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

### Attorney General Opinion No. 25-IB35

July 8, 2025

#### **VIA EMAIL**

Jennifer Pawloski  
32886 Reba Road  
Millville, DE 19967  
[jenpawloski@yahoo.com](mailto:jenpawloski@yahoo.com)

#### **RE: FOIA Petition Regarding Delaware Center for the Inland Bays**

Dear Ms. Pawloski:

We write in response to your correspondence, alleging that the Delaware Center for the Inland Bays ("DCIB") 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 DCIB violated FOIA by failing to: maintain an operable online portal, maintain a designated FOIA coordinator, include "public comment" on certain meeting agendas, provide a meaningful opportunity for the public to engage in the December 13, 2024 board meeting, timely post agendas, and timely respond to your December 13, 2024 FOIA request. However, DCIB did not violate FOIA when it sought extensions of time to respond to your December 6, 2024 FOIA request, or when it delayed posting of certain meeting minutes until such minutes were approved.

#### **BACKGROUND**

On December 6, 2024, you submitted a FOIA request to DCIB for "Board of Director Meeting Agendas, Minutes, and any communications regarding the meetings, along with access to meeting recordings from 2022, 2023, and 2024," as well as any agendas, meeting minutes, and

recordings of DCIB’s Scientific & Technical Advisory Committee (“STAC”) meetings held from 2021-present, and “any email communications between your employees or Directors regarding offshore wind development or the installation of the EMF cable through Indian River, Indian River Bay, Beach Cove, Pasture Point Cove with DNREC, US Wind, Orsted, or any of the members of the town Councils of Bethany Beach, South Bethany, Henlopen Acres.”<sup>1</sup> In your request, you also advised DCIB that various links on their website – several of which would have provided access to the requested documents – were broken.<sup>2</sup>

On December 11, 2024, DCIB’s Executive Director, Christophe A. G. Tulou, responded to you via email, thanking you for your FOIA request and inviting you to DCIB’s office to discuss the requested items and facilitate a quick and efficient response.<sup>3</sup> He advised that DCIB was aware of many of the broken website links and was already working to correct them, and he thanked you for bringing those issues to their attention.<sup>4</sup> Later that day, you replied to Mr. Tulou, advising that you were unable to meet in person, but identifying the items in your request that you were most interested in.<sup>5</sup>

On December 13, 2024, after a DCIB Board meeting that you attended virtually but were unable to meaningfully participate in, you submitted an additional FOIA request for DCIB Board budget summaries for 10/1/20 - 9/30/21, 10/1/21 - 9/30/22, 10/1/22 - 9/30/23, and 10/1/23 - 9/30/24.<sup>6</sup> You also requested copies of the Conflict of Interest Policy and the Development Report discussed at the Board meeting held the same day (12/13/24).<sup>7</sup>

On December 20, 2024, DCIB’s Communications Coordinator, Caitlin Chaney, sent an email regarding your December 6, 2024, FOIA request and indicated that additional time was needed due to voluminous records requested, holiday closures, and staffing changes. DCIB stated that it estimated responses by January 22, 2025.<sup>8</sup> On January 21, 2025, DCIB told you it required a further extension through March 18, 2025 to respond to your December 6, 2024, FOIA request.<sup>9</sup> You engaged in a subsequent email exchange with Ms. Chaney asserting your dissatisfaction with

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<sup>1</sup> Petition, Ex. M.

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

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

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Petition, Ex. O.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

the delay.<sup>10</sup> In response, DCIB advised that there was only one person available to process your requests, that the requests “involve[ed] a substantial amount of documents and multiple entities,” and that “compliance with FOIA laws requires a careful review of each document” including consultation with legal counsel and coordination with other entities.<sup>11</sup> DCIB further advised that the extensions were made in good faith to ensure proper compliance. You then received all records identified in your December 6, 2024, FOIA request on March 20, 2025.<sup>12</sup>

Your Petition, dated June 4, 2025, alleges at least thirteen FOIA violations. The asserted FOIA violations can be categorized as “open meetings” violations, “open records” violations, and untimely responses to your FOIA requests. Specifically, you allege DCIB failed to timely post open meeting agendas, include “public comment” on such meeting agendas, timely post meeting minutes, failed to maintain an online FOIA submission portal, identify a FOIA coordinator, and provided untimely responses to your FOIA requests on December 6, 2024 and December 13, 2024. Your Petition also requests this office compel DCIB to provide all requested documents at no cost to you, and impose on DCIB a “plan to ensure that [DCIB] adheres to FOIA law, [and] open meetings requirements...”<sup>13</sup>

DCIB, through its legal counsel, replied to the Petition (“Response”), including a sworn affidavit from Executive Director Christophe Tulou. In the Response, DCIB does not dispute the facts as you presented them. DCIB indicates that most of the requested documents have now been provided to you and most or all the purported FOIA violations have already or will be remedied by June 30, 2025. The Response denies that any files or records regarding offshore wind projects were intentionally withheld from you. DCIB states it does not intend to waive the cost estimate of compiling and reviewing the requested email communications because of the volume of emails requested and the amount of time required to prepare the response. Finally, the Response asserts DCIB’s commitment to correcting its past FOIA errors and ensuring future FOIA compliance.

## **DISCUSSION**

FOIA’s central purpose is 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.”<sup>14</sup> The goal “is to ensure that public business is done in the open, so that citizens can hold public officials accountable. The purpose of FOIA is *not* to provide a series of hyper-technical requirements that serve as snares for public officials, and

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<sup>10</sup> Petition, pp. 9-10.

<sup>11</sup> Petition, p. 9.

<sup>12</sup> Petition, p. 10; Response, p. 2.

<sup>13</sup> Petition, p. 19.

<sup>14</sup> *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996, 1004 (Del. 2021).

frustrate their ability to do the public's business, without adding meaningfully to citizens' rights to monitor that public business.”<sup>15</sup>

FOIA requires that the meetings of public bodies, with limited exceptions, be open to the public and that meeting notices and agendas be timely posted in advance of the meeting in accordance with the statute.<sup>16</sup> The notice and agenda must be conspicuously posted at the principal office of the public body holding the meeting, or if no such office exists, at the place where meetings of the public body are regularly held.<sup>17</sup> The public body must permit a time for public comment in accordance with 29 *Del. C.* § 10004(a), and the public comment period must appear as an item on the agenda.<sup>18</sup> “A public comment period is a major issue for discussion, and citizens must receive public notice of their opportunity for public comment so they can decide whether they wish to attend the meeting.”<sup>19</sup> Additionally, a public body is to designate a FOIA coordinator to serve as a point of contact for records requests made to the public body, implement a policy for addressing requests, and develop a web portal for receiving FOIA requests through the internet.<sup>20</sup>

In any action brought under Section 10005, the public body has the burden of proof to justify its denial of access to its records.<sup>21</sup> In certain circumstances, a sworn affidavit may be required to meet that burden.<sup>22</sup>

#### *1. Open Meetings – 29 Del. C. § 10004*

The Petition alleges several issues related to the public comment requirements, including: no “public comment” period listed on the agenda, no call for “public comment”, no acknowledgment of a comment you posted in the chat function of the virtual meeting platform at the December 13, 2024 Board of Directors meeting, and no public comment period listed on the February 7, 2025 and April 11, 2025 STAC meeting agendas. In its Response, DCIB admits that the December 13, 2024 Board of Directors meeting agenda did not include “public comment” as an agenda item but argues that the agenda did not violate FOIA because it did include “open forum” on the agenda. DCIB further admits that it did not call for public comments during the

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<sup>15</sup> *Lechlitter v. Becker*, 2017 WL 117596, at \*2 (Del. Ch. Jan. 12, 2017) (emphasis in original).

<sup>16</sup> 29 *Del. C.* § 10004.

<sup>17</sup> 29 *Del. C.* § 10004(e)(5).

<sup>18</sup> *Del. Op. Att’y Gen.* 25-IB12, 2025 WL 818781, at \*3 (Feb. 27, 2025); *Del. Op. Att’y Gen.* 24-IB26, 2024 WL 4009114, at \*3 (Jun. 26, 2024).

<sup>19</sup> *Del. Op. Att’y Gen.* 24-IB26, 2024 WL 4009114, at \*3 (Jun. 26, 2024).

<sup>20</sup> 29 *Del. C.* § 10003.

<sup>21</sup> 29 *Del. C.* § 10005(c).

<sup>22</sup> *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996 (Del. 2021).

“open forum” portion of the December 13, 2024 meeting, and it did not address your chat comment. DCIB asserts that it experienced technical difficulties with the chat function which has since been corrected. Moreover, DCIB admits that the February 7, 2025 and April 11, 2025 STAC meeting agendas were published without a “public comment” period, and it asserts that future agendas shall include a “public comment” period. As DCIB does not dispute that its Board of Directors and STAC are public bodies, they are required to include public comment on their agendas and to allow the public time for comment. Thus, we find that DCIB violated FOIA by failing to include public comment in their respective agendas and by failing to allow the public the opportunity to meaningfully participate.

The Petition also asserts that DCIB failed to post meeting agendas for the Quarter 1 and Quarter 2 Board of Directors meetings. DCIB’s Response indicated that, as of the date of the Petition, only one meeting took place in 2025 – on March 25, 2025 – and DCIB admitted that it did not timely post an agenda. As public bodies are required to post meeting agendas in advance of a meeting, we find that DCIB violated FOIA in this respect. DCIB’s Response indicates that the agenda for that meeting is now posted and available on its website. We remind DCIB that FOIA requires that a meeting notice be posted at least seven days in advance of a meeting. This notice is to include the agenda, if it has been determined, and “[the agenda] should, at least, ‘alert members of the public with an intense interest in’ the matter that the subject will be taken up by the [public body]. In other words, members of the public interested in an issue should be able to review a notice and determine that an issue important to them will be under consideration.”<sup>23</sup>

Finally, the Petition asserts that DCIB failed to timely post meeting minutes for the Quarter 1 and Quarter 2 Board of Directors meetings, the February 7, 2025 and April 11, 2025 STAC meetings, and the April 14, 2025 Development Committee meeting. DCIB stated that only one Board of Directors meeting took place in 2025, and that meeting minutes are not released until the body reviews and approves them at the next scheduled public meeting. Further, DCIB asserts that draft minutes may continue to be revised and corrected up until final minutes are approved by the public body at an open meeting, pursuant to 29 Del. C. § 10004. This Office finds no FOIA violation with respect to the purported untimely posting of the foregoing meeting minutes. However, we remind DCIB to be mindful of the specific requirements in 29 Del. C. § 10004(f), which obligates a public body that meets 4 or fewer times per year to post “draft minutes” within 20 working days after the conclusion of the meeting, and further requires posting the final approved minutes within 5 working days of final approval.

## 2. Open Records – 29 Del. C. § 10003

Your Petition also asserts various issues arising from the “open records” requirements, including: no FOIA submission portal; no designated FOIA coordinator listed on DCIB’s website; and untimely responses to FOIA requests submitted on December 6, 2024 and December 13, 2024.

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<sup>23</sup> *Lechlitter v. Del. Dep’t of Natural Res. & Env’t Control*, 2017 WL 2687690, at \*2 (Del. Ch. Jun. 22, 2017) (quoting *Ianni v. Dep’t of Elections of New Castle Cnty.*, 1986 WL 9610, at \*4 (Del. Ch. Aug. 29, 1986)).

DCIB admitted in its Response that it does not presently have a web portal for submission of FOIA requests as required. We understand DCIB intends to implement a web portal for FOIA requests within thirty days of its Response. We caution DCIB to maintain a web portal for FOIA requests.<sup>24</sup>

Similarly, DCIB admitted in its Response that its designated FOIA coordinator resigned, and it did not yet have a designated FOIA coordinator on staff or designated on its website. Public bodies are required to designate FOIA coordinators and have that designation on their websites. We understand that DCIB currently has a FOIA Coordinator who is identified on its website. We caution DCIB to keep current FOIA Coordinator designation on its website.<sup>25</sup>

Your Petition identifies two specific FOIA requests for which you assert violations based on untimely responses. With respect to your December 13, 2024 request, DCIB's Response admitted that it did not timely respond; it provided certain of the requested documents with its Response and advised that the remainder of the request would be produced by Monday, June 23, 2025. We find that DCIB violated FOIA in this respect.

Regarding your FOIA request submitted on December 6, 2024, we find that DCIB did not violate FOIA when it sought extensions of time to respond to your request. Section 10003(h)(1) permits a public body to inform a requestor that a response will take more than the statutory requisite fifteen days because the request is for voluminous records, requires legal advice, or a record is in storage or archived.<sup>26</sup> The public body must also inform you of the reason it needs the extension, and a good faith estimate of how much additional time is needed.<sup>27</sup> For both extensions, Ms. Chaney contacted you before the time period to respond had expired, gave you statutorily appropriate reasons why the extension was necessary, and provided a good faith estimate of when she anticipated the requested items would be produced. While you may have desired a more prompt response, we find DCIB did not violate FOIA by notifying you that it required a second extension of time to complete its review of your request and provide a response.<sup>28</sup>

### 3. *"Requests for Assistance"*

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<sup>24</sup> 29 Del. C. § 10003 (c).

<sup>25</sup> 29 Del. C. § 10003 (g)(1).

<sup>26</sup> 29 Del. C. § 10003(h)(1); *see Del. Op. Att'y Gen.* 20-IB09, 2020 WL 1234452, at \*3 (Feb. 27, 2020).

<sup>27</sup> *Id.*

<sup>28</sup> The Petition outlines the email exchanges with Ms. Chaney in more detail, and reflects that Ms. Chaney framed her email communication on January 21, 2025, as a "request for extension," which the Petitioner "denied" because requesting the second extension "doesn't give the appearance of demonstrating that this request is taking priority." Petition, pp. 8-10. To be clear, the statute does not require that the requestor grant permission to the public body for an extension.

The Petition contains a brief section at the end under the heading “Requests for Assistance” which DCIB also addressed in its Response. In that section, you make three asks: first, that any items responsive to your outstanding FOIA requests be provided at no cost to you; second, that this Office conduct an investigation into the offshore wind development project that prompted your FOIA requests; and third, that this Office impose “a plan to ensure that the Center for the Inland Bays adheres to FOIA law, open meetings requirements, and to demonstrate that they are committed to transparency.”

As to your first request, fees are mandated by Delaware law and this Office does not have authority to require that a public body deviate from allowable fees.<sup>29</sup>

Your second request – asking this Office to investigate the offshore wind development project that prompted your prior FOIA requests – exceeds the scope of what this Office may consider under a petition initiated pursuant to 29 *Del. C.* § 10005.

Third, you ask this office to impose a plan to ensure that DCIB adheres to FOIA law. This Office can consider whether any remediation is appropriate to recommend when violations of FOIA are found. Here, we find that no additional remediation is necessary. DCIB’s sworn Response indicates that it intends to provide you with access to all requested public records by the date of this letter and DCIB has corrected many of the FOIA violations and has concrete plans in place to prevent future FOIA violations.

### **CONCLUSION**

For the reasons set forth above, we conclude that DCIB violated FOIA as detailed above. DCIB did not violate FOIA when it sought extensions of time to respond to your December 6, 2024 FOIA request, or when it delayed posting of certain meeting minutes until such minutes were approved.

Very truly yours,

/s/ Erica K. Sefton

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Erica K. Sefton  
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

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Patricia A. Davis  
State Solicitor

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<sup>29</sup> 29 *Del. C.* § 10003(m).

cc: Robert V. Witsil, Jr., Attorney for Delaware Center for the Inland Bays