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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 23-IB25

August 15, 2023

VIA EMAIL

Erica Lindsey
ixionangel@aol.com

RE: FOIA Petition Regarding the City of Delaware City

Dear Ms. Lindsey:

We write in response to your correspondence alleging that the City of Delaware City 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 City did not violate FOIA by failing to post its meeting minutes on its website. Additionally, we find that this Office lacks the statutory authority to address the remaining claims in the Petition.

BACKGROUND

The City's Mayor and Council voted at their April 17, 2023 meeting on a special use permit to build certain townhomes. According to the Petition, a public hearing was held about thirty minutes prior to this vote, and the Council did not discuss the public's comments prior to the vote.¹ Following this meeting, you sent correspondence to the City identifying concerns with the process for the permit and asking for a re-vote on this matter. You assert that you did not receive a reply. This Petition followed.

¹ Petition.

The Petition alleges that voting on the permit less than fifteen days after the public hearing is a violation of applicable law. The Petition also asserts that at this meeting, a certain councilmember, when questioned by the City Solicitor immediately after her vote, answered those questions in a manner substantively inconsistent with the councilmember's vote. Finally, the Petition asserts that the City failed to post its April meeting minutes to its website; instead, the City posted the March minutes with the April meeting notice and incorrectly labeled the March minutes as the April meeting minutes. Moreover, it is alleged that the City has failed to post any meeting minutes on the City's website or Facebook page since those March minutes were posted.

DISCUSSION

This Office's authority in the FOIA petition process is limited to determining whether a "violation of [FOIA] has occurred or is about to occur."² The Petition's claims regarding substantive inconsistencies related to the councilmember's vote and limitations on the timing of the Council's vote are not governed by FOIA and do not constitute alleged violations of the FOIA statute. Accordingly, this Office lacks the authority to address those claims.

The Petition also alleges that the City failed to post the April minutes and any minutes for subsequent meetings on its website. FOIA does not require a municipality to post meeting minutes on its website.³ While the City is encouraged to correct any errors when voluntarily posting minutes on its website, we find that the City did not violate FOIA by failing to post these minutes to its website.

CONCLUSION

For the reasons set forth above, we conclude that the City has not violated FOIA by failing to post its meeting minutes on its website.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

² 29 *Del. C.* § 10005.

³ 29 *Del. C.* § 10004(f).

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: William J. Rhodunda, Jr., City Solicitor