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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 24-IB05

February 2, 2024

VIA EMAIL

Brian Geller
bgeller066@gmail.com

RE: FOIA Petition Regarding the Town of Leipsic

Dear Mr. Geller:

We write in response to your correspondence alleging that the Town of Leipsic violated Delaware's Freedom of Information Act, 29 *Del. C.* §§ 10001-10008 ("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 find that the Town's Museum Review Committee violated the FOIA statute and recommend the below-referenced steps to remediate this violation.

BACKGROUND

In the Petition, you allege that the Town of Leipsic's Museum Review Committee is comprised of the Mayor, Acting Council Secretary, and a Town resident, and on November 6, 2023, this Committee held a meeting, without posting a notice or inviting the public to attend. You argue that this Committee is a public body, as it was appointed by the Town Council and the museum will use public resources and funds. You contend that, as a public body, the Committee should have followed the open meeting laws.

On January 5, 2024, the Town's counsel replied on its behalf to the Petition ("Response"). The Town stated it was unaware that the Committee was subject to FOIA and assured that all future Committee meetings would be conducted in conformance with FOIA's requirements. The

Town also noted that no votes were taken on any matters at the meeting in question here and that the Museum Review Committee makes reports to the Town Council routinely.

DISCUSSION

The Town carries the burden of proof to demonstrate its compliance with FOIA.¹ For FOIA's open meeting requirements to apply, the entity must be a "public body," as defined by the statute.² A two-part analysis is employed.³ The first inquiry is whether the entity is a "regulatory, administrative, advisory, executive, appointive or legislative body of the State, or of any political subdivision of the State," which includes a ". . . committee, . . . group, panel, council, or any other entity or body established by an act of the General Assembly of the State, or established by any body established by the General Assembly of the State, or appointed by any body or public official of the State or otherwise empowered by any state governmental entity."⁴ If the first part is met, we then must determine whether the entity is supported in whole or in part by any public funds, expends or disburses any public funds, or "is impliedly or specifically charged by any other public official, body, or agency to advise or to make reports, investigations or recommendations."⁵

In this case, the Town acknowledges that it should have conducted its November 6, 2023 meeting in accordance with FOIA's open meeting requirements and does not dispute any of the provided facts demonstrating that the Committee was established by the Town Council and makes reports to the Town Council.⁶ Accordingly, we accept the Town's position and find a violation occurred.⁷ We recommend that the Town's Museum Review Committee prepare meeting minutes, to the extent practicable, for the November 6, 2023 meeting and make them available for public inspection and copying in accordance with 29 *Del. C.* § 10004.⁸ In addition, the items addressed

¹ 29 *Del. C.* § 10005(c).

² 29 *Del. C.* § 10002(k).

³ *Del. Op. Att'y Gen.* 18-IB28, 2018 WL 2994706, at *1 (Jun. 1, 2018).

⁴ 29 *Del. C.* § 10002(k).

⁵ *Id.*

⁶ Response.

⁷ 72 *Del. Laws* ch. 466 (2000).

⁸ 29 *Del. C.* § 10004(f) ("Each public body shall maintain minutes of all meetings, including executive sessions, conducted pursuant to this section, and shall make such minutes available for public inspection and copying as a public record. Such minutes shall include a record of those members present and a record, by individual members (except where the public body is a town assembly where all citizens are entitled to vote), of each vote taken and action agreed upon."); *see also Del. Op. Att'y Gen.* 21-IB16, 2021 WL 3160274, at *2 (July 6, 2021).

during this meeting should be discussed in a future Museum Review Committee meeting that is conducted in full compliance with FOIA's open meeting requirements.

CONCLUSION

Based on the foregoing, we conclude that the Town's Museum Review Committee violated FOIA's open meeting requirements and recommend that the Committee prepare meeting minutes for the November 6, 2023 meeting and make them available for public inspection and copying pursuant to Section 10004. In addition, the items addressed during the November 6, 2023 meeting should be discussed in a future Museum Review Committee meeting that is conducted in full compliance with FOIA's open meeting requirements.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: F. Michael Parkowski, Attorney for the Town of Leipsic