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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion 19-IB55

September 30, 2019

VIA EMAIL

Mr. Tony Rapposelli
Tonyrap1971@gmail.com

RE: FOIA Petition Regarding the Delaware Interscholastic Athletic Association

Dear Mr. Rapposelli:

We write in response to your correspondence alleging that the Delaware Interscholastic Athletic Association (“DIAA”) violated the open meeting requirements of the Delaware Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 (“FOIA”). We treat your correspondence as a Petition for a determination pursuant to 29 *Del. C.* § 10005(e) regarding whether a violation of FOIA has occurred or is about to occur. For the reasons set forth below, we find that DIAA’s Sportsmanship Committee violated FOIA’s open meeting requirements, but we do not recommend additional steps to remediate this violation.

BACKGROUND

The Sportsmanship Committee of the DIAA Board of Directors held a meeting on July 16, 2019 in which it discussed a sportsmanship violation involving Concord High School lacrosse team. The agenda stated “Sportsmanship Complaint – Parent,” and the Committee minutes indicate that the complaint and an associated video were discussed, in addition to correspondence from the parent, “Mount Pleasant, Concord High School, and Brandywine School District.”¹ The Committee voted to table action regarding the video and to hold a hearing with all involved parties.

This Petition followed, alleging that the agenda gave inadequate notice to the public of this matter in violation of FOIA. The Petition argues that this agenda item of “Sportsmanship

¹ Petition.

Complaint – Parent” did not put Concord parents or the public on notice of the subject matter, and “unlike other Sportsmanship Rule violation matters appearing on the July 16 agenda, there is no reference to the school in question.”² Further, you contend that the reference to “parent” in the agenda implies that the violation involves a parent, instead of student athletes. The Petition did not specifically request any remediation, but you noted the full hearing before DIAA’s Board of Directors was scheduled for September 12, 2019.

DIAA’s counsel sent a Response, asserting that the Committee had not violated FOIA. DIAA explains that the Committee is charged with making recommendations to the Board. DIAA argues that the agenda item was “plain and comprehensible” as FOIA requires and clearly stated the intention to discuss this sportsmanship complaint from a parent.³ DIAA asserts that the availability of a perhaps better method to describe an agenda item does not equate to a FOIA violation *per se*. DIAA further asserts that even if the agenda provided inadequate notice, there is no basis to recommend remediation in these circumstances, as a full discussion occurred at the Board’s properly-noticed August 8, 2019 public meeting. DIAA attached this meeting agenda showing the item: “Concord High School Boys’ Lacrosse Sportsmanship Report,” which it contends leaves no doubt as to the intended discussions and renders any inadequate notice at the previous meeting harmless error. DIAA also points out that the action taken at the July 16, 2019 Committee meeting was merely to refer the matter for a hearing, and the Board did not task the Committee with the hearing, instead deciding to hold the hearing itself. DIAA contends that substantial public rights were not affected, as no purpose would be served by requiring the Committee to re-notice this matter in these circumstances.

DISCUSSION

An agenda must provide for “a general statement of the major issues expected to be discussed at a public meeting.”⁴ The agenda must alert those with an “intense interest” in a subject that this subject will be considered.⁵ “In other words, members of the public interested in an issue should be able to review a notice and determine that an issue important to them will be under consideration.”⁶ Although this agenda item accurately describes the source of the complaint, we conclude that this agenda item does not provide adequate notice to the public of the subject intended for discussion, as anyone intensely interested in this matter could not reasonably be expected to discern this subject matter would be discussed.

² *Id.*

³ Response.

⁴ 29 *Del. C.* § 10002(a).

⁵ *Lechliter v. Delaware Dep’t of Env’tl. Control and Natural Res.*, 2017 WL 2687690, at *2 (Del. Ch. Jun. 22, 2017) (citation omitted).

⁶ *Id.*

However, it is our determination that remediation is not warranted in these circumstances. When this Office determines a violation of the open meeting law has occurred, we may recommend remedial steps “*if a public body has taken action on a matter affecting substantial public rights.*”⁷ The Committee’s duty is to make recommendations to the Board regarding sportsmanship matters. The Committee tabled action on the video and decided to recommend a hearing to the Board. DIAA states that the Board, after giving sufficient public notice of this item, again discussed this complaint in open session at its August 8, 2019 meeting and made the final decision to hold a hearing about the complaint. The hearing itself was scheduled to occur earlier this month. Based on this record, we do not find additional steps to be appropriate.⁸

CONCLUSION

Thus, it is our determination that DIAA violated FOIA’s open meeting requirements by providing inadequate notice in the Sportsmanship Committee agenda of the intended discussions regarding this sportsmanship complaint, but based on the foregoing, we do not recommend any steps to remediate this action.

Very truly yours,

/s/ Owen Lefkon

Owen Lefkon
Director, Fraud and Consumer Protection Division⁹

cc: Laura B. Makransky, Deputy Attorney General
Dorey L. Cole, Deputy Attorney General

⁷ *Del. Op. Att’y Gen.* 16-IB23, 2016 WL 7010495, at *1 (Oct. 28, 2016) (emphasis in the original) (citations omitted); *see also Del. Op. Att’y Gen.* 17-IB38, 2017 WL 3628771, at *1, 6 (Aug. 11, 2017).

⁸ *See Del. Op. Att’y Gen.* 03-IB11, 2003 WL 21431171, at *5 (May 19, 2003) (determining that additional remediation is not appropriate where the standing committee of a public body violated open meeting requirements by improperly discussing its recommendations outside a public meeting, but the full public body voted on the final decisions at a subsequent, properly-noticed public meeting).

⁹ The Chief Deputy Attorney General designated the Division Director to issue this opinion.