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## OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

### Attorney General Opinion No. 25-IB22

April 8, 2025

#### **VIA EMAIL**

Isabel Hughes  
Delaware Online/The News Journal  
[ihughes@delawareonline.com](mailto:ihughes@delawareonline.com)

#### **RE: FOIA Petition Regarding the Brandywine School District**

Dear Ms. Hughes:

We write in response to your correspondence, alleging that the Brandywine School District 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 of whether a violation of FOIA has occurred or is about to occur. As discussed more fully herein, we determine that the District did not violate FOIA in denying access to these records, as the requested records are not public records under Section 10002(o)(1).

#### **BACKGROUND**

On February 10, 2025, you submitted a FOIA request for "the report/recommendation from the hearing office[r] in the termination hearing of [a specified District employee], held in January 2025" and "all exhibits associated with the hearing."<sup>1</sup> The District replied that this employee requested a public hearing but has subsequently rescinded that consent and asked that further proceedings be confidential. The District stated it is unclear whether FOIA would shield the documents you seek from disclosure but "out of an abundance of caution, and in recognition of

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<sup>1</sup> Petition.

the confidentiality protections that normally apply to employee disciplinary/matters/hearings,” the request was denied.<sup>2</sup> This Petition followed.

In the Petition, you argue that the hearing officer’s report is a public record, as it is based on the public termination hearing, which you and other members of the public attended. You allege that the rescission of the consent for a public hearing does not convert the hearing officer’s report into a confidential record. Any exemptions must be narrowly construed, and you assert that due to the public nature of the hearing, the public has a vested interest in understanding the findings of the hearing officer. In addition, you believe that these report and hearing exhibits do not contain any sensitive or personal information that would warrant nondisclosure under the personnel file exemption.

The District, through its legal counsel, replied to the Petition (“Response”). The District states that the open meeting provisions allow a public body to hold an executive session for an employee dismissal, unless the employee requests a public hearing. Here, although the employee asked for the hearing to be open to the public, the employee rescinded this decision after the hearing and requested that the hearing officer’s report and the exhibits entered into evidence be kept confidential, if possible. The District points out that although FOIA strongly favors transparency and access to public records, the need for access to information must be balanced against legitimate privacy claims associated with personal information. The District states that the personnel records exemption in Section 10002(o)(1) protects these records and that this issue, “whether an employee can subsequently revoke their request for a public hearing and, if so, whether such a revocation can effectively shield records from disclosure under either Sections 10004(b)(8) and/or 10002(o)(1),” has not been previously decided, and out of an abundance of caution, the District has chosen to honor the employee’s request for privacy in this case.

## **DISCUSSION**

FOIA requires that citizens be provided reasonable access to and reasonable facilities for the copying of public records.<sup>3</sup> The public body has the burden of proof to justify its denial of access to records.<sup>4</sup> In certain circumstances, a sworn affidavit may be required to meet that burden.<sup>5</sup> In this case, the hearing officer’s report and exhibits concern an employee’s termination. While the hearing was held publicly, the records requested from the public body holding the hearing are still analyzed under the exemptions set forth in the FOIA statute. The personnel file exemption excludes any “personnel, medical or pupil file, the disclosure of which would constitute an invasion of personal privacy, under this legislation or under any State or federal law as it relates

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

<sup>3</sup> 29 Del. C. § 10003(a).

<sup>4</sup> 29 Del. C. § 10005(c).

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

to personal privacy.”<sup>6</sup> This exception has been described as “a file containing information that would, under ordinary circumstances, be used in deciding whether an individual should be promoted, demoted, given a raise, transferred, reassigned, dismissed, or subject to such other traditional personnel actions.”<sup>7</sup> Records pertaining to an employee’s termination hearing are included in this definition, and an employee’s termination hearing concerns an employee’s personal privacy.<sup>8</sup> Thus, we find that the District has not violated FOIA, as these requested records fall within the personnel file exemption.

### **CONCLUSION**

For the reasons set forth above, we conclude that the District did not violate FOIA in denying access to these records, as the requested records are not public records under Section 10002(o)(1).

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: Michael P. Stafford, Attorney for the Brandywine School District

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<sup>6</sup> 29 *Del. C.* § 10002(o)(1).

<sup>7</sup> *Vanella ex rel. Delaware Call v. Duran*, 2024 WL 5201305, at \*10 (Del. Super. Dec. 23, 2024) (citation omitted).

<sup>8</sup> See 29 *Del. C.* § 10004(b)(8) (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: . . . “[t]he hearing of employee disciplinary or dismissal cases unless the employee requests a public hearing”).