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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 24-IB22

June 18, 2024

VIA EMAIL

Craig J. McGowan
National Fraternal Order of Police
cmcgowan@pafop.com

RE: FOIA Petition Regarding the Town of Georgetown

Dear Mr. McGowan:

We write in response to your correspondence alleging that the Town of Georgetown violated Delaware's Freedom of Information Act, 29 *Del. C.* §§ 10001-10008 ("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 determine that the Town did not violate FOIA by releasing information in response to a FOIA request or declining to hold a hearing in executive session.

BACKGROUND

The Town of Georgetown received a FOIA request, in part seeking two police officers' discipline records and schedules for an eight-month period. The Town responded by providing records regarding discipline for one officer and schedules for both officers. The Petition alleges that the provision of this information violates FOIA. In addition, the Mayor and Council scheduled a public grievance hearing involving the officers. Your request for this hearing to be closed to the public was declined, and you contend that this denial is also a violation of FOIA.

DISCUSSION

“FOIA was enacted to ensure governmental accountability by providing Delaware’s citizens access to open meetings and meeting records of governmental or public bodies, as well as access to the public records of those entities.”¹ FOIA’s open meeting laws are intended to “inform the electorate and [to] acknowledge that public entities, as instruments of government, should not have the power to decide what is good for the public to know.”² The statute broadly defines a “public record,” but states nineteen categories of records “shall not be deemed public.”³ “Although the exemptions limit public access in certain circumstances, they do not purport to create an affirmative right of non-disclosure.”⁴ Releasing records, even if they are exempt from disclosure, does not constitute a violation of FOIA. As such, we find no violation of FOIA in this instance.

Meetings of public bodies are open to the public,⁵ but a public body “may call for an executive session closed to the public” for any of the nine purposes set forth in the statute.⁶ This statutory language for holding an executive session is permissive, rather than mandatory. Thus, FOIA does not require a public body to hold an executive session for those purposes, and we find no violation of FOIA with respect to the Mayor and Council’s refusal to hold an executive session in this matter.

Finally, we note that the findings in this Opinion do not preclude the application of other statutes or legal authority outside of FOIA to these circumstances. However, this Office may not consider any such non-FOIA claims in this petition process, as this Office’s authority is limited to addressing claims of FOIA violations.⁷

¹ *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996, 1004 (Del. 2021).

² *Del. Solid Waste Auth. v. The News Journal Co.*, 480 A.2d 628, 631 (Del. 1984).

³ 29 *Del. C.* § 10002(o).

⁴ *Reeder v. Del. Dep’t of Ins.*, 2006 WL 510067, at *11 (Del. Ch. Feb. 24, 2006).

⁵ 29 *Del. C.* § 10004.

⁶ 29 *Del. C.* § 10004(b) (A “public body *may* call for an executive session closed to the public pursuant to subsections (c) and (e) of this section, but only for the following purposes. . . .”) (emphasis added).

⁷ 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.”).

CONCLUSION

For the foregoing reasons, we conclude that the Town did not violate FOIA by providing records in response to this request or by declining to hold an executive session as requested.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: Stephani J. Ballard, Town Solicitor