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**OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE**

**Attorney General Opinion No. 21-IB24**

**October 6, 2021**

**VIA EMAIL**

Randall Chase  
Associated Press  
[rchase@ap.org](mailto:rchase@ap.org)

**RE: FOIA Petition Regarding the Ethics Committee, House of Representatives, Delaware General Assembly**

Dear Mr. Chase:

We write in response to your correspondence alleging that the Ethics Committee of the House of Representatives of the Delaware General Assembly (“Committee”) violated Delaware’s 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 regarding whether a violation of FOIA has occurred or is about to occur. As explained below, we conclude that the Committee has not violated FOIA as alleged.

**BACKGROUND**

The Committee provided public notice of a meeting scheduled for September 10, 2021. The agenda for this meeting indicated that the Committee would “discuss executive business before the [C]ommittee” and that the meeting would be closed to the public. You filed a Petition alleging that FOIA requires this Committee to comply with the open meeting requirements of FOIA. You argue that any public body planning an executive session must state the reason for the executive session on its agenda and take a public vote whether to hold an executive session. In addition, you ask this Office to “make a determination on whether the restrictions on public

disclosure and public statements related to the activities of the House Ethics Committee as outlined in House Resolution 4 constitute a prior restraint on speech by the government.”<sup>1</sup>

The Committee replied to your Petition on September 17, 2021 (“Response”). The Committee asserts that 29 *Del. C.* § 10004(h)(7) exempts ethics committees of the General Assembly from the open meeting requirements of FOIA. In addition, the Committee states that the question regarding the prior restraint on speech is not an appropriate issue to consider in a FOIA petition.

### **DISCUSSION**

Section 10004 of FOIA sets forth certain requirements for the meetings of public bodies. However, this section excludes several proceedings from these requirements, including the proceedings of “[p]ublic bodies within the legislative branch of the state government other than the House of Representatives, the Senate, the Joint Finance Committee, the Joint Committee on Capital Improvement, the Joint Legislative Oversight and Sunset Committee, Legislative Council, committees, excluding ethics committees, specifically enumerated and created by Resolution of the House of Representatives or Senate or task forces specifically enumerated and created by Resolution of the House of Representatives or Senate.”<sup>2</sup> As this provision expressly excludes the proceedings of ethics committees of the General Assembly from the requirements of Section 10004, we find that the Committee has not violated FOIA by failing to meet any of this section’s requirements. The remaining issue in the Petition regarding whether certain restrictions in a House resolution constitute a prior restraint on speech by the government is outside the purview of this Office’s statutory authority to determine.<sup>3</sup>

### **CONCLUSION**

Based on the foregoing, we determine that the Committee has not violated FOIA as alleged in the Petition.

Very truly yours,

/s/ Dorey L. Cole

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Dorey L. Cole  
Deputy Attorney General

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<sup>1</sup> Petition.

<sup>2</sup> 29 *Del. C.* § 10004(h)(7).

<sup>3</sup> 29 *Del. C.* § 10005(e) (“Any citizen may petition the Attorney General to determine whether a violation of this chapter has occurred or is about to occur.”).

Approved by:

/s/ Aaron R. Goldstein

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Aaron R. Goldstein  
State Solicitor

cc: Karen Lantz, House Majority Attorney and Ethics Committee Staff