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September 21, 2005

PLEASE REPLY TO :

New Castle County-Civil Division

Leann H. Ferguson  
Executive Vice President, SNCCA  
300 Outrigger Way  
Middletown, DE 19709

RE: Freedom of Information Act Complaint

Dear Ms. Ferguson:

This is in response to your Freedom of Information Act (FOIA) complaint against the Delaware Dept. of Transportation (DelDOT). The complaint requested DelDOT provide you with documents surrounding its legal authority to execute "joint development agreements" and DelDOT's authority under enabling legislation. You reference two agreements, one involving the developers of Westtown, the City of Middletown, and the Department, and a second agreement involving the "Southern New Castle County/Village of Bayberry Transportation Infrastructure Development Agreement." Your letter further asks our assistance in the determining what legal authority DelDOT has to enter into such joint development agreements.

FOIA, at 29 *Del.C.* § 10005(e), provides a mechanism for a citizen to petition the Attorney General when the person believes a violation of FOIA has occurred. It further provides for us to investigate, determine if a violation has occurred, and if we deem appropriate, to file suit. The citizen has the absolute right to file suit regardless of the determination of the Attorney General. However, Subsection (f) specifically provides that such complaint procedure shall not apply to an alleged violation of an agency of State government which the Attorney General is obliged to represent pursuant to State law. In this case, pursuant to 29 *Del.C.* §2504, we are required to represent DelDOT and therefore the complaint procedure in 29 *Del.C.* § 10005(e) of FOIA does not allow us to intervene in this matter. You have also requested we determine the legal authority that DelDOT has to enter into the joint development agreements. Again, due to our obligation to represent DelDOT, we cannot provide you with that legal advice.

However, you should be aware that we have reviewed the matter with DelDOT and given it the appropriate legal advice. The policy decisions surrounding the use of such agreements, or their terms, are matters which need to be resolved with DelDOT or the Legislature.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,



Malcolm S. Cobin  
State Solicitor

MSC:lnc

Xc: Frederick H. Schranck, Esq.