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

**Attorney General Opinion No. 25-IB26**

**April 16, 2025**

**VIA EMAIL**

Ronald Poliquin, Esq.  
The Poliquin Firm, LLC  
[ron@poliquinfirm.com](mailto:ron@poliquinfirm.com)

**RE: FOIA Petition Regarding the City of Milford**

Dear Mr. Poliquin:

We write in response to your correspondence on behalf of your client, Lance Tressler, alleging that the City of Milford 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 City violated FOIA by denying your client the opportunity to provide public comment during the hearing for two ordinances at the January 13, 2025 meeting.

**BACKGROUND**

On January 13, 2025, the City Council held a public meeting. The agenda included two ordinances about the retail sale for general public consumption of marijuana. Consistent with FOIA's requirements, the agenda also included a public comment period. Your client is an unpaid intern with the City. This Petition alleges that although the City Manager and your client's supervisor granted your client's request to speak in advance of this meeting, your client was denied the opportunity to provide public comment regarding these ordinances at this meeting, in violation of FOIA.

The City's counsel submitted the City's response with an accompanying affidavit, averring that to the best of his knowledge and information, that the statements in the Response are true and correct ("Response"). The City argues that its refusal to allow your client to speak was not a violation of FOIA. Instead, the City was following its procedures for conducting a public hearing on the ordinances at this meeting.

The City states that its hearing procedures follow a specified order in which the City staff and applicant speak first, and then the floor is opened for public comment. At the January 13, 2025 meeting, the City maintains that these procedures were followed, describing the events as follows. After the City staff spoke and others made public comment, the Mayor asked, for the last time, if anyone else present would like to make a public comment, before turning to any persons online who wished to speak, and it was at that time that your client, who was seated at the table for City staff and had not been identified as a potential speaker to the City's counsel, came forward to speak and was denied the opportunity. As your client was a member of the City staff working on these matters,<sup>1</sup> the City states that the "decision preventing [your client] from speaking was made solely on the basis [your client] was part of the City staff" and according to the procedures, the time for City staff's comments had passed.<sup>2</sup> The City also points out that permitting your client to speak would be viewed by the public as reopening the staff comment period, which would require reopening the floor for further public comments and potentially prejudice those who already left the meeting.

Additionally, the City states that there "is nothing of record to indicate what the content of [your client's] comments may be."<sup>3</sup> As such, the City asserts that this restriction on your client's speech was based on a content neutral procedural rule that is narrow in scope and ensures the orderly vetting of ordinances before adoption. Further, the City points out that these matters were discussed in previous public forums, including a public workshop in November 2024 and a Planning Commission meeting in December. The City states that your client spoke at neither public forum, but these public forums provided the opportunity for your client's public communication of his position.

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<sup>1</sup> As further proof of this assertion, the City provided a copy of the email from the then Marijuana Commissioner who was making the November workshop presentation, asking the City to confirm that your client was indeed part of the City's team assigned to this matter, before returning your client's call. The City confirmed that was the case.

<sup>2</sup> Response, p. 4. The City also points to the meeting audio recording, in which the City's counsel specifically denies the request, as your client is part of the City staff.

<sup>3</sup> *Id.*, p. 6.

## **DISCUSSION**

The public body has the burden of proof to demonstrate its compliance with the FOIA statute.<sup>4</sup> In certain circumstances, a sworn affidavit may be required to meet that burden.<sup>5</sup> FOIA provides that every meeting of a public body must provide a time for public comment, which “must provide a meaningful opportunity for the public to engage with the public body.”<sup>6</sup> Although the statute allows a public body to “impose reasonable time, place, and manner restrictions on the length of the public comment period and the amount of time allotted for each public comment,”<sup>7</sup> in these circumstances, FOIA does not permit denying an individual the opportunity to speak entirely during the public comment period based solely on their role as an intern. On this basis, we find a violation of FOIA occurred.

Having found that the City violated FOIA, we consider whether any remediation is appropriate to recommend. Section 10005(a) states that any “action taken at a meeting in violation of this chapter may be voidable by the Court of Chancery.” The authority to invalidate a public body’s action, or to impose other relief, is reserved for the courts, and to the extent you seek those remedies, they must be pursued through the courts.<sup>8</sup> Here, as remediation for the FOIA violation found, we recommend the City review its meeting and hearing procedures with its legal counsel to ensure future FOIA violations do not occur surrounding public comment.

## **CONCLUSION**

For the reasons set forth above, we conclude that the City violated FOIA by denying your client the opportunity to provide public comment during the hearing for two ordinances at the January 13, 2025 meeting.

Very truly yours,

/s/ Dorey L. Cole

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Dorey L. Cole  
Deputy Attorney General

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<sup>4</sup> 29 Del. C. § 10005(c).

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

<sup>6</sup> 29 Del. C. § 10004(a)(2).

<sup>7</sup> 29 Del. C. § 10004(a)(2)(b).

<sup>8</sup> 29 Del. C. § 10005.

Approved:

/s/ Patricia A. Davis

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Patricia A. Davis  
State Solicitor

cc: David N. Rutt, City Solicitor