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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 16-IB18

September 29, 2016

VIA U.S. MAIL AND EMAIL

Ms. Donna Means
40 Fremont Rd.
Newark, DE 19711
donnae.means@gmail.com

Re: FOIA Complaint Concerning the Newark City Council

Dear Ms. Means:

We write in response to your February 25, 2016 petition ("Petition") for a determination pursuant to 29 *Del. C.* § 10005(e) regarding whether a violation of FOIA has occurred or is about to occur.[1] Your Petition alleges that the Newark City Council ("Council") violated the open meeting provisions of Delaware's Freedom of Information Act ("FOIA"), 29 *Del. C.* §§ 10001-10007 ("FOIA").

Pursuant to our routine process in responding to petitions for determination under FOIA, we invited the Council to submit a written response to your Petition. We received the Council's

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[1] On or about January 20, 2016, you submitted a printed copy of an online complaint form for the Department of Justice Office of Civil Rights and Public Trust ("OCRPT") and a flash drive containing an audio recording of the January 11, 2016 meeting to OCRPT staff. As written, your correspondence alleged discrimination and violations of the First Amendment to the United States Constitution. On January 26, 2016, the OCRPT transferred your correspondence to the Department of Justice ("DOJ") FOIA Coordinator because, while not specifically framed as such, your correspondence alleges that the Council violated certain provisions of FOIA. On January 29, 2016, the DOJ FOIA Coordinator contacted you by email in order to collect the information necessary to begin the petition process. You contacted the DOJ FOIA Coordinator by telephone in early February to discuss the complaint and we received your formal petition, which was dated February 6, 2016, on February 25, 2016.

response ("Response Letter"), which was dated March 2, 2016, on March 4, 2016.[2] You submitted correspondence in response to the Response Letter on March 14, 2016, the Council submitted a response to your March 14 correspondence on April 7, 2016,[3] and you submitted correspondence in response to the Council's April 7 correspondence on April 13, 2016. We have reviewed your Petition, the Response Letter, and all supplemental correspondence. For the reasons set forth below, we conclude that the Council did not violate FOIA as alleged in the Petition.

RELEVANT FACTS[4]

The Council held a meeting on December 14, 2015. Early in the meeting, the Council allowed for general public comment. The Council also allowed for public comment on each action item before voting on the items. Among other things, the Council discussed a bill seeking to amend a City ordinance to increase water rates by 7.2% and to implement a fire protection surcharge effective January 1, 2016. The Council then allowed public comment on the ordinance, during which you opposed the proposal and instead encouraged the Council to consider a 1% city wage tax. You then stated that you "wonder[ed] why the Mayor jumped up and grabbed" a note that you had passed to Council member Todd Ruckle. You also stated that City of Newark Mayor Polly Sierer ("Mayor") had "been passing notes back and forth all night." The Mayor requested that you have a seat, to which you replied that you "would just like fair." The bill was subsequently approved as amended by a vote of 5 to 2.

The Council held another meeting on January 11, 2016. As with its December 14, 2015 meeting, the Council allowed general public comment early in the meeting and also allowed for public comment on each action item before voting on the items. During the period allotted for general public comment, you stated:

> There are a couple things in life that cannot be bought. Integrity is one, the other is respect. Although you can't buy integrity, you certainly can sell it. Just as I and many Newark residents believe happened in the last mayoral race. We have no other choice since the promised explanation of the PAC money never happened. Respect must be earned, not bought, demanded, or commanded. Great leaders lead by example, not orders, not "do as I say not as I

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[2] While we note that the Newark City Solicitor submitted the response on behalf of the City of Newark, we have identified this and all other correspondence from the Newark City Solicitor regarding the Petition as the Council's response.

[3] The correspondence was dated March 7, 2016 but received on April 7, 2016. Under the circumstances, we believe that this was a typographical error.

[4] We base our factual findings on the following: the Petition; the Response Letter; your March 14, 2016 correspondence; the Council's April 7, 2016 correspondence; your April 13, 2016 correspondence; the audio recording of the December 14, 2015 Council meeting, and the audio of the January 11, 2016 Council meeting.

> do." When they lead by example, they just automatically gain respect. Everyone's. They're big enough to say "I was wrong and I'm sorry." They don't accept apologies and then smugly carry on because they feel they're so much more important than their subjects to lower themselves to apologize. They follow the rules they made. They don't change them on a whim because they feel their subjects outsmarted them. At the last council meeting, you even showed a lack of disrespect for your peers on the bench by ripping my note out of Mr. Ruckle's hand as he was reading it. You, Madam Mayor, treated him like a pubescent son found with a porn magazine. He, the look on his face, was priceless.

At that point, the Mayor interrupted your comment, stating that she "w[ould] not continue to have somebody be at the podium making personal attacks," and indicated that you "may have a seat." You replied "no thank you," remained at the podium, and continued speaking while the Mayor indicated twice more that you "may have a seat" before requesting that you be escorted from the room. During the exchange, you addressed the Mayor directly, stating that she had been passing notes to City Manager Carol Houck and City Secretary Renee Bensley while "laughing and chuckling." You stated that this was not the first time that the she had done so and that she does not uphold the Constitution. You were subsequently escorted from the room by two officers. After subsequently reentering the meeting, you were again "told to leave."

POSITIONS OF THE PARTIES

The Petition alleges that the Council violated FOIA as follows: (1) the Council denied you an opportunity to participate in public comment; (2) the Council removed you from the meeting without justification; and (3) the Mayor passed notes to other individuals during Council meetings. Specifically, the Petition alleges that the Mayor has a "habit of passing notes to the City Secretary, City Manager and other Councilpersons."[5]

In its Response Letter, the Council asserts that: (1) the Council did not deny you an opportunity to participate in public comment; (2) the Council was justified in removing you from the meeting pursuant to 29 *Del. C.* § 10004(d) and its own Rules of Decorum; and (3) the Mayor's passing of notes to individuals who are not Council members regarding non-substantive procedural matters does not amount to a FOIA violation. The Council also submitted a sworn affidavit, dated March 3, 2016, wherein the Mayor denies having ever passed notes to Councilmembers during a Council meeting.

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[5] On May 13, 2016, you supplemented your response, stating that the Mayor "has on many occasions, almost every meeting prior to [your] complaint, passed notes not only to Ms. Bensley and Ms. Houck but also has left her seat and walked down the table to give [Councilwoman Margrit Hadden] and [City Solicitor Bruce C. Herron] notes."

RELEVANT STATUTES

FOIA defines a "meeting" as "the formal or informal gathering of a quorum of the members of any public body for the purpose of discussing or taking action on public business."[6] FOIA provides that, as a general matter, "[e]very meeting of all public bodies shall be open to the public . . ."[7] Nevertheless, FOIA does "not prohibit the removal of any person from a public meeting who is willfully and seriously disruptive of the conduct of such meeting."[8]

DISCUSSION

The Council Did Not Violate FOIA by Removing You from the January 11, 2016 Meeting

The Petition alleges that the Council violated FOIA by denying you an opportunity for public comment and removing you from the January 11, 2016 meeting.

As a general matter, "FOIA does not require a public body to allow members of the public to speak during a public meeting."[9] Indeed, "[t]here is nothing in the text of the declaration of policy or in the open meeting provision requiring public comment or guaranteeing the public the right to participate by questioning or commenting during public meetings."[10] Even if a public body does allow for public comment, "there is no requirement in FOIA that an unlimited or extended period of time must be provided to each citizen nor that public bodies permit the public to question their individual members."[11] Moreover, FOIA does "not prohibit the removal of any person from a public meeting who is willfully and seriously disruptive of the conduct of such meeting."[12] We have interpreted this provision to authorize "removal of any citizen who seriously disrupts a meeting by violating those restrictions."[13]

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6 29 *Del. C.* § 10002(g).

7 29 *Del. C.* § 10004(a).

8 29 *Del. C.* § 10004(d).

9 *Del. Op. Att'y Gen.* 08-IB01 (Jan. 28, 2008) (citing *Reeder v. Delaware Dep't of Ins.*, C.A. No. 1553-N., Mem. Op., 2006 WL 510067, at *12 (Del. Ch. 2006), *aff'd*, 931 A.2d 1007 (Del. 2006)).

10 *Reeder*, 2006 WL 510067, at *12.

11 *Id.*

12 29 *Del. C.* § 10004(d).

13 *Del. Op. Att'y Gen.* 04-IB15 (Sept. 10, 2004).

When a public body has elected to permit public comment at an open meeting, this office has previously subjected participation restrictions to First Amendment scrutiny.[14] In doing so, we have stated that First Amendment protections "inhere in the definition of an 'open meeting' under Delaware's FOIA when a public body allows for a period of public participation."[15] While more recent court opinions have distinguished First Amendment analyses from the application of FOIA,[16] absent clear guidance to the contrary, we believe the spirit of FOIA obligates us to address such issues when reviewing the merits of a petition.

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[14] *See, e.g.*, *Del. Op. Att'y Gen.* 06-IB19 (Sept. 5, 2006) (subcommittee did not violate FOIA by limiting "the persons invited to speak to public officials based on their status and not on the content of their views"); *Del. Op. Att'y Gen.* 05-IB01 (Jan. 3, 2005) (school board violated FOIA by imposing prior restraints on what citizens could discuss during a public commentary portion of the meeting); *Del. Op. Att'y Gen.* 04-IB15 (town council violated FOIA by prohibiting terminated police officer from attending subsequent town council meeting on basis that the individual may be disruptive of the meeting); *Del. Op. Att'y Gen.* 03-IB06 (Jan. 21, 2003) (town council violated FOIA by opening for public discussion a proposal to hire a temporary officer-in-charge of the police department but refusing to hear from one of the town's current police officers who felt he was more qualified to run the police department).

[15] *Del. Op. Att'y Gen.* 03-IB06 n.1.

[16] In *Reeder*, the Court of Chancery noted that nothing in the text of FOIA guarantees the right to public comment or, if a public body permits comment, the right to an unlimited or extended period of time or the opportunity to question individual members. 2006 WL 510067, at *12. The court nonetheless noted that public bodies do not "have free rein to act arbitrarily or invidiously against citizens who attend their meetings." *Id.* Rather, there are other "bodies of law that courts can and must apply to make sure that public bodies discharge their legal responsibilities in a non-arbitrary and public-regarding manner." *Id.* at *13. "If a public body seeks comments, for example, on a proposed regulation, *both the Administrative Procedures Act and the First Amendment* might preclude the body from choosing to hear comments only from certain citizens, and not others, depending on the reason given for the distinctions drawn." *Id.* at *12 (emphasis added). The court noted:

> [I]t is important that courts . . . respect what the General Assembly has not done. If the General Assembly wished to include requirements for public participation in FOIA, it could have done so. It plainly did not, and it would be improper for me to write into FOIA requirements which are clearly not there . . . .

Id. at *13. Similarly, in *Galena v. Leone*, 638 F.3d 186 (3d Cir. 2011), the United States Court of Appeals for the Third Circuit considered plaintiff's appeal of a district court order granting judgment as a matter of law in defendant's favor and vacating a jury verdict in favor of the plaintiff on a First Amendment claim against a county council chairperson. In *Galena*, the plaintiff argued that his First Amendment rights to free speech were violated when he was ejected from a county council meeting for lodging an oral objection to a council action outside of the "public comment" portion of the meeting. *Id.* at 193. The council had previously adopted an Administrative Code

As an initial matter, we note that a Newark City Council meeting is a "limited public forum" for First Amendment purposes.[17] In a limited public forum, content-based regulations are permitted "so long as the content is tied to the limitations that frame the scope of the [forum's] designation, and so long as the regulation is neutral as to viewpoint within the subject matter of that content."[18] "The government may not 'regulat[e] speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.'"[19] The government may, however, "restrict the time, place and manner of speech, as long as the restrictions are reasonable and serve the purpose for which the government created the limited public forum."[20] "A time, place, and manner restriction on speech is reasonable if it is (1) content-neutral, (2) narrowly tailored to serve an important governmental interest, and (3) leaves open ample alternatives for communication of information."[21] However, to survive First Amendment

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that provided for the order of business at a typical council meeting – including a period specifically reserved for public comment – and allowed the presiding offer to bar individuals for becoming "boisterous" or making "offensive, insulting, threatening, insolent, slanderous, or obscene remarks." *Id.* at 191. With respect to the plaintiff's invocation of the Sunshine Act – which provided that any person may allege a Sunshine Act violation at any time – to support his First Amendment claim, the court noted: "[E]ven though [defendant]'s enforcement of the [Administrative] Code in restricting [plaintiff]'s speech could have raised a question of the validity of the Code under the Sunshine Act, any question of whether the Code, as written or applied, was inconsistent with the [Sunshine] Act would have been separate from the question of whether the Code's provisions unreasonably restricted the First Amendment rights of a member of the public who wanted to speak at a time other than the Hearing of the Public portion of a meeting" *Id.* at 200. The court echoed the lower court's determination that "the possible questions of whether [plaintiff] had a right to speak under [Pennsylvania's] Sunshine Act and whether [defendant] violated the Act by ejecting him from the Council meeting are distinct from the issues in this First Amendment case . . . ." *Id.* at 202. The court then limited its analysis to a determination of whether the Administrative Code violated the First Amendment on its face and whether it had been applied as written. *Id.* at 202-13.

[17] *See Galena*, 638 F.3d at 198 ("It is perfectly clear that the District Court was correct when it held that the March 20 Council meeting was a limited public forum inasmuch as the meeting was held for the limited purpose of governing Erie County and discussing topics related to that governance." (citations omitted)).

[18] *Eichenlaub v. Twp. of Ind.*, 385 F.3d 274, 281 (3d Cir. 2004).

[19] *Galena*, 638 F.3d at 199 (quoting *Rosenberger v. Rectors and Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995)).

[20] *Id.* at 199 (citing *Pleasant Grove City v. Summum*, 555 U.S. 460, 469 (2009)).

[21] *Id.* (citing *Ward v. Rock Against Racism*, 491 U.S. 781, 179-803 (1989)).

scrutiny, even a reasonable time, place, or manner restriction must be viewpoint neutral as applied.[22]

The Council maintains that your "use of the words 'pubescent son' in close juxtaposition with 'porn magazine' was a breach of civility and a violation of generally accepted rules of decorum, as well as the Rules of Decorum adopted by the Council[.]"[23] The Council's Rules of Decorum ("Rules") provided as follows:

> City Council meetings shall be conducted in a fair and impartial manner that allows the business of the City to be effectively undertaken. Citizens, City staff and Council members alike must be allowed to state their positions in a courteous atmosphere that is free of intimidation, profanity, personal affronts, threats of violence, or the use of Council as a forum for politics. All remarks shall be directed to the City Council as a whole, not to City staff or to the public in attendance. Warnings may be given by the Chair at any time that a speaker does not conduct himself or herself in a professional and respectful manner and anyone whose loud, threatening, personal, or abusive language impedes the orderly conduct of a City Council meeting shall, at the discretion of the presiding officer, be barred from speaking further and may be ejected from the meeting.[24]

While we express no opinion regarding whether these Rules can withstand First Amendment scrutiny in their entirety, we are persuaded that the Rules' prohibition against personal affronts is a content-neutral time, place, and manner restriction that is not facially unconstitutional.[25] Indeed, we recognize that "criticism of public officials lies as the very core of speech protected by the First Amendment."[26] However, we believe that such a restriction in the context of a limited public

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22 *Id.*

23 Response Letter at 2.

24 Response Letter at Ex. C. While we note that the Council amended its Rules on April 21, 2016, this determination is limited to a consideration of the Rules in effect as of January 11, 2016.

25 *See, e.g., Steinberg v. Chesterfield County Planning Comm'n*, 527 F.3d 377, 386-89 (4th Cir. 2008) (concluding that planning commission's prohibition on "personal attacks" not facially unconstitutional); *Scroggins v. City of Topeka*, 2 F. Supp. 2d 1362, 1371-75 (D. Kan. 1998) (city council rule prohibiting "personal, rude, or slanderous remarks" not facially unconstitutional). *But see Moore v. Asbury Park Bd. Of Educ.*, 2005 WL 2033687, at *12-13 (D.N.J. Aug. 23, 2005) (concluding that bylaw provision prohibiting statements "personally directed" to individual board members is an unconstitutional content-based restriction resulting in impermissible viewpoint-based restraint).

26 *Colson v. Grohman*, 174 F.3d 298, 507 (5th Cir. 1999).

forum strikes an appropriate balance between protecting that interest while also serving the important governmental interest that governmental business to be effectively undertaken in an orderly, fair, and efficient manner.

Having concluded that the Council's prohibition against "personal affronts" is not unconstitutional on its face, we turn next to a determination of whether the restriction was unconstitutional as applied; that is, because of your viewpoint.[27] Under the circumstances, we believe that the Mayor specifically invoked the policy's prohibition against "personal affronts" in attempting to silence your speech.[28] However, we are not persuaded that the Mayor's actions were based upon your viewpoint. Notably, the Mayor permitted your critical commentary – in which you questioned the Mayor's integrity and then accused her of disrespecting her peers at the previous council meeting – to proceed uninterrupted for more than 90 seconds. It was not until your critical commentary escalated to an accusation that she treated a fellow councilmember "like a pubescent son found with a porn magazine" that the Mayor requested that you take a seat.[29] Under the circumstances, we believe that the Mayor's actions were based upon her viewpoint-neutral desire to maintain civility and order upon hearing these statements.[30] Indeed, your statements transformed your critical commentary into "the kind of 'truculent' and 'disruptive'

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[27] *See Galena*, 638 F.3d at 199 ("[E]ven if a limitation on speech is a reasonable time, place, and manner restriction, there is a First Amendment violation if the defendant applied the restriction because of the speaker's viewpoint."); *Steinberg*, 527 F.3d 377 (noting that even a facially valid policy against personal attacks "does not preclude a challenge premised on misuse of the policy to chill or silence speech").

[28] While we note that the Mayor stated that she "w[ould] not continue to have somebody be at the podium making personal attacks," we believe that the terms "personal affronts" and "personal attacks" to be sufficiently analogous to support a conclusion that the Mayor invoked the policy's prohibition against "personal affronts."

[29] *See Foster v. David*, 2006 WL 2371976, at *11 (E.D. Pa. Aug. 11, 2006) (no First Amendment violation where plaintiff was allowed to speak on the behavior of law enforcement officials and was stopped only when he became belligerent and disruptive by calling law enforcement official a "terrorist" who was like "Osama bin Laden").

[30] *Compare Eichenlaub*, 385 F.3d at 281 n.3 ("We do not read the record of the proceedings to indicate that the presiding officer attempted to muzzle [the plaintiff]."), *with Monteiro v. City of Elizabeth*, 436 F.3d 397 (3d Cir. 2006) (concluding that sufficient evidence existed to support a jury verdict that defendant acted with a motive to suppress plaintiff's viewpoint). To be clear, we would reach this same conclusion even if the Mayor's restriction of your speech were deemed not strictly content-neutral. *See Eichenlaub*, 385 F.3d at 281 (indicating that the could would find no First Amendment violation even if presiding officer's restrictions on plaintiff's speech were not strictly content-neutral).

behaviors that justify removing a citizen from a public meeting to maintain order and decorum, and to prevent a speaker from 'hijacking' a meeting."[31]

As such, while we caution the Council to ensure that its Rules and its application of those Rules comports with the First Amendment, we nonetheless conclude that, under these unique circumstances, the Council did not violate FOIA vis-à-vis the First Amendment as alleged.[32]

The Mayor Did Not Violate FOIA by Passing Notes with Her Staff During Public Meetings

Your Petition and subsequent correspondence also allege that the Mayor violated FOIA by circulating notes during public meetings. Specifically, you allege that the Mayor has a "habit of passing notes to the City Secretary, City Manager and other Councilpersons." You later attempted to clarify by stating that the Mayor "has on many occasions, almost every meeting prior to [your] complaint, . . . left her seat and walked down the table to give [Councilwoman Margrit Hadden] and [City Solicitor Bruce C. Herron] notes." We read the Petition to allege that the Council shielded the discussion of public business from the public, thereby violating FOIA's open meeting provisions.

Here, without specific information regarding specific dates, the number of Council members present, and the number of Council members to whom you allege the Mayor passed notes during specific meetings, these allegations are too vague to warrant consideration.[33] Moreover,

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[31] *Mesa v. Hudson Cty. Bd. Of Chosen Freeholders*, 2011 WL 4592390, at *6 (D.N.J. Sept. 30, 2011) (citations omitted). The court noted that the plaintiff "stood up and accused the County Executive of exiting 'like a bat out of hell,'" which "set the tone for his subsequent combative remarks." *Id. See also Eichenlaub*, 385 F.3d at 281 ("Restricting such behavior is the sort of time, place, and manner regulation that passes muster under the most stringent scrutiny for a public forum. Indeed, for the presiding officer of a public meeting to allow a speaker to try to hijack the proceedings, or to filibuster them, would impinge on the First Amendment rights of other would-be participants. We have no difficulty sustaining the decision to remove [the plaintiff] on that basis."); *Olasz v. Welsh*, 301 Fed. App'x. 142, at *4 (3d Cir. 2008) (concluding that council president's actions in ruling fellow councilmember out of order to constrain his badgering, constant interruptions and disregard for the rules of decorum a permissible time, place and manner regulation); *Thornton v. City of Kirkwood*, 2008 WL 239575, at *5 (E.D. Mo. Jan. 28, 2008) (concluding that plaintiff's comments during public comment, which included use of the words "jackass, jackass, jackass," calling the Mayor a jackass, and stating that the city had a "plantation-like mentality," were "irrelevant and repetitive, and his truculent attitude was disruptive to the city council meeting").

[32] *See* 29 *Del. C.* §10004 (FOIA's open meeting provisions do "not prohibit the removal of any person from a public meeting who is willfully and seriously disruptive of the conduct of such meeting").

[33] *See Del. Op. Att'y Gen.* 16-IB14 (June 9, 2016) (concluding that two allegations, including an allegation that a board chair "routinely discussion [sic] agency business orally and via email with selected commissioners before meeting times and dates" were too vague to warrant

you have not offered any evidence to rebut the Mayor's sworn affidavit,[34] wherein she denied having ever passed notes to Councilmembers during a Council meeting.[35] Finally, to the extent that you challenge the passing of notes among the Mayor and her staff during the January 11, 2016 meeting, such communications would not be subject to Delaware's FOIA, as those individuals are not members of the Council.[36] As such, we cannot conclude that the Council violated FOIA as alleged in the Petition.

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consideration); *Del. Op. Att'y Gen.* 96-IB05 (Feb. 13, 1996) (finding no violation when only "sweeping, vague allegations" with "no specific facts are alleged" regarding conduct of meetings).

[34] *See Del. Op. Att'y Gen.* 05-IB10 (Apr. 11, 2005) (no *prima facie* case where petitioner offered no evidence to "doubt or question" sworn affidavit denying that a meeting occurred as alleged).

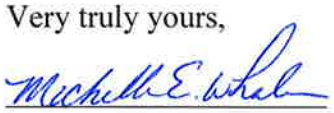
[35] To be clear, this office has held that "serial" communications among members of a public body *may* amount to a meeting subject to FOIA's open records provisions. *See, e.g. Del. Op. Att'y Gen.* 04-IB17 (Oct. 18, 2004); *Del. Op. Att'y Gen.* 03-IB11 (May 19, 2003). The threshold inquiry, of course, is whether the communications at issue—transmitted vie email, text message, the passing of notes, or any other method—involved a quorum of the public body. *See 29 Del. C.* § 10002(g) (defining "meeting" as "the formal or informal gathering of a *quorum* of the members of any public body for the purpose of discussing or taking action on public business." (emphasis added)); *Del. Op. Att'y Gen.* 10-IB12 (Sept. 28, 2010) ("A meeting of a public body means a meeting of a 'quorum of the members,' 29 *Del. C.* § 10002(b), and, as a general matter, conversations with each other or with staff do not need to be public unless they include a quorum of the members."). Importantly, however, a complaining party must make a *prima facie* showing that a meeting may have occurred, at which point the burden then shifts to the public body to prove that no FOIA violation occurred. *See Del. Op. Att'y Gen.* 05-IB10. Here, you have failed to establish a *prima facie* showing that a meeting may have occurred. Specifically, as we have already noted, you have not offered any evidence to rebut the Mayor's sworn affidavit, wherein she denied having ever passed notes to Councilmembers during a Council meeting. *See id.* (no *prima facie* case where petitioner offered no evidence to "doubt or question" sworn affidavit denying that a meeting occurred as alleged). Because you have failed to establish a *prima facie* showing that the Mayor passed notes to a quorum of the Council, there is not sufficient evidence in the record to support a conclusion that the Council engaged in a private meeting, thereby violating FOIA, by passing notes during a Council meeting.

[36] *See Del. Op. Att'y Gen.* 16-IB05 (Mar. 11, 2016) (conversations between Board President and staff or counsel did not violate FOIA); *Del. Op. Att'y Gen.* 10-IB12 (noting that conversations among board members or among board members and their staff do not need to be public unless they involve a quorum of the members); *Del. Op. Att'y Gen.* 01-IB15 (Oct. 3, 2001) (FOIA does not apply to meetings between Sussex County Administrator and his staff).

CONCLUSION

Based on the foregoing, we determine that the Council did not violate FOIA as alleged in the Petition.

Very truly yours,



Michelle E. Whalen
Deputy Attorney General

Approved:

Aaron R. Goldstein, State Solicitor

cc: Danielle Gibbs, Chief Deputy Attorney General
Bruce C. Herron, Newark City Solicitor