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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 25-IB32

June 17, 2025

VIA EMAIL

Joseph M. Donahue, Jr.
norinedonahue@gmail.com

Keith Redmond
302bladesde@gmail.com

RE: FOIA Petition Regarding the Town of Blades

Dear Mr. Donahue and Mr. Redmond:

We write in response to your correspondence, alleging that the Town of Blades 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 determine that the Town violated FOIA by failing to demonstrate that the below-referenced Town meeting was held in compliance with FOIA.

BACKGROUND

This Petition alleges that the Town of Blades violated FOIA by holding a private meeting with a property developer. Specifically, the Petition asserts that the Mayor stated at the May 12, 2025 Council meeting that she planned to have a meeting with the developer the following week; Mr. Donahue asked at that time for two people to attend the meeting to silently observe. At a May 19, 2025 workshop meeting, Mr. Donahue was told he could not attend the meeting to be held two days later, as it was a private meeting between Town officials and the developer, which did not involve a quorum. The Petition states that Mr. Donahue still attempted to attend the meeting, but the Town's police chief denied Mr. Donahue and another Town resident entry to the building. The

Petition contends that this denial of access was a violation of FOIA and alleges that the meeting was improperly noticed in violation of the Town charter. Further, the Petition asserts that the Town's two-day notice that Mr. Donahue could not attend this meeting was unethical and a violation of Title 22 and 77 Delaware Laws, Section 299. This Office provided a copy of this Petition to the Town's attorney and requested a response, but did not receive a reply.

DISCUSSION

In any action brought under Section 10005, the public body has the burden of proof to demonstrate compliance with FOIA.¹ In certain circumstances, a sworn affidavit may be required to meet that burden.² As a preliminary matter, this Office's authority under the FOIA statute is limited to determining alleged violations of the FOIA statute.³ The non-FOIA claims, including the allegations regarding ethics, the Town's charter, and other alleged statutory violations, cannot be considered in this Opinion.

The Petition's primary claim is that the Town violated FOIA by holding a private meeting between Town officials and a property developer. As the Town did not respond to this Petition and provided no argument whatsoever, we must find that the Town violated FOIA, as it did not meet its burden of demonstrating that this meeting was held in compliance with FOIA's provisions. Accordingly, we recommend that the Town discuss the meeting's topics, to the extent permissible under 29 *Del. C.* § 10004, and ratify any votes taken, at a future public meeting held in compliance with FOIA.

CONCLUSION

We conclude that the Town violated FOIA by failing to demonstrate that the above-referenced meeting was held in compliance with FOIA.

¹ 29 *Del. C.* § 10005(c).

² *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996 (Del. 2021).

³ 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. "); *see e.g., Del. Op. Att'y Gen.* 20-IB28, 2020 WL 7663557, at *2 (Nov. 9, 2020) ("These matters of municipal law, concerning the authority of the Council President or Mayor, are outside the scope of the FOIA statute, and thus, we make no determination regarding these issues.").

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: Michael R. Smith, Attorney for the Town of Blades