

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

ROBERT W. JACKSON, III,)	
)	
Petitioner,)	
v.)	
)	C.A. No. 07M-09-141 RRC
COMMISSIONER CARL C. DANBERG and)	
DEPARTMENT OF CORRECTION,)	
)	
Respondents.)	

Submitted: February 29, 2008
Decided: April 25, 2008

On Respondents' Motion to Dismiss.
GRANTED.

MEMORANDUM OPINION

Thomas A. Foley, Esquire, Wilmington, Delaware, and John S. Malik, Esquire, Wilmington, Delaware, Attorneys for Petitioner.

Gregory E. Smith, Esquire and James T. Wakley, Esquire, Department of Justice, Wilmington, Delaware, Attorneys for Respondents.

COOCH, J.

I. INTRODUCTION

Robert W. Jackson, III (“Petitioner”) has been sentenced to death by lethal injection as a result of his 1993 conviction of Murder First Degree. Petitioner has filed a writ of mandamus and a complaint for declaratory judgment, seeking to have this Court invalidate the lethal injection policies, procedure, and protocol (hereinafter “execution policies and procedures”) adopted by the Delaware Department of Correction. Petitioner argues that the Department’s execution policies and procedures were illegally promulgated because the Department of Correction did not allow for their public review and comment, purportedly required by the Administrative Procedures Act, codified in Title 29, Chapter 101 of the Delaware Code (“the APA”), and that the lethal injection execution policies and procedures are therefore invalid.

In response to the complaint, Commissioner of Correction Carl C. Danberg and the Delaware Department of Correction (“Respondents”) have filed the instant motion to dismiss the petition for Petitioner’s failure to state a claim upon which relief can be granted, pursuant to Superior Court Civil Rule 12(b), arguing that the Department of Correction is exempted by statute from having publicly to promulgate its execution policies and procedures for lethal injection in accordance with the APA.

The issue presented is whether 11 *Del. C.* § 4322(d), which provides that

Department of Correction Policies and Procedures, including any Policy, Procedure, Post Order, Facility Operational Procedure or Administrative Regulation adopted by a Bureau, facility or department of the Department of Correction shall be confidential, and not subject to disclosure except upon the written authority of the Commissioner[.]

exempts the Department of Correction's execution policies and procedures from the APA's general requirement that proposed policies and procedures of covered state agencies be published for public review and comment. The unambiguous language of 11 *Del. C.* § 4322(d) resolves the issue: the Department of Correction is not required to promulgate its execution policies and procedures under the APA because they are "confidential." Respondents' motion to dismiss is **GRANTED**.

II. BRIEF FACTUAL AND PROCEDURAL HISTORY

On April 3, 1992, Petitioner, with his accomplice Anthony Lachette, burglarized the home of Elizabeth Girardi. No one was present in the home at the time of the burglary; however, as Petitioner and Lachette left Mrs. Girardi's home, they encountered her in the driveway. Lachette fled, but Petitioner remained, despite Lachette's attempts to persuade him to flee with him. Petitioner then took an axe from a nearby shed, confronted Mrs. Girardi in the driveway, and bludgeoned her to death.

Following a jury trial that concluded on March 30, 1993, Petitioner was convicted on two counts of first degree murder (intentional murder and felony murder), and was sentenced to death.¹

¹ This brief overview of the facts is taken from *Jackson v. State*, 643 A.2d 1360, 1363 (Del. 1994).

This case has a lengthy procedural history:

The Delaware Supreme Court affirmed Petitioner's convictions on his first direct appeal; however, that Court vacated the death sentence, and remanded the case to this Court for a new penalty hearing. *Jackson v. State*, 643 A.2d 1360 (Del. 1994). This Court re-imposed a sentence of death after a jury again recommended a death sentence. *Jackson v. State*, Cr. ID# 92003717DI (Del. Super. October 26, 1995). This second death sentence was affirmed on appeal to the Delaware Supreme Court. *Jackson v. State*, 684 A.2d 745 (Del. 1996).

Petitioner filed a Motion for Postconviction Relief in August 1997. This Court denied Petitioner's motion after an evidentiary hearing, *Jackson v. State*, Cr. ID# 92003717DI (Del. Super. August 25, 1999), and the Supreme Court affirmed. *Jackson v. State*, 770 A.2d 506 (Del. 2001).

In August 2001, Petitioner filed a petition for writ of habeas corpus in the United States District Court for the District of Delaware. The District Court denied the petition. *Jackson v. Carroll*, 2004 WL 1192650 (D. Del). The Third Circuit denied relief on appeal, *Jackson v. Carroll*, 2005 WL 3477556 (3rd Cir.), and the United States Supreme Court denied certiorari in October 2006. *Jackson v. Carroll*, 127 S.Ct. 60 (2006).

An execution date had been set by this Court for May 19, 2006, after the Third Circuit affirmed the denial by the United States District Court of his petition for writ of habeas corpus. Petitioner then filed an action on May 14, 2006 in the United States District Court for the District of Delaware, challenging the lethal injection execution procedures employed by the Delaware Department of Correction as "cruel and unusual punishment" in violation of the Eighth Amendment to the United States Constitution. *Jackson v. Danberg*, No. 06-CV-300 (D. Del. 2007), and on May 9, 2006, the United States District Court granted a preliminary injunction against Petitioner's May 19, 2006 execution, pending resolution of his action in the District Court of Delaware. This case was subsequently certified as a class action suit on behalf of all defendants in Delaware sentenced to death. (Footnote continued at 5)

The Department of Correction instituted new procedures for the implementation of lethal injection on August 30, 2007 (amended October 2, 2007).² On September 28, 2007 Petitioner filed a “Petition for a Writ of Mandamus for Declaratory Relief” pursuant to 29 *Del. C.* § 10141, asking that this Court “[d]eclare the Department of Correction’s newly adopted lethal injection procedures unlawful until such time as the Defendant comes into compliance with the APA.”³ Respondents then filed the instant Motion to Dismiss.

III. CONTENTIONS OF THE PARTIES

Moving Respondents contend that 11 *Del. C.* § 4322(d) exempts all of the Department of Correction’s policies and procedures from compulsory

The District Court litigation was then stayed pending a decision of the United States Supreme Court in *Baze v. Rees*, 2008 WL 1733259 (U.S.). In that case, the United States Supreme Court was asked to determine whether a specific method of lethal injection used to execute death-sentenced prisoners in Kentucky violated the Eighth Amendment. On April 16, 2008, that Court found that the Kentucky prisoner had failed to establish that the lethal injection execution method in that state presented a “‘substantial’ or ‘objectively intolerable’ risk of serious harm,” and held that the prisoner was therefore not entitled to relief. *Id.* at *1. The stay has not yet been lifted in *Jackson v. Danberg* in United States District Court, but presumably that case will soon go forward.

Also, Defendant filed a Second Motion for Postconviction Relief in this Court on October 19, 2006 in this Court, which is pending. *State of Delaware v. Robert W. Jackson, III*, Del. Super., Cr. ID# 92003717DI. The Court has briefly set forth the facts relating to the crime as previously found in this case, but notes that among the grounds for relief asserted in this motion is a claim of “actual innocence.”

² Pet’r Ans. Opp’n Resp’ts Mot. to Dismiss, at n.1.

³ Pet’r Petition for Writ of Mandamus for Decl. Relief, at 7. Petitioner had originally filed this claim in U.S. District Court for the District of Delaware. However, Petitioner later re-filed his claim in Delaware Superior Court after determining that it was a state claim which first had to be litigated in state court. *Id.*

promulgation under the APA (including their pre-adoption public review and comment). In support of their argument, Respondents point to the language of § 4322(d), which states in pertinent part: “Department of Correction Policies and Procedures ... shall be confidential, and not subject to disclosure except upon the written authority of the Commissioner.”⁴

In opposition, Petitioner contends that the APA’s general requirement that affected state agencies publicly promulgate their proposed regulations before their official adoption applies to the Department of Correction’s execution policies and procedures. Petitioner maintains that 11 *Del. C.* § 4322(d) provides only a narrow exception to the APA’s mandate of promulgation, and argues that 11 *Del. C.* § 4322(d) “limits only the access of prisoners to [Department of Correction] materials,” and not public access to the same.⁵ Thus, Petitioner contends, promulgation of the execution policies and procedures to the public is still required by the APA, and asks this Court to order same in his petition for a writ of mandamus (pursuant to 29 *Del. C.* § 10143). Petitioner’s overarching argument is that

[a]llowing the executive branch of the State of Delaware the sole discretion in the implementation of execution is improper,⁶ [and that] the imposition of the ultimate penalty – the death sentence, is certainly

⁴ Because the Court has found the resolution of this issue to be dispositive, the Court does not reach the second issue argued by Petitioner, that the execution policies and procedures are not “regulations” within the scope of the APA.

⁵ Pet’r Ans. Opp’n Resp’ts Mot. to Dismiss, at 3-4.

⁶ *Id.* at 2.

something that should not be shielded from public view, from a policy standpoint. Indeed, the on-going and wide-ranging scope regarding the debate of capital punishment nationwide, and in this state, reflects the public scrutiny that such execution procedures should be brought to light. Certainly parties interested in this debate should have the opportunity to voice their concerns consistent with the requirements of the APA.⁷

Petitioner also requests that the Court conduct a “hearing” to examine to what extent the Department of Justice was “involved” in drafting the new procedures with the Department of Correction.⁸

IV. STANDARDS OF REVIEW

A) Motion to Dismiss

When deciding a motion to dismiss, “all factual allegations of the complaint are accepted as true.”⁹ A complaint will not be dismissed under Superior Court Civil Rule 12(b)(6) “unless it appears to a certainty that under no set of facts which could be proved to support the claim asserted would the plaintiff be entitled to relief.”¹⁰ Therefore, the Court must determine “whether a plaintiff may recover under any reasonably

⁷ *Id.* at 6.

⁸ *Id.* at 2. Petitioner originally argued in his “Petition for Writ of Mandamus for Declaratory Relief” that the Department of Correction issued the execution policies and procedures in a “substantially unlawful manner.” Pet’r Petition for Writ of Mandamus for Decl. Relief, at 4-5 (citing *Bernie’s Conchs LLC v. Delaware Division of Natural Resources*, 2007 WL 1732833 (Del. Super.), *appeal docketed*, No. 335-2007 (Del. July 9, 2007)). However, in his subsequent briefs, Petitioner has abandoned this stated standard of review.

⁹ *Plant v. Catalytic Constr. Co.*, 287 A.2d 682, 686 (Del. Super. 1972), *aff’d* 297 A.2d 37 (Del. 1972).

¹⁰ *Id.*

conceivable set of circumstances susceptible of proof under the complaint.”¹¹

B) Petition for Writ of Mandamus for Declaratory Relief

The Court will issue a writ of mandamus only if the petitioner establishes that the petitioner has both 1) a clear legal right which requires the Court to compel the performance of a nondiscretionary duty by a public official, agency, or inferior court; and 2) a lack of any other adequate remedy.¹² If either of these two elements is absent, then the writ does not lie, and the petition must be dismissed.¹³

C) Complaint for Declaratory Judgment

Disposition by means of declaratory relief pursuant to 10 *Del. C.* § 6501 is appropriate where: 1) there is a controversy involving the rights or other legal relations of the party seeking declaratory relief; 2) there is controversy in which the claim of right or other legal interest is asserted against one who has an interest in contesting the claims; 3) the controversy

¹¹ *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

¹² *E.g.*, *Clough v. State*, 686 A.2d 158, 159 (Del. 1996); *Guy v. Greenhouse*, 637 A.2d 287, 287 (Del. 1993).

¹³ *E.g.*, *Ross v. Dep't of Corr.*, 722 A.2d 815, 820 (Del. Super. 1998).

is between parties where interests are real and adverse; 4) the issue involved in the controversy is ripe for judicial declaration.¹⁴

V. DISCUSSION

The Court is called upon to decide an issue of statutory construction: whether 11 *Del. C.* § 4322(d) exempts the Department of Correction’s lethal injection execution policies and procedures from compulsory promulgation to the public before official adoption under the APA. The Court holds that that 11 *Del. C.* § 4322(d) does provide an exemption for Department of Correction policies and procedures, including those policies and procedures governing lethal injection.

As Petitioner acknowledges, the Department of Correction is excluded from 29 *Del. C.* § 10161(a), which enumerates the 31 “state agencies affected” by the APA; however, § 10161(b) provides that “all agencies which are not listed in subsection [10161](a) of this section [such as the Department of Correction] shall only be subject to subchapter I and II of this chapter and §§ 10141, 10144 and 10145 of this title.”

¹⁴ *Hoechst Celanese Corp. v. National Union Fire Ins. Co. of Pittsburgh*, 623 A.2d 1133, 1136-37 (Del. Super. 1992) (citing *Marshall v. Hill*, 93 A.2d 524 (Del. Super. 1952)).

Pursuant to 29 *Del. C.* § 10113(a) (a part of subchapter I), “all regulations, *except those specifically exempted*, shall be adopted according to the requirements of this chapter” (emphasis added). An affected agency must otherwise “file notice and full text of [proposed regulations], together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication, in full or as a summary, in the Register of Regulations...”¹⁵ However, 29 *Del. C.* § 10112(b)(4) provides that: “when making its documents and other materials available to the public, the agency may: ... decline to make available documents and other materials which ... are specifically exempted from disclosure by law.”

11 *Del. C.* § 4322(d) provides that:

Department of Correction Policies and Procedures, including any Policy, Procedure, Post Order, Facility Operational Procedure or Administrative Regulation adopted by a Bureau, facility or department of the Department of Correction shall be confidential, and not subject to disclosure except upon the written authority of the Commissioner.

Respondents argue that by the General Assembly’s addition of subsection (d) to 11 *Del. C.* § 4322, the General Assembly has specifically exempted from disclosure the Department of Correction’s documents relating to “policies and procedure,” which, as a result, renders the APA inapplicable to the Department of Corrections, and therefore no public hearings or public

¹⁵ 29 *Del. C.* § 10115(a).

comment process are necessary.¹⁶ 11 *Del. C.* § 4322(c), enacted at the same time as §4322(d), provides that:

[n]o inmate shall be provided a copy of the Department of Correction Policy and Procedures Manuals, The Bureau of Prisons Policy and Procedures Manuals, nor any of the Department of Correction Facilities Operational Procedures, Administrative Regulations and Post Orders.

While 11 *Del. C.* § 4322(c) is not directly implicated for the purposes of of the present issue, it does provide context for analysis understanding § 4322(d) since § 4322(c) only applies to “inmate” access, while § 4322(d) contains no such limitation, arguably making it broader.

Several well established principles apply when a court undertakes statutory construction. Where legislative intent is clearly reflected in statutory language, the language itself controls.¹⁷ The Court must give effect to the entire statutory scheme in operation at any given point in time.¹⁸ It must be presumed that in enacting a statute the General Assembly did not intend an unreasonable or unworkable result.¹⁹

The General Assembly enacted 11 *Del. C.* § 4322(c) and (d) in 1998, apparently in response to a recent Delaware Supreme Court holding that a prisoner was entitled to copies of various Department of Correction

¹⁶ Resp’ts Mot. to Dismiss, at 8.

¹⁷ *Spielberg v. State*, 558 A.2d 291, 293 (Del. 1989).

¹⁸ *E.g.*, *Evans v. State*, 872 A.2d 539, 553 (Del. 2005) (holding that various sentencing provisions, enacted in different statutes, must be read *in pari materia*).

¹⁹ *Stiftel v. Carper*, 378 A.2d 124, 132 (Del. Ch. 1977) (citing *E.I. DuPont De Nemours & Co. v. Clark*, 88 A.2d 436 (Del. 1952)).

disciplinary rules pursuant to the then-existing 11 *Del. C.* § 6535.²⁰ 11 *Del. C.* § 4322(d) provides, in relevant part, that Department of Correction policies and procedures “shall be confidential.” Thus, the intent of the General Assembly can be further confirmed from the context in which it enacted 11 *Del. C.* § 4322(d), i.e., that the General Assembly intended for the “policies” and “procedures” of the Department of Correction to be, exactly as the statute states, “confidential.”²¹

It also is noteworthy, as the State points out, that “the Department of Correction has never promulgated any regulation pursuant to the APA for codification in the Administrative Code,” and that the General Assembly never taken action to change this state of affairs.²² Extended legislative

²⁰ See *Ross and Gattis v. Department of Correction*, 722 A.2d 813 (Del. 1998) (acknowledging that the inmate-petitioners’ motion for reargument of the Supreme Court’s decision to deny his appeal from the Superior Court as to regulations (as opposed to rules) was mooted by the General Assembly’s amendment to 11 *Del. C.* § 4322 and 11 *Del. C.* § 6535 during the pendency of the appeal).

²¹ The synopsis of the Senate Bill adding subsection (c) states:

This Act prohibits distribution to inmates of certain correctional manuals in order to preserve the securities and safety of the correctional facilities, to protect the public, staff, staff and inmates from prisoner escapes, and to reduce the distribution of dangerous and non dangerous contraband between different areas of the inmate population. 71 Del. Laws ch. 324, §1 (1998).

The synopsis of the Senate Bill adding subsection (d) states:

This Amendment provides for the protection of the policies and procedures by which the Department of Correction operates in order to maintain the confidentiality necessary for the safety of the public, staff and inmates. 71 Del. Laws ch. 324, §1 (1998).

²² Resp’ts Mot. to Dismiss, at 8 (citing *Watson v. Burgan*, 610 A.2d 1364, 1368 (Del. 1992) (noting that the General Assembly’s non-interference with a Department of Correction regulation “may well constitute acquiescence”).

inaction following executive practice is indicative of legislative intent, and, relatedly, longstanding executive construction of a “doubtful” statute is given weight by the Court.²³

There is a dearth of case law construing the provisions of 11 *Del. C.* § 4322(c) and (d). Nonetheless, one case is instructive. In 1998, this Court, in *Riley v. Taylor*, considered whether 11 *Del. C.* 4322 (c) and (d) precluded an inmate from access to the “various administrative procedures and policies concerning the administration and classification of DCC inmates.” Judge Quillen held that “the broad language” of 11 *Del. C.* § 4322 (c) and (d) “precluded prisoner access to prison policies and procedures,” including “all policies related to the classification and general administration of prisoners, with the exception of rules pertaining to prisoner discipline,” and concluded that:

[i]n light of the recent amendments, and this Court's general reluctance to interfere with the administration of prisons, all aspects of [the petitioner's] Complaint seeking access to prison policy concerning inmate classification procedures, rules for treatment of death sentenced inmates and the rules for general composition of protected custody must be dismissed...²⁴

²³ *Watson v. Burgan*, 610 A.2d 1634, 1368 (Del. 1992); *State v. Bethlehem Steel Corp.*, 184 A 873, 875 (Del. Super. 1936).

²⁴ *Id.* at *3. Petitioner concedes that “some regulations promulgated by the Department would need to be kept confidential, as they could impact on the security and orderly conduct of a prison,” and that some policies and procedures “implicate security concerns and would properly be kept beyond public view.” Petitioner argues that which policies and procedures should be kept confidential should be determined “on a case-by-case basis.” Pet’r Ans. Opp. Resp’ts Mot. to Dismiss, at 6.(Footnote continued at 14)

The *Riley* Court’s holding that 11 *Del. C.* § 4322(c) and (d) “preclude[s] prisoner access to prison policies and procedures,” all but answers the issue raised in this motion.

As Petitioner notes, other states that have seen similar challenges under their respective administrative procedures acts to the legality of the process by which lethal injection policies and procedures were adopted include Maryland, Tennessee, Kentucky, Georgia, Florida, New Jersey,

In an ancillary argument, Petitioner claims that *Riley* stands for the proposition that “the [amendments to 11 *Del. C.* § 4322] limit *only prisoner access* to Policy and Procedures.” Pet’r Ans. Opp. Resp’ts Mot. to Dismiss, at 4 (emphasis in original). Petitioner further asserts that the Delaware Freedom of Information Act (FOIA) strengthens this argument, since, Plaintiff argues, under FOIA, “when [Department of Correction] records are sought by anyone other than an inmate in the Department’s custody, the records are public.” *Id.* at 5.

The Court cannot agree with Petitioner’s argument. Such a holding could lead to an “absurd” situation where a Department of Correction regulation would receive public review and comment, but that that ultimately adopted policy or procedure would subsequently become confidential, in effect, rendering 11 *Del. C.* § 4322(d) meaningless. Additionally, Petitioner’s argument leads to the possible illogical result that an inmate’s attorney, or some other party with standing, could obtain copies and furnish them to the inmate. “Literal or perceived interpretations which yield mischievous or absurd results are to be avoided” *Spielberg v. State*, 558 A.2d 291, 293 (Del. 1989) (citing *Daniels v. State*, 538 A.2d 1104, 1110 (Del. 1988)). The General Assembly could not have intended such an incongruous interpretation as the one suggested by Petitioner. The Court notes that 11 *Del. C.* § 4322 (d) makes no distinction between “public” and “prisoner” access to Department of Correction information, while 11 *Del. C.* § 4322(c) specifically identifies “prisoner” access to the same. Arguably, this makes 11 *Del. C.* § 4322(d) a broader provision than 11 *Del. C.* § 4322(c), since 11 *Del. C.* § 4322(d) applies to both prisoner and public access. The same reasoning can be applied to Petitioner’s argument as to the FOIA provisions, as similarly untenable outcomes could result. Furthermore, FOIA contains language that excludes from its scope documents whose disclosure is otherwise prohibited by statute or common law. *See Jenkins v. Gullledge*, 449 A.2d 207 (Del.1982) (citing 29 *Del. C.* § 10002(d)(6)). Thus, if, as this Court now holds, 11 *Del. C.* § 4322(d) provides an exemption to the APA, then Petitioner’s argument as to FOIA fails as well.

California, and North Carolina.²⁵ Respondents posit that challenges to lethal injection protocols under state administrative procedure acts are now a “common litigation tactic to effectively block the effectuation of lawfully-imposed death sentences.”²⁶

Petitioner relies on a recent decision of the Maryland Court of Appeals in *Evans v. Maryland*, where that court held that a lethal injection protocol must be promulgated in Maryland in the same manner as other state regulations.²⁷ However, that case is distinguishable, because Maryland does not have an analogous provision to Delaware’s 11 *Del. C.* § 4322(d); furthermore, unlike Delaware’s Department of Correction, Maryland’s “Department of Public Safety and Correctional Services” has generally published their regulations in the Maryland Register.²⁸ Petitioner has cited another recent case from California that held, over California correctional authorities’ objections, that a lethal injection protocol must be promulgated in the same manner as other state regulations. However, this case is distinguishable as well, since apparently California also has no analogue to

²⁵ Resp’ts Mot. to Dismiss, at 10.

²⁶ *Id.*

²⁷ *Evans v. Maryland*, 914 A.2d 25 (Md. 2006).

²⁸ *Id.* at 331-332 (citing *Massey v. Sec’y of Pub. Safety and Correctional Services*, 886 A.2d 585 (Md. 2005)).

11 Del. C. 4322(d).²⁹ The State respondents in North Carolina and New Jersey apparently conceded in the litigation in those states that their administrative procedures acts in fact applied to their lethal injection protocols.³⁰ Courts in the remaining states (Tennessee, Kentucky, Georgia, and Florida) have either denied the claim summarily, or found that their respective administrative procedures acts did not require the public promulgation of a lethal injection protocol.³¹ Thus, Petitioner’s position is far from being the majority position on this issue,³² and the holdings of the various other courts have turned on the construction of the applicable statutes in those states.

In order to be successful in either a petitioner for a writ of mandamus petitioner, or a motion for declaratory judgment, a movant must establish that he or she has a clear legal right or interest.³³ The Court agrees with Respondents that the “General Assembly, through 10 *Del. C.* § 4322(d), rendered all [Department of Correction] policies and procedures confidential, and that this specific exemption removes the [Department of

²⁹ *Morales v. Cal. Dep’t of Corr. & Rehab.*, No. CV-061436 (Cal. Super. Ct. Marin Cty., October 31, 2007).

³⁰ Resp’ts Mot. to Dismiss, at 10.

³¹ *Id.*

³² Justice Ginsberg, in her dissent in *Baze v. Rees*, observed that “[b]ecause most death-penalty States keep their protocols secret, a comprehensive survey of other States’ practices is not available.” *Baze v. Rees*, 2008 WL 1733259, at *47 n.5 (U.S.).

³³ *Guy v. Greenhouse*, 637 A.2d 287, 287 (Del. 1993); *Hoechst Celanese Corp. v. National Union Fire Ins. Co. of Pittsburgh*, 623 A.2d 1133, 1136-37 (Del. Super.1992).

Correction] from the APA’s general agency definition.”³⁴ Thus, Petitioner has not asserted a valid claim of right or other legal interest, and thus has not established grounds for either a writ of mandamus or a declaratory judgment. The Court therefore grants Respondents’ motion to dismiss, since “it appears to a certainty that under no set of facts which could be proved to support the claim asserted would the [Petitioner] be entitled to relief.”³⁵ Any change to the confidential procedure by which the Department of Correction presently adopts its lethal injection policies and procedures would require action by the General Assembly.

V. CONCLUSION

For the preceding reasons, Respondents’ Motion to Dismiss is **GRANTED.**

IT IS SO ORDERED.

cc: Prothonotary

³⁴ Resp’ts Mot. to Dismiss, at 8.

³⁵ *Plant v. Catalytic Constr. Co.*, 287 A.2d 682, 686 (Del. Super. 1972), *aff’d* 297 A.2d 37 (Del. 1972).