



KATHLEEN JENNINGS  
ATTORNEY GENERAL

DEPARTMENT OF JUSTICE  
820 NORTH FRENCH STREET  
WILMINGTON, DELAWARE 19801

CIVIL DIVISION (302) 577-8400  
CRIMINAL DIVISION (302) 577-8500  
DIVISION CIVIL RIGHTS & PUBLIC TRUST (302) 577-5400  
FAMILY DIVISION (302) 577-8400  
FRAUD DIVISION (302) 577-8600  
FAX (302) 577-2610

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

### Attorney General Opinion No. 25-IB44

September 3, 2025

#### **VIA EMAIL**

Phillip Hudson  
[hud477@yahoo.com](mailto:hud477@yahoo.com)

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

Dear Mr. Hudson:

We write regarding your correspondence alleging that the Christina School District violated the Delaware 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 find that the District did not sufficiently support that the two below-referenced items in the request were exempt and not required to be made available through its FOIA request process. The remaining claims are not appropriate for consideration.

#### **BACKGROUND**

As a former employee of the Christina School District, you submitted a FOIA request to the District on June 13, 2025, seeking records related to your separation from employment, including a copy of the separation agreement; any board meeting minutes, internal memorandum, or correspondence discussing or approving the separation terms; any internal communications or records explaining why the District entered the agreement; and any entries or documentation in your personnel file related to this separation. On July 10, 2025, the District extended its time for a response by fourteen business days. The District thereafter responded to the request, stating that it located responsive records but due to the confidential nature of these documents, you would need to visit the District office in person to review them. The District requested you bring two forms of identification. You replied that due to schedule issues, you are unable to visit in person and as done with past requests, you would like the records mailed. The District declined, stating that they are unable to provide the documents unless you verify your identity in person, which is standard District practice. This Petition followed.

In the Petition, you claim that the District violated FOIA by: (1) requiring in-person verification of your identity with two forms of identification; (2) refusing to transmit records by email or mail, even with your agreement to accept redactions and pay reasonable costs; and (3) missing the extended response deadline of August 5, 2025.

The District, through its legal counsel, replied to your Petition (“Response”), enclosing the affidavit of the Chief Financial Officer attesting that the records have been retrieved and are available for inspection at the District’s office, upon the verification of your identity. The District’s counsel asserts that the requested records fall squarely within the definition of the personnel file exemption and disclosing your file would constitute an invasion of privacy. The District argues that its rationale for requiring identification is related to “this exact concern.”<sup>1</sup> The District maintains that the requested records are exempt and are not required to be made available under FOIA, and any right to inspect your personnel file does not arise out of the FOIA statute. Although the District believes your claims are moot for those reasons, the District states that the FOIA statute merely requires reasonable access to and reasonable facilities for the copying of responsive records and does not mandate that a public body transmit records by email or mail. Additionally, the District argues that its response was timely, because after an appropriate extension for legal advice and archived records, you were notified on July 28, 2025 that the records were available at the District office for inspection.

## **DISCUSSION**

Delaware’s FOIA law “was enacted 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>2</sup> The public body has the burden of proof to justify its denial of access to records.<sup>3</sup> In certain circumstances, a sworn affidavit may be required to meet that burden.<sup>4</sup>

This request was processed by the District as a FOIA request, but the restrictions placed on the availability of the records – namely, requiring two forms of identification and an in-person visit to the District office – pertain to the District’s granting a former employee access to their personnel file, a process that, as the District acknowledges, is outside of the FOIA request process. This Office’s statutory role is limited to determining violations of the FOIA statute.<sup>5</sup> As the District’s process for granting an employee access to their personnel file does not fall under the

---

<sup>1</sup> Response, p. 2.

<sup>2</sup> *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996, 1004 (Del. 2021).

<sup>3</sup> 29 Del. C. § 10005(c).

<sup>4</sup> *Judicial Watch*, 267 A.3d at 1008-1012.

<sup>5</sup> 29 Del. C. § 10005(e).

FOIA statute, we decline to consider the first two claims in the Petition, as they relate to personnel file records being released outside of the FOIA process. The Petition's third claim regarding the timeliness of the District's response is moot, as the District has provided you with a response to the request.<sup>6</sup>

The only issue appropriate for this Office's review is whether the requested records are public records under FOIA. The personnel file exemption includes 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 to personal privacy."<sup>7</sup> The personnel file 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>8</sup> The determination of whether a record qualifies as part of a personnel file is based on the content, rather than mere location, of the records.<sup>9</sup>

The District asserts that all the requested records are covered by the personnel file exemption and thus, are not required to be provided under FOIA. We agree, with the exception of any applicable Board meeting minutes and the separation agreement. If the District located any responsive Board meeting minutes, not subject to the limitations on the disclosure of executive session minutes, they are recommended to be made available to you.<sup>10</sup>

In addition, employment contracts with a public body are not categorically considered private, especially if the expenditure of public funds is involved, unless the District can point to something specific in the contract which would invade the employee's personal privacy.<sup>11</sup>

---

<sup>6</sup> See, e.g., *Flowers v. Office of the Governor*, 167 A.3d 530, 546 (Del. Super. 2017); *Chem. Indus. Council of Del., Inc. v. State Coastal Zone Indus. Control Bd.*, 1994 WL 274295, at \*13 (Del. Ch. May 19, 1994); *Del. Op. Att'y Gen.* 18-IB30, 2018 WL 3118433, at \*2 (Jun. 7, 2018); *Del. Op. Att'y Gen.* 17-IB35, 2017 WL 3426275, n. 3 (July 31, 2017) (citing *The Library, Inc. v. AFG Enter., Inc.*, 1998 WL 474159, at \*2 (Del. Ch. July 27, 1998)).

<sup>7</sup> 29 Del. C. § 10002(o)(1).

<sup>8</sup> *Vanella v. Duran*, 2024 WL 5201305, at \*10 (Del. Super. Dec. 23, 2024) (citation omitted).

<sup>9</sup> *Id.* at \*11 ("The determination of whether a record is properly considered part of a personnel file is resolved by its content rather than mere location, however. To that end, a public body may not restrict access to records otherwise disclosable under FOIA merely by placing them in a personnel file.").

<sup>10</sup> 29 Del. C. § 10004(f).

<sup>11</sup> *Del. Op. Att'y Gen.* 05-IB13, 2005 WL 1209243, at \* 4 (May 9, 2005) ("We agree with the courts in other states that, as a general rule, 'the employment contracts evidencing the regular salaries paid to [public employees], and their obligations and rights, are exactly the types of records to which the Legislature intended the public to have access.' . . . Public employment contracts

Similarly, we believe that a separation agreement between the District and an employee may not be private in its entirety, especially if it memorializes the expending of public funds. In this case, the District failed to make a showing that the separation agreement, in its entirety, invades your personal privacy. The remainder of the request seeking documentation of the District's rationale for your separation of employment, including personnel file notations, by its nature involves traditional personnel actions, as defined under FOIA, which implicates your personal privacy.

For the responsive Board meeting minutes, if any, and the separation agreement, it is recommended that the District review and determine whether these records, or any parts thereof, are appropriately made available to you under FOIA, and if so, to supplement its response to your request, within the timeframes of Section 10003, by providing access to these records through its FOIA request process.

### **CONCLUSION**

For the foregoing reasons, we determine that the District did not sufficiently support that two items in the request were exempt and not required to be made available through its FOIA request process. A response specific to those two items is recommended. The remaining claims are not appropriate for consideration.

Very truly yours,

/s/ Dorey L. Cole

---

Dorey L. Cole  
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

---

Patricia A. Davis  
State Solicitor

cc: Alpa V. Bhatia, Attorney for the Christina School District

---

'state the rights and obligations of the [public employee] in order to earn contractual remuneration, but they are not in the nature of a performance evaluation.' We do not believe that FOIA's personnel file exemption covers a contract between a public employee and a public body, unless the public body can point to something specific in the contract which would invade the employee's personal privacy.'") (internal citations omitted).