Id.* at *14. The court did not address DSP's reliance on the Statutory Exception. The court concluded that the requests to which that exception was directed were exempt on other grounds. Opinion at *6.

[26] Attorney Fees Opinion at *2. Vanella appealed the Superior Court's merits decision, and we dismissed that appeal as interlocutory because the attorney fee issue remained unresolved. *Vanella, on Behalf of Del. Call v. Duran*, 2025 WL 733246, at *1 (Del. Mar. 7, 2025).

when a suit was the only "action" that FOIA contemplated, and of the 2010 amendment, which created the on-the-record appeal without revising the fee-shifting provision. In the court's view, that legislative history evinced no intent to waive sovereign immunity for fee awards in on-the-record appeals.[27] This appeal followed.

## II

This Court reviews the Chief Deputy's determination on the same record that was before the Superior Court. We review questions of law, including questions of statutory interpretation, *de novo* and without deference to the Superior Court's or the Chief Deputy's reading of the statute.[28] The legal sufficiency of a public body's submissions under Section 10005(c)'s burden of proof is likewise a question of law reviewed *de novo*.[29]

## III

FOIA entitles any citizen to inspect and copy public records.[30] The Act defines "public record" broadly, reaching "information of any kind" that relates "in

---

[27] Attorney Fees Opinion at *11–15.

[28] *Jud. Watch, Inc. v. Univ. of Del.*, 267 A.3d 996, 1003 (Del. 2021).

[29] *See id*. at 1003, 1010–13 (assessing, without deference, the sufficiency of the public body's showing under Section 10005(c)). DSP contends that whether responsive records exist is a factual determination that this Court reviews only for substantial evidence. Appellee's Answering Br. at 12 (citing *Stoltz Mgmt. Co. v. Consumer Affairs Bd.*, 616 A.2d 1205, 1208 (Del. 1992)). The question Vanella's records claims present, however, is not whether the Chief Deputy permissibly weighed conflicting evidence; it is whether DSP's submissions, principally two affidavits, were legally sufficient to satisfy Section 10005(c)'s burden.

[30] 29 *Del. C.* § 10003(a); *see* 29 *Del. C.* § 10001 (declaring it "vital that citizens have easy access to public records in order that the society remain free and democratic").

any way to public business," "regardless of the physical form or characteristic by which such information is stored, recorded or reproduced."[31] A record within that definition must be produced on request unless one of Section 10002(o)'s enumerated exceptions removes it from the "public record" definition. Those exceptions are narrowly construed.[32] Section 10005(c) places the burden of proof on the public body "to justify the denial of access to records."[33]

Vanella raises four claims on appeal. First, he contends that DSP failed to carry its burden of showing that no records exist that are responsive to the Employment-History and Former-Officer Requests. Second, he asserts that trooper résumés are not exempt in their entirety under the Personnel File Exception and that DSP must produce them with any exempt content redacted. Third, he argues that neither the Statutory Exception nor the Personnel File Exception shields the demographic information, which he seeks only in anonymized form. Fourth, he maintains that a petitioner who prevails in an on-the-record appeal may recover attorney fees and costs under Section 10005(d). Because DSP defends both the

---

[31] 29 *Del. C.* § 10002(o).

[32] *Flowers v. Off. of the Governor*, 167 A.3d 530, 544–45 (Del. Super. 2017) ("[E]xemptions are to be narrowly construed and . . . FOIA is to be construed to further open access to public records"); *ACLU of Del. v. Danberg*, 2007 WL 901592, at *3 (Del. Super. Mar. 15, 2007).

[33] 29 *Del. C.* § 10005(c) ("In any action brought under this section, the burden of proof shall be on the custodian of records to justify the denial of access to records . . . . ").

Résumé and Demographic Requests on a shared alternative ground under the Statutory Exception, we address that ground after the request-specific claims.

A

In the Denial and the Doherty Affidavit, DSP represented that it does not maintain records of its troopers' past employers and job titles or a list of former troopers, and the Superior Court accepted those representations.[34] Vanella contends that the Doherty Affidavit was insufficient to carry Section 10005(c)'s burden. We agree.

We held in *Judicial Watch, Inc. v. University of Delaware* that, "unless it is clear on the face of the request that the demanded records are not subject to FOIA," a public body "must state, under oath, the efforts taken to determine whether there are responsive records and the results of those efforts."[35] An unsworn assertion that responsive records do not exist will not carry the burden. The oath requirement reflects the "inherent information imbalance" between a public body and a requesting party.[36] Only the public body knows what its records contain, and an unsworn denial gives it a "unilateral opportunity to characterize" those records that the requesting party has no way to test.[37]

---

[34] Opinion at *12, *14.

[35] *Jud. Watch*, 267 A.3d at 1012.

[36] *Id.* at 1011.

[37] *Id.*

The Doherty Affidavit does not meet DSP's burden under Section 10005(c). The affidavit states that DSP "does not maintain records of law enforcement officers who are not Delaware state troopers" and describes the computer systems in which DSP stores information about its own troopers.[38] Yet the affidavit itself indicates that responsive records exist. As to employment histories, the affidavit states that DSP "maintains computer systems that include trooper . . . pedigree information,"[39] and "pedigree information" is background information relating, among other things, to a person's employment.[40] As to former troopers, the affidavit states that DSP "maintains in electronic form only a limited portion of former troopers since current record keeping practices began in 2012," a statement that concedes some responsive records exist.[41] And as to both requests, the affidavit nowhere describes the effort DSP undertook to determine whether responsive records exist or the results of any such effort.

DSP argues that it "cannot produce what it does not have,"[42] yet acknowledges that responsive information "likely exists" within application packets and other

---

[38] App. to Appellant's Opening Br. at A17 (Doherty Aff. ¶¶ 2–3).

[39] *Id.* (Doherty Aff. ¶ 3) (emphasis added).

[40] *Pedigree Information*, BLACK'S LAW DICTIONARY (12th ed. 2024).

[41] App. to Appellant's Opening Br. at A17 (Doherty Aff. ¶ 5).

[42] *Id.* at 14.

human-resources records "for at least some troopers."[43] If DSP has some of the records Vanella seeks, it must produce them; a public body may not withhold responsive records in its possession because a request asks for some records it lacks.[44] And because nothing on the face of the Requests shows that the records sought are exempt, *Judicial Watch* required DSP to support its denial with a sworn account of its search, not to defend the records' nonexistence for the first time on appeal.[45]

We therefore reverse the Superior Court's judgment as to the Employment-History and Former-Officer Requests.[46] On remand, DSP must, within the timeframes set forth in 29 *Del. C.* § 10003(h), either produce the responsive records it possesses or support its denial with a new or supplemental affidavit that satisfies

---

[43] *Id.* at 14 & n.38.

[44] *See* 29 *Del. C.* § 10003(h)(1) (contemplating denial of "access to the records or parts of them"); *cf. Del. Op. Att'y Gen. 05-IB02*, 2005 WL 120844, at *2 (Jan. 12, 2005) ("A public body must try to redact exempt information from its records to make non-exempt information available to the public").

[45] *See Jud. Watch*, 267 A.3d at 1012.

[46] In its Denial, DSP asserted the Public Safety Exception against the Employment-History Request and the Statutory Exception against the Former-Officer Request. App. to Appellant's Opening Br. at A12–14 (Denial); App. to Appellee's Answering Br. at B2–3 (Dep't Official Resp. at 2–3). DSP does not press either exception on appeal, so we do not address them. DSP does suggest, in a footnote, that any responsive information "would be derived from personnel records and would therefore be exempt under § 10002(o)(1)." Appellee's Answering Br. at 14 n.38. The presence of information in a personnel file, however, satisfies only the Personnel File Exception's first prong, and, as we explain below, DSP has made no showing that disclosure of a trooper's employment history with other law enforcement agencies invades personal privacy.

*Judicial Watch* by stating under oath the efforts taken to determine whether responsive records exist and the results of those efforts.[47]

B

We next address the Résumé Request. Here, the issue is not whether responsive records exist. The Doherty Affidavit states that "[t]o the extent DSP HR has any résumés, they would be contained in, and therefore considered part of, their DSP personnel file,"[48] and DSP acknowledged at oral argument that "chances are we have résumés for some troopers, probably a small portion."[49]

The Superior Court nonetheless held that any résumés DSP possesses are exempt in their entirety under the Personnel File Exception. It reasoned that résumés "typically contain" private information such as home addresses, personal phone numbers, and email addresses, and that "Delaware FOIA has no explicit segregability requirement" under which that information could be redacted.[50] The court's second premise was error. Section 10003(h)(1) authorizes a public body to respond to a request by "denying access to the records or parts of them," and Section

[47] *See Jud. Watch*, 267 A.3d at 1012–13. DSP argued that it may regardless assess administrative fees under 29 *Del. C.* § 10003(m). Appellee's Answering Br. at 14 n.38. Our holding here does not displace any right DSP may have to do so. But the cost of complying with a FOIA request does not excuse a public body from responding; Section 10003(m) sets forth the procedure that a public body must undertake before fulfilling a request that would require a requesting party to incur administrative fees.

[48] App. to Appellant's Opening Br. at A17 (Doherty Aff. ¶ 4).

[49] Oral Arg. at 40:24–40:35.

[50] Opinion at *13.

10003(k) provides that "records or portions of records deemed nonpublic may be removed" before disclosure.[51] A record is not exempt in its entirety because a discrete portion of that record is exempt from disclosure.[52] A contrary rule would permit a public body to withhold any record containing a single exempt data point. Indeed, Vanella does not oppose redaction. He agrees that DSP may redact private information, and during oral argument Vanella narrowed the Résumé Request to troopers' history of employment with other law enforcement agencies, excluding home addresses, phone numbers, email addresses, and similar personal details.[53] The question therefore is whether résumés so redacted are exempt under the Personnel File Exception.

The Personnel File Exception excludes from the definition of "public record" "[a]ny personnel, medical or pupil file, the disclosure of which would constitute an invasion of personal privacy, under this legislation or under any State or federal law as it relates to personal privacy."[54] The exception has two prongs: (i) the record must be of the kind contained in a personnel, medical, or pupil file, and (ii) its disclosure must invade personal privacy.

---

[51] 29 *Del. C.* § 10003(h)(1), (k).

[52] *See, e.g.*, *Del. Op. Att'y Gen. 05-IB02*, 2005 WL 120844, at *2 ("A public body must try to redact exempt information from its records to make non-exempt information available to the public.").

[53] Oral Arg. at 11:36–12:36.

[54] 29 *Del. C.* § 10002(o)(1).

Résumés satisfy the exception's first prong. FOIA does not define "personnel file." The Attorney General's Office defined the term in 2002 as "a file containing information that would, under ordinary circumstances, be used in deciding whether an individual should be promoted, demoted, given a raise, transferred, reassigned, dismissed, or subject to such other traditional personnel actions."[55] A résumé contains information used in deciding whether an individual should be hired—a traditional personnel action.[56] Any résumés that DSP has "would be contained in, and therefore considered part of, their DSP personnel file."[57]

Exemption therefore turns on the second prong. The redacted résumés are exempt only if disclosure of the troopers' past employment with other law enforcement agencies would "constitute an invasion of personal privacy, under this legislation or under any State or federal law as it relates to personal privacy."[58] The parties offer competing interpretations of when an invasion of personal privacy occurs. Vanella, following the Connecticut Supreme Court's decision in *Perkins v. Freedom of Information Commission*, would find an invasion of personal privacy

---

[55] Opinion at *10 (quoting *Del. Op. Att'y Gen. 02-IB24*, 2002 WL 31867898, at *1 (Oct. 1, 2002)).

[56] *See, e.g.*, 19 *Del. C.* § 731(3) (defining "personnel file" to include "any application for employment").

[57] App. to Appellant's Opening Br. at A17 (Doherty Aff. ¶ 4).

[58] 29 *Del. C.* § 10002(o)(1).

only where the public body establishes the elements of a common law privacy tort.[59] DSP would find an invasion of personal privacy whenever there are generalized "safety and privacy concerns."[60] But we need not choose among those constructions or announce our own to decide this case because DSP cannot prevail under any construction.

Section 10005(c) places the burden on DSP to justify its denial.[61] DSP, however, made no showing that disclosure of a trooper's prior law enforcement employers, or the job titles and dates of that employment, would invade anyone's privacy. Instead, DSP's affidavits only address disclosure of the troopers' names and addresses.[62] Moreover, a generalized invocation of officer safety is not a substitute for the showing that Section 10005(c) requires. This Court rejected a claim similar to DSP's contention—that generalized safety concerns are sufficient to withhold the requested information—in *Gannett Co. v. Board of Managers of the Delaware Criminal Justice Information System*. In *Gannett*, we found that citing generalized officer-safety concerns did not justify withholding the names of arresting officers under the Personnel File Exception, observing that "[w]hich officer

---

[59] Appellant's Opening Br. at 19–21 (citing *Perkins v. Freedom of Info. Comm'n*, 635 A.2d 783 (Conn. 1993)).

[60] Appellee's Answering Br. at 19–21.

[61] 29 *Del. C.* § 10005(c); *see Jud. Watch*, 267 A.3d at 1012.

[62] App. to Appellant's Opening Br. at A17–21 (Doherty Aff. and Sturgis Aff.).

conducted an arrest is a matter of public record."[63] Put simply, DSP's generalized safety concerns do not satisfy the second prong. We therefore reverse the Superior Court's judgment as to the Résumé Request. On remand, DSP must, within the timeframes set forth in 29 *Del. C.* § 10003(h), either produce the résumés it possesses for currently employed troopers, redacted to disclose only prior law enforcement employers and the job titles and dates of that employment, or support its denial with an affidavit that satisfies *Judicial Watch*.[64]

C

We next address whether DSP properly denied the Demographic Request under the Personnel File Exception. The Superior Court held that it did, reasoning that trooper age, sex, and race are contained within personnel files and their disclosure would compromise the privacy and safety of troopers who may serve in undercover roles.[65] Like the Résumé Request, DSP does not dispute that it possesses the information at issue. Its computer systems include trooper "pedigree

---

[63] *Gannett Co. v. Bd. of Managers of the Del. Crim. Justice Info. Sys.*, 840 A.2d 1232, 1239 (Del. 2003).

[64] *See Jud. Watch*, 267 A.3d at 1012–13.

[65] Opinion at *14.

information,"[66] and DSP offered Vanella "demographical and other statistical information (without trooper names)" to resolve his request.[67]

The exception's first prong is satisfied. A personnel file contains the information used, under ordinary circumstances, in deciding whether an individual should be promoted, demoted, or subject to other traditional personnel actions, and DSP uses demographic information in making certain assignments, including to undercover or intelligence roles.[68]

The exception's second prong, however, is not met. Vanella does not seek age, sex, and race linked to named troopers. He seeks them under anonymous alphanumeric identifiers that mask trooper names.[69] Information that cannot be connected to an identifiable individual does not invade that individual's personal privacy. DSP has made no showing that a table of age, sex, and race, keyed to arbitrary identifiers, would permit anyone to identify individual troopers or that its disclosure could threaten any trooper's safety or privacy.

---

[66] App. to Appellant's Opening Br. at A17 (Doherty Aff. ¶ 3); *see* Opinion at *14 (DSP "acknowledges, through the Doherty Affidavit, that it maintains this information in its computer system").

[67] App. to Appellant's Opening Br. at A46 (Email from Deputy Att'y Gen. to Robert Vanella (Nov. 13, 2023)).

[68] *See supra* Part III.B.

[69] App. to Appellant's Opening Br. at A45–46 (Email from Robert Vanella to Deputy Att'y Gen. (Nov. 13, 2023)).

DSP's remaining objection is that it does not maintain the information in the form requested, so a response would require it to create a new record, which FOIA does not require.[70] But exporting existing data from a computer system is not the creation of a new record.[71] Substituting an arbitrary identifier for a name in that export is a mechanical act of redaction permitted under FOIA.

We therefore reverse the Superior Court's judgment as to the Demographic Request. On remand, DSP must, within the timeframes set forth in 29 *Del. C.* § 10003(h), produce the age, sex, and race of each currently employed trooper, with each trooper's information reported under an anonymous alphanumeric identifier in place of the trooper's name.

D

That leaves DSP's alternative ground for affirming the denial of the Résumé and Demographic Requests. DSP argues that the Statutory Exception incorporates the Police Officers' Due Process, Accountability, and Transparency Act

[70] *See id.* at A12–14 (Denial).

[71] *See Del. Op. Att'y Gen. 17-IB32*, 2017 WL 3426272, at *3 (July 25, 2017) ("Nor are we persuaded by the City's argument that it would need to create a new record in order to provide this information. Each request for database records under FOIA must be assessed on its specific facts to determine whether the request is asking the public body to create a new record, and those assessments may become more difficult over time as technology evolves. Here, the Program Manager's affidavit suggests that the information can easily be exported to Microsoft Excel. In this instance, we do not view the mere exportation of existing data to a Microsoft Excel spreadsheet as the creation of a new record.").

("PODPAT"),[72] which provides that "no law-enforcement agency shall be required to disclose in any civil proceeding" the records that PODPAT enumerates, including an officer's personnel file.[73] We disagree.[74] PODPAT does not excuse DSP from producing résumés or anonymized demographic information in response to a FOIA request.

Our reasoning is simple: PODPAT's limitation applies only in a "civil proceeding," and a FOIA request is not one. A civil proceeding is "[a] judicial hearing, session, or lawsuit in which the purpose is to decide or delineate private rights and remedies."[75] A citizen's request that a public body disclose public records is not a judicial hearing, session, or lawsuit. A FOIA dispute may reach a civil proceeding through a lawsuit or an on-the-record appeal from the Chief Deputy's decision, but the record is not disclosed in that proceeding. If the requesting party prevails, disclosure is the result that the proceeding achieves. FOIA's exceptions apply, if at all, to the request itself, not to the mechanism that a citizen must use to

---

[72] Appellee's Answering Br. at 29 (referring to 29 *Del. C.* § 10002(o)(6)). Chapter 92 of Title 11 was amended in August 2023 and is now titled "Police Officers' Due Process, Accountability, and Transparency"; it was formerly known as the Law Enforcement Officers' Bill of Rights ("LEOBOR").

[73] 11 *Del. C.* § 9200(d), (d)(1); *see* Appellee's Answering Br. at 29.

[74] Although the Superior Court did not reach this issue, we can address it because it was fairly presented to the Chief Deputy and the Superior Court. *See Unitrin, Inc. v. Am. Gen. Corp.*, 651 A.2d 1361, 1390 (Del. 1995) ("We also recognize that this Court may rule on an issue fairly presented to the trial court, even if it was not addressed by the trial court.").

[75] *Civil Proceeding*, BLACK'S LAW DICTIONARY (12th ed. 2024).

enforce FOIA rights. Because a FOIA request is not a "civil proceeding," and PODPAT only applies in civil proceedings, PODPAT does not apply to FOIA through the Statutory Exception.

E

Finally, Vanella challenges the Superior Court's conclusion that it did not have the power to shift attorney fees and costs in an appeal brought under Section 10005(e). To reach that holding, the Superior Court reasoned that the statute is ambiguous, the availability of fee-shifting must be strictly construed because the State is afforded sovereign immunity, and the statutory construction tools do not reflect the General Assembly's intent to waive that immunity. Although we agree with the court that fee shifting is unavailable in appeals filed under Section 10005, we disagree with the court's conclusion that the statute is ambiguous.

Our interpretation turns on the statutory language and structure.[76] As the Superior Court recognized, Section 10005 lays down different pathways for a citizen who seeks to challenge a public body's response to a FOIA request. A citizen who requests records from a public body that is not a State Agency has two choices: he

[76] *Food Mktg Inst. v. Argus Leader Media*, 588 U.S. 427, 436 (2019) ("In statutory interpretation disputes, a court's proper starting point lies in a careful examination of the ordinary meaning and structure of the law itself."); *State v. Barnes*, 116 A.3d 883, 888 (Del. 2015) ("The starting point for the interpretation of a statute begins with the statute's language.").

may bring suit in a court of competent jurisdiction,[77] or he may petition the Attorney General to determine whether the public body's response violated FOIA.[78] In contrast, a citizen who requests records from a State Agency has only one path: he may petition the Attorney General to determine whether the State Agency's response violated FOIA.[79]

Section 10005(e) establishes two different procedures governing a petition seeking Attorney General review—one for non-State Agency requests and one for State Agency requests. For a non-State Agency, the Attorney General must make a written determination within 20 days of receiving the petition.[80] In such a case, if the Attorney General finds that a FOIA violation has occurred or is about to occur, the citizen may file suit in a court of competent jurisdiction or may ask the Attorney General to file suit on the citizen's behalf.[81] If the Attorney General does not find a

---

[77] 29 *Del. C.* § 10005(b) ("Any citizen denied access to public records as provided in this chapter may bring suit within 60 days of such denial.").

[78] *Id.* § 10005(e) ("Any citizen may petition the Attorney General to determine whether a violation of this chapter has occurred or is about to occur.").

[79] *Id.* § 10005(b) ("Notwithstanding the foregoing [language permitting any citizen to bring suit in court], a person denied access to public records by [a State Agency] must within 60 days of denial, present a petition and all supporting documentation to the Chief Deputy as described in subsection (e) of this section.").

[80] *Id.* § 10005(e) ("In every [petition against a non-State Agency], the Attorney General shall, within 10 days, notify in writing the custodian of records or public body involved. Within 20 days of receiving the petition, the Attorney General shall make a written determination of whether a violation has occurred or is about to occur, and shall provide the citizen and any custodian of records or public body involved with a copy of the determination.").

[81] *Id.* ("If the Attorney General finds that a violation of this chapter has occurred or is about occur, the citizen may: (1) [f]ile suit as set forth in this chapter; or (2) request in writing that the Attorney General file suit on the citizen's behalf. If such request is made, the Attorney General may file

FOIA violation, the citizen maintains the right to file suit.[82] For a State Agency, on the other hand, petitions are referred to the Chief Deputy, who must issue a written determination within 20 days declaring whether a violation of FOIA has or is about to occur.[83] Either the citizen or the State Agency may appeal the Chief Deputy's determination to the Superior Court "on the record."[84] But if the Chief Deputy determines that the State Agency has violated FOIA, and the State Agency does not comply with that determination, Section 10005(e) bars the Attorney General from representing the Agency in any on-the-record appeal.[85]

To summarize: in the case of a request directed to a non-State Agency, a citizen may immediately file suit or may petition the Attorney General and then choose to file suit. A citizen requesting public records from a State Agency has only

---

suit, and shall within 15 days notify the citizen of the decision to file suit, unless the custodian of records or public body has agreed to comply with this chapter.").

[82] *Id.* ("The citizen shall have the absolute right to file suit regardless of the determination of the Attorney General, and may move to intervene as a party in any suit filed by the Attorney General.").

[83] 29 *Del. C.* § 10005(e) ("Every petition against an administrative office or officer, agency, department, board, commission or instrumentality of state government which the Attorney General is obliged to represent pursuant to § 2504 of this title shall be referred to the Chief Deputy Attorney General who shall, within 20 days of receiving the petition, render a written determination to the petitioner and the public body involved declaring whether a violation has occurred or is about to occur").

[84] *Id.* ("Regardless of the finding of the Chief Deputy, the petitioner or the public body may appeal the matter on the record to Superior Court").

[85] *Id.* ("If the Chief Deputy finds that a violation of this chapter has occurred or is about to occur, the Attorney General shall not represent the public body in any appeal filed pursuant to this chapter for such violation if the public body the Attorney General is otherwise obligated to represent fails to comply with the Chief Deputy's determination").

one path to judicial review—a petition considered by the Chief Deputy followed by an on-the-record appeal to the Superior Court. A requesting citizen may not file suit against a State Agency and may not seek an on-the-record appeal of an Attorney General decision regarding a non-State Agency. The two paths do not intersect.[86]

With that structure in mind, we turn to Section 10005's language regarding remedies.[87] Section 10005(d) provides that:

> [r]emedies permitted by this section include an injunction, a declaratory judgment, writ of mandamus and/or other appropriate relief. The court may award attorney fees and costs to a successful plaintiff of any action brought under this section. The court may award attorney fees and costs to a successful defendant, but only if the court finds that the action was frivolous or was brought solely for the purpose of harassment.[88]

Vanella argues that the statute gives the Superior Court discretion to award attorney fees to a successful plaintiff, which he maintains includes a citizen who brings an on-the-record appeal of a Chief Deputy's determination of a petition. Vanella emphasizes that subsection (d)'s fee-shifting clause expressly applies to "*any* action"—broad language that he argues can only be understood to include on-the-record appeals.

---

[86] The State argues otherwise based on language in Section 10005(b) and (e) that the State reads out of context. For reasons further explained below, the State's reading is not consistent with the statutory language or structure. *See infra* note 104.

[87] *Chase Alexa LLC v. Kent Cnty. Levy Ct.*, 991 A.2d 1148, 1151 (Del. 2010) ("The rules of statutory construction are designed to ascertain and give effect to the intent of the legislators, as expressed in the statute. First, the Court must determine whether the statute is ambiguous, because if it is not, then 'the plain meaning of the statutory language controls.'").

[88] 29 *Del. C.* § 10005(d).

Although we agree with Vanella that "any action," read in isolation, could reasonably include an on-the-record appeal, Vanella's interpretation elides the use of the term "plaintiff" in the fee-shifting provision. "Plaintiff" is unambiguous and not synonymous with "appellant." *Black's Law Dictionary* defines "plaintiff" as "[t]he party who brings a civil suit in a court of law" and "appellant" as "[a] party who appeals a lower court's decision[.]"[89] In the context of this statute, a plaintiff can only mean a citizen who is permitted to, and does, file suit in court after a public body denies his FOIA request. The term fairly includes a citizen who chooses to file suit under Section 10005(e) after first petitioning the Attorney General to determine whether a non-State Agency violated FOIA.[90] But "plaintiff" cannot reasonably be read to include a requesting party who is denied records by a State Agency and is required by statute to pursue an administrative process culminating in an on-the-record appeal. We must view the General Assembly's use of different terms in Section 10005 as intentional.[91]

---

[89] *Appellant*, BLACK'S LAW DICTIONARY (12th ed. 2024). Our colleagues in dissent rely on the 5th edition of Black's, arguing that it is the most recent edition as of 1988, when the fee-shifting provision was enacted. In our view, the focus on 1988 is misdirected, since Section 10005 did not contain an appellate process at that time. The more relevant period is 2010, when the appellate process was added and the General Assembly did not amend the fee-shifting provision. Then, like now, Black's defined "plaintiff" as "[t]he party who brings a civil suit in a court of law." *Plaintiff*, BLACK'S LAW DICTIONARY (9th ed. 2009).

[90] *See* 29 *Del. C.* § 10005(e).

[91] *See Ins. Comm'r of Del. v. Sun Life Assur. Co.*, 21 A.3d 15, 22 (Del. 2011) (holding that when the General Assembly uses different language in different portions of a statute, "[w]e view that choice as deliberate, and not as an oversight").

In our view, Section 10005(d)'s use of the term "plaintiff" intentionally distinguishes between citizens who initiate suit in a court of competent jurisdiction and citizens who must follow the administrative appeal process. In order to find ambiguity in the statute, we would have to conclude that Vanella's contrary interpretation is a reasonable one.[92] But as Vanella conceded at oral argument, his interpretation would yield a result that would contravene the General Assembly's intent.[93] The parties agree that Section 10005(e) permits either a citizen or a State Agency to appeal an adverse decision by the Chief Deputy, meaning that either a citizen or a State Agency may be an appellant.[94] But if "appellant" is synonymous with "plaintiff" under Section 10005(d), the statute would allow the Superior Court to order a citizen to pay a State Agency's attorney fees if the agency is successful on appeal.

Neither party contends that the General Assembly intended this result. Rather, the fee-shifting language in Section 10005(d) shows that the legislature intended to limit fee shifting against a citizen to occasions when the court "finds that the action

---

[92] *See Protech Minerals, Inc. v. Dugout Team, LLC*, 284 A.3d 369, 375 (Del. 2022) ("Statutory language is ambiguous when it is reasonably susceptible to different conclusions or interpretations."); *Chase Alexa*, 991 A.2d at 1151 ("The fact that the parties disagree about the meaning of the statute does not create ambiguity").

[93] Oral Arg. at 19:00–19:41; *Cf. Jud. Watch*, 267 A.3d at 1003–04 ("When interpreting a statute, the Court's priority is to 'determine and give effect to legislative intent.'") (citation omitted).

[94] Oral Arg. at 16:25–19:00.

was frivolous or was brought solely for the purpose of harassment."[95] Under Vanella's reading, that limitation on fee shifting would not apply if a State Agency successfully appealed a decision by the Chief Deputy. An interpretation that conflicts with legislative intent is not a reasonable reading of the statute.[96]

In addition, the doctrine of sovereign immunity supports our plain-language interpretation. Under Article I, § 9 of the Delaware Constitution,[97] sovereign immunity is a "protect[ion] from suit" and requires that the State consent to being sued before it is subject to a lawsuit.[98] The State consents to suit only when the General Assembly "clearly expresses" its intent to waive sovereign immunity for a cause of action.[99] "[A]bsent a clear waiver of sovereign immunity, damages (including costs) may not be awarded against the State."[100] We find no express waiver for attorney fees and costs for administrative proceedings under FOIA—to do so we would have to insert the word "appellant" into Section 10005(d).[101]

---

[95] 29 *Del. C.* § 10005(d).

[96] *Chase Alexa*, 991 A.2d at 1151.

[97] *Shellhorn & Hill, Inc. v. State*, 187 A.2d 71, 73 (Del. 1962) ("We think, however, that sovereign immunity is not judicially created in the State of Delaware. It was established initially by our first Constitution and has been continued thereafter by successive Constitutions.").

[98] *Hollingsworth v. Yellen*, 2025 WL 1019627, at *2 (D. Del. Apr. 4, 2025), *report & rec. adopted*, 2025 WL 2879602 (D. Del. Oct. 9, 2025).

[99] *Pauley v. Reinoehl*, 848 A.2d 569, 574 (Del. 2004).

[100] *Roofers, Inc. v. Delaware Dep't of Lab.*, 2014 WL 1228911, at *2 (Del. Super. Mar. 25, 2014), *aff'd*, 2014 WL 7010733 (Del. Nov. 24, 2014).

[101] Citing the history of amendments to the FOIA statute, Vanella correctly points out that before Section 10005 was amended in 2010 to create the Attorney General petition and on-the-record

Our interpretation also is consistent with the decisions of our sister states. Jurisdictions that have found a right to appellate attorney fees under their FOIA-equivalent statutes expressly create that right or provide that attorney fees are available if a petitioner is successful in the administrative process.[102] Had the General Assembly intended to authorize attorney fees for successful appellants in administrative proceedings, it would have said so expressly.

In a final effort to inject ambiguity into the statute, Vanella argues that the State's reading of Section 10005(d) leads to an absurd result "whereby courts can

---

appeal process, a citizen could bring suit against a State Agency in a court of competent jurisdiction, and Section 10005(d) allowed fee shifting in those cases. We agree that before the 2010 amendments, Section 10005(d) constituted a clear waiver of sovereign immunity. But the statutory amendments altered that waiver, and the version of Section 10005(e) that applies to Vanella does not expressly waive sovereign immunity for FOIA proceedings against a State Agency.

[102] *See, e.g.*, *Ark. Code Ann.* § 25-19-107(d)(1) ("In any action to enforce the rights granted by this chapter, *or in any appeal therefrom*, the court shall assess against the defendant reasonable attorney's fees and other litigation expenses reasonably incurred by a plaintiff . . ." (emphasis added)); *Conn. Gen. Stat. Ann.* § 1-206(e) ("*On appeal*, the court may, in addition to any other powers conferred by law, order the disclosure of any such records withheld in violation of the Freedom of Information Act and may assess against the state reasonable attorney's fees and other litigation costs reasonably incurred in an appeal in which the complainant has prevailed against the Department of Energy and Environmental Protection." (emphasis added)); *Iowa Code* § 22.10(3)(c) ("[A] court . . . [s]hall order the payment of all costs and reasonable attorney fees, *including appellate attorney fees*, to any plaintiff successfully establishing a violation of this chapter in the action brought under this section." (emphasis added)); *Ohio Rev. Code Ann.* § 2743.75(G)(2) ("*If a court of appeals in any appeal taken* under division (G)(1) of this section by the public office or person responsible for the public records determines that the public office or person denied the aggrieved person access to the public records . . . and obviously filed the appeal with the intent to either delay compliance with the court of claims' order from which the appeal is taken for no reasonable cause or unduly harass the aggrieved person, the *court of appeals may award reasonable attorney's fees* to the aggrieved person . . . ." (emphasis added)); 65 *P.S.* § 67.1304(b) ("[s]anctions for frivolous requests *or appeals*. -- The court may award reasonable attorney fees and costs of litigation or an appropriate portion thereof to an agency or the requester if the court finds that the legal challenge under this chapter was frivolous." (emphasis added)).

issue only hollow advisory opinions in FOIA disputes involving [S]tate [A]gencies."[103] This argument is based on the State's contention—adopted by the Superior Court—that none of the remedies listed in Section 10005(d) are available when the Superior Court hears an on-the-record appeal from the Chief Deputy's decision.[104] That is not our reading of Section 10005(d). Subsection (d) first identifies the "[r]emedies permitted by this section." The subsection then goes on to authorize fee shifting in favor of a "successful plaintiff" and a "successful defendant." Nothing in the first sentence of subsection (d) limits the available remedies to suits filed by citizens against non-State Agencies. Instead, the language refers broadly to remedies permitted under Section 10005. We therefore find no

---

[103] Appellant's Opening Br. at 36.

[104] The State adopts this interpretation based in part on its contention that a citizen may elect to file suit against a State Agency after filing a petition with the Chief Deputy. *See* Appellee's Answering Br. at 35 n.78. The State rests this reading on two sections of the statute: subsections (b) and (e).

The State points out that Section 10005(b) states that a citizen or State Agency "may appeal" an adverse decision of the Chief Deputy, arguing that "may" signals that another option is available. We read the word "may" in Section 10005(b) to indicate that either side has the right to appeal an adverse decision but neither side is required to do so.

As to subsection (e), the State focuses on a portion of the last sentence in Section 10005(e), which states that "[t]he citizen shall have the absolute right to file suit regardless of the determination of the Attorney General . . . ." Two context clues defeat the State's interpretation. First, that sentence follows several sentences that describe the process for a petition against a non-State Agency. Second, the rest of the sentence states ". . . , and may move to intervene as a party in any suit filed by the Attorney General." The reference to a suit filed by the Attorney General must refer to a suit brought on behalf of a citizen against a non-State Agency, since Section 10005(e) creates a mechanism for the Attorney General to do so. In short, and for the reasons previously explained, the different pathways created by Section 10005(e) do not intersect.

absurdity in our plain-language interpretation of the statute and affirm the Superior Court's decision denying Vanella's motion for fees and costs.

IV

For the foregoing reasons, the judgment of the Superior Court is affirmed in part and reversed in part. We reverse the judgment upholding DSP's denial of the Employment-History, Résumé, Former-Officer, and Demographic Requests and remand for further proceedings consistent with this Opinion. We affirm the judgment denying Vanella's motion for attorney fees and costs. Jurisdiction is not retained.

**TRAYNOR**, J. concurring in part, dissenting in part, with **SEITZ**, C.J. joining:

We concur in the majority's decision to the extent that it reverses the Superior Court's judgment upholding DSP's denial of the Employment History, Résumé, Former Officer, and Demographic Requests and remands to the Superior Court for further proceedings. We dissent, however, because we disagree with the majority's narrow construction of the sentence in § 10005(d) that authorizes the Superior Court to award attorney fees and costs to a "successful plaintiff" in a FOIA enforcement action. Unlike the majority, we believe that the Superior Court's conclusion that FOIA "does not permit an award of costs and attorneys' fees following a Superior Court on-the-record appeal[]" was erroneous.[105] Accordingly, we would reverse and remand to the Superior Court for reconsideration of Vanella's motion for an award of fees and costs.

When the General Assembly amended § 10005(d) in 1988 to permit fee-shifting, its intent was clear: a citizen seeking access to public records under § 10005 who has been forced to invoke the Superior Court's jurisdiction to accomplish that end is eligible, subject to the court's discretion, for an award of fees and costs.

According to the Superior Court and our colleagues in the majority, that basic element of § 10005 was abandoned, but only under certain circumstances, when the General Assembly amended § 10005(e) in 2010. Under the relevant 2010

[105] *Opinion* at *15.

amendments, citizens whose FOIA request has been denied by a state agency can no longer seek redress in the Superior Court by way of a lawsuit; instead, should they choose to challenge the denial, they must first petition the Attorney General to review the denial and, if dissatisfied with the Attorney General's determination, appeal on the record to the Superior Court.[106] Notably, the 2010 amendments left § 10005(d) and its reference to a successful *plaintiff* unscathed. This point is worth stressing: the 2010 amendments did not touch § 10005(d); they were confined to §§ 10005(b), (e), and (f).[107] The question, then, is whether the General Assembly's failure to simultaneously amend § 10005(d) to add a reference to a successful *appellant*'s entitlement to fees manifested the legislature's intent to exclude an aggrieved citizen's on-the-record appeal from the statute's fee-shifting reach. We think that it does not.

For starters, nothing in the legislative record suggests that the General Assembly considered whether adopting the new procedural avenue would alter the pre-existing fee-shifting paradigm under which the court, in its discretion, could award fees and costs to a successful citizen-litigant. On this point, the General Assembly said nothing. Along these lines, we also cannot discern, and the majority does not provide, a policy justification for treating citizen-litigants who arrive in the

---

[106] *Id.*
[107] 2010 Del. Laws Ch. 400.

Superior Court by way of a lawsuit differently than those who are before the court as appellants in an on-the-record appeal.

Next, we are not persuaded by the majority's conclusion that the General Assembly, by not amending § 10005(d) to include "appellants," signaled its intent that fee-shifting should be unavailable to citizens who are forced to take the petition/on-the-record appeal route to secure records from state agencies, yet available to citizens pursuing FOIA requests via the other procedural path. This conclusion is, in our view, flawed in two major respects.

In the first place, the majority relies on an unduly constrictive definition of "plaintiff" derived from the current edition of Black's Law Dictionary.[108] One might just as readily consult the 5th edition of Black's—the most recent edition as of 1988, when the fee-shifting provision was enacted—and learn that "plaintiff" was defined at that time as "[a] person who seeks remedial relief for an injury to rights."[109] The 5th edition of Black's also defines "[p]laintiff in error" as "[t]the party who sues out a writ of error to review a judgment or other proceeding at law."[110] These definitions

[108] We agree with the majority that "'[p]laintiff is . . . not synonymous with 'appellant.'" Majority Opinion at 26. But a word need not be synonymic with, to be encompassed by, another word. For example, "baseball player" is not synonymous with "shortstop." But no one would seriously argue that a shortstop is not a baseball player.

[109] BLACK'S LAW DICTIONARY 1035 (5th ed. 1979).

[110] *Id*. We note further that Black's 11th edition—the one that the majority cites—reports that "appellant" is "[a]lso termed (archaically) *plaintiff in error*." BLACK'S LAW DICTIONARY 123 (11th ed. 2019). In the 5th edition, published in 1979, this usage is not considered archaic.

could be read as encompassing appellants; at a minimum, they cast doubt on the conclusiveness of the majority's cited definition.[111]

In addition to that, the majority's interpretation of § 10005(d)'s fee-shifting language and, in particular, the section's use of "plaintiff" but not "appellant," fails to account for its most natural reading when § 10005 was amended in 1988. Instead, the majority focuses on what the 2010 amendments did not say about fee-shifting in state agency cases to divine what the General Assembly intended "plaintiff" to mean in 1988.

We think that the more apt interpretive focus should be on what the General Assembly intended in 1988 when it opened the door to fee shifting in favor of successful FOIA plaintiffs. From that perspective—and considering that in 1988 the only avenue by which a FOIA plaintiff could secure relief in the Superior Court was by filing a lawsuit—we believe that "plaintiff" as used in § 10005(d) means "a citizen who litigates under the FOIA statute to secure records."[112] That would include an appellant who, by virtue of the 2010 amendments, may only seek judicial relief by way of an on-the-record appeal under § 10005(e). Under this reading,

---

[111] In many instances, how a word is defined depends on the context in which it is used. To be sure, "dictionary definitions can help discern the meaning of words in a statute[.]" *In re Fox Corp. Snap Inc.*, 312 A.3d 636, 647 (Del. 2024). But dictionary definitions "can also be inconclusive," especially when they "lack context." *Id.*

[112] It follows that, if this statutory interpretation were to prevail, then the pre-2010 amendment waiver of sovereign immunity would not "alter[] that waiver" as the majority concluded. *See* Majority Opinion n.101.

whether to award attorney fees and costs in a particular case would lie within the court's discretion.

Lastly, we address the majority's observation that our reading "would allow the Superior Court to order a citizen to pay a State Agency's attorney fees if the agency is successful on appeal."[113] We agree. The majority, however, based largely on Vanella's concession at oral argument, concludes that the General Assembly did not intend for fee shifting to run in favor of a state agency that prevails in an on-the-record appeal. This is inconsistent with the text of § 10005(e), which provides that "[t]he court may award attorney fees and costs to a successful defendant, but only if the court finds that the action was frivolous or was brought solely for the purpose of harassment." We see no reason why this provision should not retain the meaning it bore before the 2010 amendments. To put it differently, under our interpretation, if the Superior Court finds that a citizen has pursued a petition and on-the-record appeal that is frivolous or is brought solely for the purpose of harassment, the court may, in its discretion, award fees and costs to the State.

To sum up, we believe that the General Assembly, by authorizing fee shifting in FOIA enforcement actions in 1988, expressed its intent that citizens who successfully litigate FOIA claims in the Superior Court may be awarded attorney fees and costs. It bears emphasis, however, that fee-shifting under § 10005(d) is not

---

[113] Majority Opinion at 27.

automatic; it is within the Superior Court's discretion whether to shift fees to a successful FOIA litigant.

For the reasons set forth above, we respectfully dissent from the majority opinion's affirmance of the Superior Court's denial of Vanella's motion for attorney fees and costs.  In all other respects, we concur.