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

**Attorney General Opinion No. 25-IB20**

**March 28, 2025**

**VIA EMAIL**

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**RE: FOIA Petition Regarding the Joint Legislative Oversight and Sunset Committee, Delaware General Assembly**

Dear Petitioners:

We write in response to your correspondence alleging that the Joint Legislative Oversight and Sunset Committee of the Delaware General Assembly 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 Committee has not violated FOIA as alleged.

**BACKGROUND**

The Joint Legislative Oversight and Sunset Committee held a meeting on February 13, 2025. The meeting agenda included the item "Staff Presentation on Focused Review: Lead

Poisoning Prevention Program (DHSS, DPH),” followed by a public comment period for this item. This Petition followed.

In the Petition, you allege that “[a]lthough the Lead Poisoning Prevention Program was discussed, the majority of the meeting time was spent reviewing other initiatives and programs that are not part of the Lead Poisoning Prevention Program and were not listed on the agenda.”<sup>1</sup> These topics included the “Delaware State Lead-Based Paint Program, the Childhood Lead Poisoning Prevention Advisory Committee, lead service-line replacements, and the lead-safety of drinking water in public schools.”<sup>2</sup> You state that not all these programs are administered by the same State agency. You allege that “[c]ertain agencies, therefore, were given an advantage by being present to respond to concerns and criticisms, while other agencies were at a disadvantage by not having their program review listed on the agenda.”<sup>3</sup> You also believe that these deficiencies in the agenda caused the public comment portion of the meeting to be overly limited to only the noticed item.

On March 12, 2025, the Director of the Division of Legislative Services replied to the Petition on the Committee’s behalf (“Response”). The Committee argues that because the Committee is part of the General Assembly, it is not bound by the agenda requirements in the FOIA statute, pointing to the express exemption in 29 *Del. C.* § 10004(e)(1) that excludes the General Assembly from FOIA’s meeting notice requirements. The Committee asserts that this exception is consistent with case precedent that has found the General Assembly has the sole authority to make rules to determine and govern its own proceedings. Even if this meeting notice exception was found not to apply to the Committee, the Committee believes that its agenda in this case provided sufficient notice by alerting members of the public with an intense interest in the matter that this subject would be addressed at the meeting. Finally, the Committee also emphasizes that it took no action at this meeting; rather, the Committee deferred all action on the Committee’s review for sixty days to allow for further written public comment and additional research into the questions presented at the meeting.

## DISCUSSION

The public body has the burden of proof to demonstrate compliance with FOIA.<sup>4</sup> In certain circumstances, a sworn affidavit may be required to meet that burden.<sup>5</sup> FOIA mandates that public bodies meet specific requirements when holding public meetings, including those contained in

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<sup>1</sup> Petition.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> 29 *Del. C.* § 10005(c).

<sup>5</sup> *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996 (Del. 2021).

Section 10004(e). This section requires a public body to give advance notice of a public meeting and to post this notice with an agenda, which is defined to include “the major issues expected to be discussed” and a “statement of intent to hold an executive session and the specific ground or grounds therefor.”<sup>6</sup> However, the General Assembly is specifically exempted from the meeting notice requirements in Section 10004(e), including the requirement to post a meeting agenda.<sup>7</sup> As the Committee is part of the General Assembly, we find that the Committee is also exempt from the requirement to post an agenda, and its February 13, 2025 agenda therefore did not violate FOIA.

### CONCLUSION

We conclude that the Committee’s February 13, 2025 meeting agenda did not violate FOIA, as the General Assembly is exempted from FOIA’s meeting notice requirements.

Very truly yours,

/s/ Dorey L. Cole

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Dorey L. Cole  
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

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Patricia A. Davis  
State Solicitor

cc: Mark J. Cutrona, Esq., Director, Division of Legislative Services

<sup>6</sup> 29 *Del. C.* §§ 10002(a), 10004.

<sup>7</sup> 29 *Del. C.* § 10004(e)(1) (“This subsection concerning notice of meetings does not apply to any emergency meeting which is necessary for the immediate preservation of the public peace, health, or safety, or to the General Assembly.”).