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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 17-IB50

October 6, 2017

VIA EMAIL

Ms. Dell Tush
rodneydunes@deweybeachvacation.com

RE: September 18, 2017 FOIA Correspondence Regarding the Town of Dewey Beach

Dear Ms. Tush:

We write regarding your correspondence, received on September 18, 2017, alleging that the Town of Dewey Beach (the "Town") violated Delaware's Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 ("FOIA"). Specifically, you allege that the Town violated FOIA by failing to post notice of meetings which the Town Commissioners intended to hold on September 13, 14, 15, and 22 at least seven days in advance thereof. You also appear to allege that the Town violated FOIA's notice requirements in connection with a meeting that the Town scheduled for September 20, 2017. We treat your correspondence as a petition for determination, pursuant to 29 *Del. C.* § 10005(e), of whether the Town violated FOIA ("Petition"). We have reviewed your Petition, the Town's September 22, 2017 response, and the affidavits submitted by the Town on September 27, 2017. Our determination with respect to each of your FOIA allegations is set forth below.¹

As an initial matter, we have determined that your allegations concerning the meetings scheduled for the September 14, 15 and 20 are now moot, as the Town cancelled those meetings in advance thereof. Additionally, we have already determined, in connection with another FOIA petition, that the Town's conduct regarding timely notice of its September 13, 2017 meeting amounted to, at most, a technical violation of the statute for which no remediation is warranted.² As such, the only remaining issue for our consideration concerns the September 22, 2017 meeting notice.


Based upon our review of the record, it is our determination that the Town did not violate FOIA by failing to provide timely notice of its September 22, 2017 meeting. Indeed, we are

¹ We decline to address your remaining claims, as they fall outside the scope of FOIA.


² See *Del. Op. Att'y Gen.* 17-IB49 (Sept. 29, 2017).

satisfied that the Town posted notice of the September 22, 2017 meeting at the principal office of the Town Council least seven days in advance thereof.³

Very truly yours,


Michelle E. Whalen
Deputy Attorney General

Approved:


Aaron R. Goldstein
State Solicitor

cc: LaKresha S. Roberts, Chief Deputy Attorney General (via email)
Frederick A. Townsend, III (via email)

³ See 29 Del. C. § 10004(e)(4) (“Public notice required by this subsection shall include, but not be limited to, conspicuous posting of said notice at the principal office of the public body holding the meeting, or if no such meeting exists at the place where the meetings of the public body are regularly held . . .”). While both your petition and the Town’s response (including affidavits) place significant emphasis on electronic posting of said notice, we note that the date and time of *electronic* notice is not relevant to this determination. Indeed, although we certainly encourage the practice in the interest of transparency, we note FOIA does not currently require the Town to post electronic notice of its meetings. *See id.* (“In addition [to conspicuous posting of physical notice], for all noncounty and *nonmunicipal* public bodies, public notice required by this subsection shall include, but not be limited to, electronic posting on a designated State of Delaware website, approved by the Registrar of Regulations by May 1, 2013, which shall be accessible to the public. In addition, all public bodies in the executive branch of state government that are subject to the provisions of this chapter shall electronically post said notice to the designated State of Delaware website approved by the Secretary of State.”) (emphasis added).