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

### Attorney General Opinion No. 25-IB49

October 6, 2025

#### **VIA EMAIL**

Amy Roe  
[amywroe@gmail.com](mailto:amywroe@gmail.com)

#### **RE: FOIA Petition Regarding the Delaware Office of State Planning Coordination**

Dear Ms. Roe:

We write in response to your correspondence alleging that the Delaware Office of State Planning Coordination (“OSPC”) violated Delaware’s 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 of whether a violation of FOIA has occurred or is about to occur. For the reasons set forth below, we determine that the OSPC did not violate FOIA by denying your submission of written comments in connection with the September 3, 2025 PLUS meeting.

#### **BACKGROUND**

The OSPC scheduled a Preliminary Land Use Service (“PLUS”) meeting for September 3, 2025, conducted both in person and virtually. Prior to the meeting, you submitted written comments regarding the agenda item for “NCC Data Centers,” but the OSPC replied that written comments are not collected or posted in the PLUS process and advised you will have the opportunity to speak during the public comment period of the meeting. This Petition followed, in which you inquire whether this refusal to accept your written comments constitutes a violation of FOIA.<sup>1</sup> You question the applicability of the virtual meeting requirement in Section 10006A(c)(6)

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<sup>1</sup> The additional questions posed in the Petition are not considered herein, as this Office’s statutory authority is limited to determining whether a FOIA violation occurred in these circumstances.

allowing the public to attend and provide public comment through an electronic means of communication.

On September 18, 2025, the OSPC, through its legal counsel, replied to the Petition and enclosed the affidavit of the PLUS Coordinator and Planner (“Response”). The OSPC argues that this Petition is moot, because you participated in the September 3, 2025 meeting and verbally gave public comment during the public comment period. In addition, the OSPC contends that FOIA does not require public bodies to accept written public comment during the public comment periods for meetings. The OSPC asserts that it satisfied Section 10006A(c)(6), because the PLUS Coordinator and Planner, who monitored this meeting, attests that the meeting was held in a hybrid format – in person and virtually on the Microsoft Teams platform – and the OSPC accepted verbal public comments through that same means, the videoconferencing and phone line available on Microsoft Teams.

## **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 carries the burden of proving compliance with the FOIA statute.<sup>3</sup> In certain circumstances, a sworn affidavit may be required to meet that burden.<sup>4</sup>

FOIA mandates that the meetings of public bodies, with limited exceptions, be open to the public<sup>5</sup> and when certain requirements are satisfied, permits public bodies to hold a meeting virtually.<sup>6</sup> A virtual meeting is a meeting of a public body that one or more members attend through the use of an electronic means of communication. Among other requirements, Section 10006A mandates that the public be permitted “through an electronic means of communication,” to “monitor the meeting” and “provide public comment, if the public body is required to accept, or provides an opportunity for, public comment.”<sup>7</sup> Section 10004(a) requires that every open meeting, including virtual meetings, include “time for public comment” during the meeting and allows reasonable restrictions to be placed on the length of the public comment period and the “amount of time allotted for each public comment.”

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<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, Inc.*, 267 A.3d at 1008-1012.

<sup>5</sup> 29 Del. C. § 10004.

<sup>6</sup> 29 Del. C. § 10006A.


<sup>7</sup> 29 Del. C. § 10006A(c)(6).

We do not believe that these provisions support the inference that written comments must be accepted at every public meeting. Section 10004(a) makes no mention of written comments; rather, it suggests comments are intended to be verbal, noting public bodies may limit the allotted time for each comment. Section 10006A(c)(6) requires a public body, through *an* electronic means of communication, to give the public the opportunity to attend and submit public comments in a virtual meeting, which the OSPC did here. Thus, we do not find a FOIA violation for the OSPC's denial of your written comments in this instance, as we do not believe that public bodies, in order to comply with Section 10004(a)'s requirement for a public comment period, are required by FOIA to accept written comments in connection with the public comment period.

### **CONCLUSION**

For the foregoing reasons, we conclude that the OSPC did not violate FOIA by denying your submission of written comments in connection with the September 3, 2025 PLUS meeting.

Very truly yours,

  
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Daniel Logan  
Chief Deputy Attorney General

cc: Veda D. Wooley, Deputy Attorney General  
Dorey L. Cole, Deputy Attorney General