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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 23-IB20

July 12, 2023

VIA EMAIL

Warren Rosenkranz
wrosenk@yahoo.com

RE: FOIA Petition Regarding the Villages of Arden, Ardentown, and Ardencroft

Dear Mr. Rosenkranz:

We write in response to your correspondence alleging that the Villages of Arden, Ardentown, and Ardencroft violated Delaware's Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 ("FOIA"). We treat this 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 discussed more fully herein, we determine that the Villages did not violate FOIA by failing to post the June 26, 2023 meeting notices on their websites or by scheduling these meetings to be held in Arden.

BACKGROUND

The Villages of Arden, Ardentown, and Ardencroft are considering a proposed transportation plan to enhance safety and mobility between the Villages. According to the notices in the Villages' monthly newsletter, the Villages of Ardentown and Ardencroft scheduled special meetings at Gild Hall in Arden on June 26, 2023 to vote on this transportation plan, and the Village of Arden scheduled a meeting on this same date and location that was not designated as a special meeting.¹ You allege that after reviewing these meeting notices in the newsletter, you found that

¹ Petition, p. 6. The Petition included a photograph of the newsletter's notices for these three meetings, which appear to have errors. The two special meetings are noticed for July 26, 2023 in one notice, while the Arden meeting is scheduled for June 26, 2023, but another notice in the same

no notices about these upcoming meetings were posted to Ardentown’s or Ardencroft’s websites. You point to the Ardentown charter’s notice provisions for special meetings, which include a requirement that the notices be mailed to residents. You state that according to the Chair of Ardencroft Town Assembly, the three Villages would meet to approve the plan on June 26, 2023. Further, you assert that the transportation plan comment period closes and a steering committee will consider comments on the plan before these scheduled meetings, and “[i]t is at this time unknown whether the formal meeting notices will arrive in time.”² You ask our Office to determine whether these circumstances are compliant with FOIA. In addition, you allege that the three Villages’ notices planning the meeting location outside their respective geographic jurisdictions violates FOIA.

DISCUSSION

FOIA provides that “[a]ny citizen may petition the Attorney General to determine whether a violation of this chapter has occurred or is about to occur.”³ The Petition first claims that Ardentown and Ardencroft failed to post meeting notices on their websites and the formal meeting notices required by the Village charters to be mailed may not timely arrive. FOIA does not require the Villages to post their meeting notices and agendas on their websites.⁴ Further, as the Code limits this Office’s authority to considering allegations regarding the FOIA statute, we find that this Office lacks the statutory authority to address the claim about the timeliness of any meeting notices required by the Village charters.⁵

Additionally, the Petition claims that the Villages violated FOIA by scheduling meetings outside the respective geographic jurisdictions of the Villages. FOIA requires that “every regularly scheduled meeting of a public body . . . be held within the geographic jurisdiction of that public body.”⁶ A regularly scheduled meeting is defined specifically as any meeting “held on a periodic basis.”⁷ The Villages’ special meetings may be held “within [their] jurisdiction or the county in

newsletter notes that all three Villages will vote on the plan on June 26, 2023. According to your Petition, at a June 6, 2023 Wilmington Area Planning Council meeting, the Chair of the Ardencroft Town Assembly announced that the three Villages intended to hold their meetings together on June 26, 2023 at Gild Hall in Arden to approve this plan. Thus, for purposes of this Opinion, we assume that the Village meetings were planned for June 26, 2023 to vote on this transportation plan.

² *Id.*, p. 7.

³ 29 *Del. C.* § 10005(e).

⁴ 29 *Del. C.* § 10004(e)(5).

⁵ 29 *Del. C.* § 10005(e).

⁶ 29 *Del. C.* § 10004(g).

⁷ 29 *Del. C.* § 10004(g)(2).

which its principal office is located.”⁸ In this case, the notice provided with this Petition indicated that Ardencroft’s and Ardentown’s special meetings were scheduled for Gild Hall in Arden, which is located in New Castle County where all of the Villages are located. Arden’s meeting is not designated as a special or regularly scheduled meeting in the meeting notice supplied, but Arden’s meeting was scheduled to be held within its geographic jurisdiction, so under either designation, the meeting’s location would be compliant with FOIA. Accordingly, we find that the three Villages did not violate FOIA by noticing these meetings to be held in Gild Hall in Arden.

CONCLUSION

For the reasons set forth above, we conclude that the Villages have not violated FOIA by failing to post the June 26, 2023 meeting notices on their websites or by scheduling these meetings to take place in Arden.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: Edward B. Rosenthal, Counsel to the Villages of Arden, Ardentown, and Ardencroft

⁸ 29 *Del. C.* § 10004(g)(1) (“A public body serving any political subdivision of the State, including, but not limited to, any city, town or school district, shall hold all such other meetings within its jurisdiction or the county in which its principal office is located, unless it is school board training that has been approved by the Secretary of Education as beneficial to school board development activities.”).