



STANFORD COMPUTATIONAL POLICY LAB

Computational Policy Lab

Huang Engineering Center
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Stanford, CA 94305
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November 4th, 2018

Kim Siegel, FOIA Coordinator
Delaware Department of Justice
820 N. French Street
Wilmington, DE 19801

Dear FOIA Coordinator Kim Siegel:

On September 21, 2018, I filed a public information request by email under the Delaware Freedom of Information Act,¹ seeking:

A current snapshot of the Microsoft Access or Microsoft SQL database(s) (“the database”) forming the backend of the Delaware Criminal Justice Information System’s (“DeJIS”) Online Wanted Person Review (“OWPR”); url: <https://pubsrv.deljjs.delaware.gov/WantedPublic/>).

This request is enclosed with this letter.²

I filed this request on September 21, 2018 with DeJIS. The request was again directed to the attention of Earl McCloskey, the DeJIS FOIA coordinator, on September 28, 2018 by Peggy Bell, a planner at DeJIS, and by myself again on October 22, 2018. An agency shall provide a response to a request, either in the form of a denial, the requested records, or advising that

¹ 29 Del. C. § 10001 *et seq.* Hereafter, “FOIA.”

² Attachment 1.

additional time is required to respond.³ The period since I filed my request greatly exceeds fifteen business days. I seek to have the Attorney General:

1. Enjoin DelJIS to provide a response to my request; and,
2. Enjoin DelJIS to provide the requested database snapshot.

While it in no way discharges his statutory duty under FOIA, on September 5, 2018, Earl M. McCloskey, Executive Director of DelJIS, sent me a formal letter of denial in response to a different, previous request for “[d]atabase entries from the [DelJIS] Online Wanted Person Review available during June, 2018.”⁴ In response to my request, Mr. McCloskey claimed that the records I am seeking “do not exist and are not in a static file.”

I wish to note three points in particular:

1. The requested records do, in fact, exist;
2. The requested records are public, both by virtue of the statute specifically designating them as a public record and by DelJIS’s own practice of publishing them; and,
3. There is no exception under FOIA for records which are “not static.”

With respect to the existence of the records (hereafter “the database”), we know the database exists because DelJIS publishes entries from it, while current, on a public facing website, the DelJIS Online Wanted Person Review.⁵ The Wanted Person Review, moreover, makes use of standard Microsoft web and database infrastructure to query a backend database which provides the wanted individuals displayed on the results page.

As for the public nature of the records, all records are presumptively public information under FOIA, including electronic information and databases.

The definition of “public record” under FOIA is very broad. It includes all information contained in or on physical documents (typically paper), as well as information stored in electronic format (such as Word, Excel, etc.) or databases, relating in any way to public business, or in any way of public interest, or in any way related to public purposes. Thus, as a practical matter, FOIA’s concept of “public record” covers, at least initially, almost every conceivable type of physical or electronic record that may be created, maintained or possessed by a public body.⁶

³ 29 *Del. C.* § 10003(h)(1).

⁴ See Attachment 2.

⁵ DelJIS Online Wanted Person Review: <https://pubsrv.deljjs.delaware.gov/WantedPublic/>.

⁶ *Delaware Freedom of Information Act: Policy Manual for FOIA Coordinators*. Delaware Attorney General, July 1, 2015. https://attorneygeneral.delaware.gov/wp-content/uploads/sites/50/2017/03/FOIA_Manual_10-30-15.pdf.

A fortiori, records which an agency actually publishes and labels public information, as evidenced by the “WantedPublic” language contained in the URL above, are public information. Moreover, as I have noted in my requests to DeJIS, I am seeking is not investigatory in nature.⁷ Neither does it contain or constitute any information exempt from public disclosure under FOIA’s exception for criminal history information,⁸ a provision from which the requested information is specifically exempted.⁹ Furthermore, the Delaware Superior and Supreme Courts have held that information contained in DeJIS databases that is not criminal history information is subject to disclosure.¹⁰

Lastly, there is no exception under FOIA for records which are not static or “not in a static file.” The right under FOIA to access current versions of public records which may be updated or revised in the future, such as call logs,¹¹ calendars¹², and “real-time” spreadsheets inventorying equipment belonging to state agencies,¹³ has repeatedly been recognized.

Additionally, we are seeking these records in their most basic form; in any spreadsheet, plain text, or comma separated value format exported directly from the database maintained by DeJIS. In addition to the claim that these records do not exist, Mr. McClosky also cited, notes that a public body is not required to compile information from various sources to create a document or provide information in a question-and-answer format.¹⁴ To reiterate, the records we are seeking do exist. Moreover, because we are seeking these records in their most basic, native database format, no additional document creation is required at any point. This data can be generated easily, even for large spans of time and potentially thousands, or even hundreds of thousands, of entries. A database export of this nature requires no document creation, photocopying, multi-source compiling, or drafting.

A government body in receipt of a request “shall make every reasonable effort to assist the requesting party in identifying the records being sought.”¹⁵ Given that Mr. McCloskey’s denial was received the same day as he noted he received the request and that the records in question clearly do exist, we have reason to believe that Mr. McCloskey did not make every reasonable effort to identify the sought records. Additionally, given this short time frame and the inaccurate nature of the denial and the fact that the public body made no contact prior to the

⁷ 29 Del. C. §10002(l)(3).

⁸ 29 Del. C. §10002(l)(4).

⁹ See 11 Del. C. §8502(4)(a), 11 Del. C. §8502(4)(b): “Nor shall the term [“criminal history information”] include information contained in: ... Posters, announcements or lists for identifying or apprehending fugitives or **wanted persons** ... or other electronically stored information sources maintained by criminal justice agencies which are required by law with long-standing custom to be made public.” (Emphasis mine.)

¹⁰ See *Gannett Co., Inc. v. Board of Managers*, 840 A. 2d 1232 - Del: Supreme Court 2003. See also *Gannett Co. v. DE CRIM. JUSTICE INFO. SYS.*, 768 A. 2d 508 - Del: Superior Court 1999 at

¹¹ *Del. Op. Att’y Gen. 18-IB02* (Jan. 12, 2018).

¹² *Del. Op. Att’y Gen. 17-IB44* (Aug. 30, 2017).

¹³ *Del. Op. Att’y Gen. 17-IB61* (Dec. 5, 2017).

¹⁴ *Del. Op. Att’y Gen. 96-1B28* (Aug. 8, 1996).

¹⁵ 29 Del. C. §10003(g)(2)

denial, it is unclear whether a FOIA coordinator worked to “foster cooperation between the public body and the requesting party” as required by state law.

This complaint is being made in writing, contains a copy of the original request,¹⁶ a sample from DelJIS proving the existence of the records we seek,¹⁷ and all current correspondence with DelJIS.¹⁸

We look forward to receiving your decision on this matter.

Sincerely,

Johann D. Gaebler

Enclosures:

1. Sep. 22, 2018 Request for a Snapshot of the DelJIS Database.
2. Sep. 4, 2018 Request for Database Entries in the DelJIS Online Wanted Person Review from June, 2018.
3. Mr. McCloskey’s Sep. 5, 2018 Denial of my 09/04/2018 request.
4. The DelJIS Online Wanted Person Review, as of Nov. 5, 2018.
5. Correspondence with DelJIS since Sep. 4, 2018.

¹⁶ Attachment 1.

¹⁷ Attachment 4.

¹⁸ Attachment 5.

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Tue Sep 4 15:37:52 2018
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boundary="====5169614619596915354=="
MIME-Version: 1.0
Subject: Delaware Freedom of Information Act Request: DelJIS Online Wanted
Person Review
From: 60266-32709651@requests.muckrock.com
To: "Bell, Peggy (DELJIS)" <Peggy.Bell@state.de.us>
Date: Tue, 04 Sep 2018 19:37:52 -0000
Message-ID: <20180904193752.179.12117@7770600a-2a85-4637-8bbb-
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MIME-Version: 1.0
Content-Transfer-Encoding: 8bit

Delaware Criminal Justice Information System
FOIA Office
Suite 101
802 Silver Lake Boulevard
Dover, DE 19904

September 4, 2018

Dear FOIA Coordinator Earl McCloskey:

I am writing to request the following electronic records, pursuant to the Delaware Freedom of Information Act § 100001 et seq. ("FOIA"):

Database entries from the Delaware Criminal Justice Information System's ("DelJIS") Online Wanted Person Review available during June, 2018 (06/01/2018--06/30/2018).

These records are published online by DelJIS and while active may be reviewed by anyone with an internet connection. They are not investigatory in nature, and do not concern "pending investigative files, pretrial and presentence investigations and child custody and adoption files where there is no criminal complaint at issue." 29 Del. C. §10002(1)(3). Moreover, their contents do not constitute "criminal history record information." See 11 Del. C. §8502(4)(a). ("Nor shall the term include information contained in ... [p]osters, announcements or lists for identifying or apprehending fugitives or wanted persons.") Consequently, they are subject to disclosure under FOIA.

To reduce your burden as much as possible, maintain accuracy, and prevent reporting errors, I am only seeking electronic records. I can accept the data in many common formats, such as comma separated (.csv), spreadsheet (e.g., .xls), or other database formats.

This request is not being made for commercial purposes. The information requested is for academic and journalistic research and its release is in the public interest. I am requesting similar data from cities and states across the country. My analysis of the data will be used to inform the public and the community. If fees are not waived, please inform me in advance if charges will exceed \$50 and the reason for any estimated costs.

Thank you very much for your time. I appreciate your assistance.

I look forward to receiving your response to this request within 15 business days, as the statute requires.

Sincerely,
Johann Gaebler

Filed via MuckRock.com
E-mail (Preferred): 60266-32709651@requests.muckrock.com
Upload documents directly: https://www.muckrock.com/accounts/agency_login/delaware-criminal-justice-information-system-5114/deljis-online-wanted-person-review-60266/?email=Peggy.Bell%40state.de.us&uid-login=e2e815f1-1364-4792-b114-e1a192c5972c#agency-reply

Is this email coming to the wrong contact? Something else wrong? Use the above link to let us know.

For mailed responses, please address (see note):

MuckRock News
DEPT MR 60266
411A Highland Ave
Somerville, MA 02144-2516

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.

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Johann Gaebler</p>

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Subject: Delaware Freedom of Information Act Request: DelJIS Online Wanted
 Person Review
From: 61556-01732306@requests.muckrock.com
To: "Bell, Peggy (DELJIS)" <Peggy.Bell@state.de.us>
Date: Fri, 21 Sep 2018 18:21:35 -0000
Message-ID: <20180921182135.13321.84676@d7a42b3d-7902-43e0-a42d-
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MIME-Version: 1.0
Content-Transfer-Encoding: 8bit

Delaware Criminal Justice Information System
FOIA Office
Suite 101
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Dover, DE 19904

September 21, 2018

Dear FOIA Coordinator Earl McCloskey:

I am writing to request the following electronic records, pursuant to the Delaware Freedom of Information Act § 10001 et seq. ("FOIA"):

A current snapshot of the Microsoft Access or Microsoft SQL database(s) ("the database") forming the backend of the Delaware Criminal Justice Information System's ("DelJIS") Online Wanted Person Review ("OWPR"; url: <https://pubsrv.deljis.delaware.gov/WantedPublic/>).

First, the database both exists and is a specific record. It is the database(s) which receive(s) search queries entered at <https://pubsrv.deljis.delaware.gov/WantedPublic/>, and which provide(s) the results displayed at <https://pubsrv.deljis.delaware.gov/WantedPublic/searchResults.aspx>. Please note that I am requesting a snapshot of the database, current as of DelJIS's response to this request, not a previous version of the database. Additionally, there is no basis for restricting access to records on the basis that they are not "static." FOIA includes no such exception. Indeed:

"'Public record' is *information of any kind,* owned, made, used, retained, received, produced, composed, drafted or otherwise compiled or collected, by any public body, relating in any way to public business, or in any way of public interest, or in any way related to public purposes, *regardless of the physical form or characteristic by which such information is stored, recorded or reproduced.*" 29 Del. C. §10002(h); emphasis mine.

The right under FOIA to access current versions of public records which may be updated or revised in the future—such as call logs (Del. Opinion of the Att’y Gen. 18-IB02), calendars (17-IB44), and “real-time” spreadsheets inventorying equipment belonging to state agencies (17-IB61)—has repeatedly been recognized.

Second, the database is public. It is published online by DelJIS and entries in the database, while active, may be reviewed by anyone with an internet connection. They are not investigatory in nature, and do not concern “pending investigative files, pretrial and presentence investigations and child custody and adoption files where there is no criminal complaint at issue.” 29 Del. C. §10002(1)(3). Moreover, their contents do not constitute “criminal history record information.” See 11 Del. C. §8502(4)(a). (“Nor shall the term include information contained in ... [p]osters, announcements or lists for identifying or apprehending fugitives or wanted persons.”) Consequently, they are subject to disclosure under FOIA.

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Thank you very much for your time. I appreciate your assistance.

I look forward to receiving your response to this request within 15 business days, as the statute requires.

Sincerely,
Johann Gaebler

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<p>The right under FOIA to access current versions of public records which may be updated or revised in the future—such as call logs (Del. Opinion of the Att’y Gen. 18-IB02), calendars (17-IB44), and “real-time” spreadsheets inventorying equipment belonging to state agencies (17-IB61)—has repeatedly been recognized.</p>

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<p>

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</pre></body></html>



STATE OF DELAWARE
DELAWARE CRIMINAL JUSTICE INFORMATION SYSTEM (DELJIS)
802 Silver Lake Boulevard
Suite 101
Dover, Delaware 19904

Telephone: 302-739-4856

Fax: 302-739-6285

September 5, 2018

Ms. Johann Gaebler
Muck Rock News
Dept MR 60266
411 A Highland Ave.
Somerville, MA 02144-2516

Dear Ms. Gaebler:

By email dated Tuesday, September 5, 2018, you made a request under the Delaware Freedom of Information Act (FOIA) requesting:

“Database entries from the Delaware Criminal Justice Information System’s (“DelJIS”) Online Wanted Person Review available during June, 2018 (06/01/2018--06/30/2018).

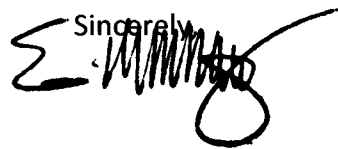
These records are published online by DelJIS and while active may be reviewed by anyone with an internet connection. They are not investigatory in nature, and do not concern “pending investigative files, pretrial and presentence investigations and child custody and adoption files where there is no criminal complaint at issue.” 29 Del. C. §10002(l)(3). Moreover, their contents do not constitute “criminal history record information.” See 11 Del. C. §8502(4)(a). (“Nor shall the term include information contained in ... [p]osters, announcements or lists for identifying or apprehending fugitives or wanted persons.”) Consequently, they are subject to disclosure under FOIA.

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Ms. Johann Gaebler
September 5, 2018
Page 2 of 2

Upon the advice of the Department of Justice Deputy Attorney General assigned to the Delaware Criminal Justice Information System (DELJIS), we have determined that the records you have requested do not exist and are not in a static file.

In addition, Delaware's FOIA does not require a public body to compile information from various sources to create a document or provide information in a question-and-answer format. *Op. Att'y Gen.* 96-IB28 (Aug. 8, 1996).

Sincerely,


Earl M. McCloskey
Executive Director
DELJIS

CC: Ms. Lisa Morris
Deputy Attorney General



Your Search...

SEARCH

Phone Numbers Mobile Help Size Print Email

Delaware Criminal Justice Information System Online Wanted Person Review



[Click to Submit a Tip to Crime Stoppers](#)

[View Homeland Security Investigations Most Wanted](#)

Search Wanted Person List By Name:

Last Name:

First Name:

Optional

U2Z 6L

Please Input the Text from the image above.

Search

CAUTION: The warrants available in this database consist of warrants issued by the courts of Delaware. Recent changes in the status of the warrants may not be reflected in this online database. Do not attempt to make an arrest based on this warrant information. Only law enforcement officers can arrest a person for an outstanding warrant.

If you need to contact the police about anyone listed on this site please call their non-emergency numbers. [View Non-Emergency Police Phone Numbers](#)

If you have information which may lead to the arrest of individuals named in these warrants, you may submit your tip online by clicking the crime stopper link above or by calling 800-847-3333.

E-mail this office - [Send E-mail](#), call 866-751-5327 or mailing your information to Delaware Criminal Justice Information System, 802 Silver Lake Boulevard, Suite 101, Dover, Delaware 19904.

<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">From nobody

Mon Oct 15 05:04:10 2018

Content-Type: multipart/alternative;

boundary="=====
1543983326885615394=="

MIME-Version: 1.0

Subject: RE: Delaware Freedom of Information Act Request: DelJIS Online Wanted
Person Review

From: "'61556-01732306@requests.muckrock.com'"

<61556-01732306@requests.muckrock.com>

To: "Bell, Peggy (DELJIS)" <Peggy.Bell@state.de.us>

Date: Mon, 15 Oct 2018 09:04:10 -0000

Message-ID: <20181015090410.908.86380@bf6da79f-13b0-403c-883f-
53508fbad613.prvt.dyno.rt.heroku.com>

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Content-Type: text/plain; charset="utf-8"

MIME-Version: 1.0

Content-Transfer-Encoding: 8bit

Delaware Criminal Justice Information System
FOIA Office
Suite 101
802 Silver Lake Boulevard
Dover, DE 19904

October 15, 2018

This is a follow up to a previous request:

To Whom It May Concern:

I wanted to follow up on the following Delaware Freedom of Information Act request, copied below, and originally submitted on Sept. 21, 2018. Please let me know when I can expect to receive a response.

Thanks for your help, and let me know if further clarification is needed.

Filed via MuckRock.com

E-mail (Preferred): 61556-01732306@requests.muckrock.com

Upload documents directly: https://www.muckrock.com/accounts/agency_login/delaware-criminal-justice-information-system-5114/deljis-online-wanted-person-review-61556/?

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On Sept. 28, 2018:

Good morning

Please be advised that Mr. Earl McCloskey at Earl.McCloskey@state.de.us is the Executive Director and FOIA Coordinator for DELJIS (Delaware Criminal Justice Information System). As such, all requests should be directed to him. I have forwarded this request to him for processing.

Please update your files. If you need additional assistance, please feel free to contact DELJIS. Thank you.

Thank you.

Peggy Bell
DELJIS
802 Silver Lake Blvd Suite 101
Dover, DE 19904
302-739-4856 (main #)
302-739-6285 (fax #)
302-270-4442 (cell #)
SLC D 530-A

On Sept. 21, 2018:

Dear FOIA Coordinator Earl McCloskey:

I am writing to request the following electronic records, pursuant to the Delaware Freedom of Information Act § 10001 et seq. ("FOIA"):

A current snapshot of the Microsoft Access or Microsoft SQL database(s) ("the database") forming the backend of the Delaware Criminal Justice Information System's ("DelJIS") Online Wanted Person Review ("OWPR"; url: <https://pubsrv.deljis.delaware.gov/WantedPublic/>).

First, the database both exists and is a specific record. It is the database(s) which receive(s) search queries entered at <https://pubsrv.deljis.delaware.gov/WantedPublic/>, and which provide(s) the results displayed at <https://pubsrv.deljis.delaware.gov/WantedPublic/searchResults.aspx>. Please note that I am requesting a snapshot of the database, current as of DelJIS's response to this request, not a previous version of the database. Additionally, there is no basis for restricting access to records on the basis that they are not "static." FOIA includes no such exception. Indeed:

"'Public record' is *information of any kind,* owned, made, used, retained, received, produced, composed, drafted or otherwise compiled or collected, by any public body, relating in any way to public business, or in any way of public interest, or in any way related to public purposes, *regardless of the physical form or characteristic by which such information is stored, recorded or reproduced.*" 29 Del. C. §10002(h); emphasis mine.

The right under FOIA to access current versions of public records which may be updated or revised in the future—such as call logs (Del. Opinion of the Att’y Gen. 18-IB02), calendars (17-IB44), and “real-time” spreadsheets inventorying equipment belonging to state agencies (17-IB61)—has repeatedly been recognized.

Second, the database is public. It is published online by DelJIS and entries in the database, while active, may be reviewed by anyone with an internet connection. They are not investigatory in nature, and do not concern “pending investigative files, pretrial and presentence investigations and child custody and adoption files where there is no criminal complaint at issue.” 29 Del. C. §10002(1)(3). Moreover, their contents do not constitute “criminal history record information.” See 11 Del. C. §8502(4)(a). (“Nor shall the term include information contained in ... [p]osters, announcements or lists for identifying or apprehending fugitives or wanted persons.”) Consequently, they are subject to disclosure under FOIA.

This request is not being made for commercial purposes. The information requested is for academic and journalistic research and its release is in the public interest. I am requesting similar data from cities and states across the country. My analysis of the data will be used to inform the public and the community. If fees are not waived, please inform me in advance if charges will exceed \$50 and the reason for any estimated costs.

Thank you very much for your time. I appreciate your assistance.

I look forward to receiving your response to this request within 15 business days, as the statute requires.

Sincerely,
Johann Gaebler

Filed via MuckRock.com

E-mail (Preferred): 61556-01732306@requests.muckrock.com

Upload documents directly: https://www.muckrock.com/accounts/agency_login/delaware-criminal-justice-information-system-5114/deljis-online-wanted-person-review-61556/

email: Peggy Bell 302-739-4856 (main #) 302-739-6285 (fax #) 302-270-4442 (cell #) SLC D 530-A

email=Peggy.Bell%40state.de.us&uid-login=000ed74d-27e5-40bc-8ca6-92a3fd3c117e#agency-reply
Is this email coming to the wrong contact? Something else wrong? Use the above link to let us know.

For mailed responses, please address (see note):

MuckRock News
DEPT MR 61556
411A Highland Ave
Somerville, MA 02144-2516

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.

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Content-Type: text/html; charset="utf-8"

MIME-Version: 1.0

Content-Transfer-Encoding: 8bit

<p>
Delaware Criminal Justice Information System
FOIA Office
Suite 101
802 Silver Lake Boulevard
Dover, DE 19904</p>

<p>October 15, 2018</p>

<p>This is a follow up to a previous request:</p>

<p>To Whom It May Concern:</p>

<p>I wanted to follow up on the following Delaware Freedom of Information Act request, copied below, and originally submitted on Sept. 21, 2018. Please let me know when I can expect to receive a response.</p>

<p>Thanks for your help, and let me know if further clarification is needed.</p>

<p>Filed via MuckRock.com
E-mail (Preferred): 61556-01732306@requests.muckrock.com
Upload documents directly:
https://www.muckrock.com/accounts/agency_login/delaware-criminal-justice-information-system-5114/deljis-online-wanted-person-review-61556/?email=Peggy.Bell%40state.de.us&uid-login=000ed74d-27e5-40bc-8ca6-92a3fd3c117e#agency-reply
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<Dover, DE 19904
302-739-4836 (main #)
302-739-0285 (fax #)
302-270-4442 (cell #)
SLC D 530-A
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