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

**Attorney General Opinion No. 23-IB04**

**January 25, 2023**

**VIA EMAIL**

Thomas Pledgie  
[tpledgie@msn.com](mailto:tpledgie@msn.com)

**RE: FOIA Petition Regarding the Delaware Department of Finance**

Dear Mr. Pledgie:

We write regarding your correspondence alleging that the Delaware Department of Finance violated 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 regarding whether a violation of FOIA has occurred or is about to occur. For the reasons set forth below, we find that the Department did not violate FOIA by denying access to the requested records.

**BACKGROUND**

On December 5, 2022, you requested certain recordings of the Retirement Benefit Study Committee meetings, specifically the “audio and/or video of RBSC Nov[.] 29, 2021 Meeting (Webex Event no. 2334 526 6708), RBSC Feb[.] 28, 2022 Meeting (Webex Event no. 2334 900 6473), and RBSC Meeting Mar[.] 24, 2022 (Webex Event no. 2344 263 3169).”<sup>1</sup> The Department responded on December 27, 2022, denying your request because you are not a citizen of Delaware. Notwithstanding its denial, the Department pointed you to the minutes for these meetings available on its website. This Petition followed, in which you appealed this denial and questioned the requirements for being a Delaware citizen, noting that you lived and worked in Delaware for many years before moving out of state.

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<sup>1</sup> Petition.

The Department’s counsel responded to the Petition on its behalf (“Response”) and included an affidavit from the Executive Assistant to the Secretary of Finance. The Executive Assistant attests that she takes the minutes for the Committee and has access to the records of the Committee. She states under oath that she has reviewed the records of the Committee and no audio or video recordings of the meetings held on the dates referenced in your request exist. The Department also asserts that as you are not a citizen of Delaware, you are not entitled to access public records under FOIA, and you lack standing to avail yourself of the FOIA enforcement provisions. Additionally, the Department contends that the Petition fails to meet the requirements of 29 *Del. C.* § 10005(e) and the Petition is moot.

### **DISCUSSION**

FOIA requires a public body to provide citizens with reasonable access to public records in accordance with the statute.<sup>2</sup> In any action brought under Section 10005, the public body has the burden of proof to justify its denial of access to records.<sup>3</sup> The Department provided the affidavit of the Executive Assistant responsible for taking the meeting minutes who attested that she reviewed the records of the Committee and the recordings you requested do not exist. Accordingly, we find that the Department met its burden of proof to demonstrate that its denial of access to the records you requested was proper.<sup>4</sup>

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<sup>2</sup> 29 *Del. C.* § 10003.

<sup>3</sup> 29 *Del. C.* § 10005(c).

<sup>4</sup> *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996, 1012 (Del. 2021). (“[U]nless it is clear on the face of the request that the demanded records are not subject to FOIA, to meet the burden of proof under Section 10005(c), a public body must state, under oath, the efforts taken to determine whether there are responsive records and the results of those efforts.”).

**CONCLUSION**

For the foregoing reasons, we determine that in these circumstances, the Department did not violate FOIA by denying access to the requested records.<sup>5</sup>

Very truly yours,

/s/ Alexander S. Mackler

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Alexander S. Mackler  
Chief Deputy Attorney General

cc: Edward J. Kosmowski, Deputy Attorney General  
Dorey L. Cole, Deputy Attorney General

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<sup>5</sup> While we have decided to issue a determination here as a courtesy, we feel compelled to note that as a noncitizen, you lack standing to avail yourself of the provisions contained in Section 10005, including the petition process set forth in Section 10005(e).