



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-IB51

October 16, 2025

VIA EMAIL

Elise Altergott
elise.altergott@web-mtg.com

RE: FOIA Petition Regarding the Town of Millsboro

Dear Ms. Altergott:

We write in response to your correspondence alleging that the Town of Millsboro 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 Town did not violate FOIA as alleged in responding to this request and did not commit the asserted meeting-related violations.

BACKGROUND

The Town of Millsboro is considering a proposal to amend a Town Charter provision related to the keeping of domestic fowl. On September 5, 2025, you submitted a FOIA request to the Town seeking eight items: (1) all documents relating to every complaint regarding chickens within Town limits; (2) all paperwork regarding court cases the Town has filed related to chickens; (3) all court cases filed, won, and lost regarding chickens in Town; (4) all paperwork and minutes regarding the court cases mentioned at the January 25, 2025 Charter and Code Committee meeting (5) the meeting agenda, minutes, and ratified minutes of the Charter and Code Committee meeting where they discussed "outlawing" chickens; (6) the website link to all the postings regarding Charter and Code Committee's September 2, 2025 meeting including the agenda, minutes, and ratified minutes; (7) the website link for all past and future public notices of the Charter and Code Committee's "September 2, 2025" meetings; and (8) the website link for all past and future public

notices regarding all committees.¹ For the first three items, the Town replied that investigatory files are not public records under Section 10002(o)(3) of FOIA. For the fourth item requesting “paperwork” regarding the minutes that discussed court cases, the Town provided a responsive document and provided a link to the Town website where the minutes can be found. For the fifth item seeking agendas and minutes for Committee meetings discussing outlawing chickens, the Town gave a website link. For the sixth item regarding a September 2, 2025 meeting, the Town replied that a meeting was not held on that date. For the seventh and eighth items, the Town stated that all public meetings are posted on the Town hall door and the Town’s event calendar, giving a link to this webpage. This Petition followed.

In the Petition, you assert that you would like to know the details of the complaints regarding your or others’ keeping of chickens, but the Town denied the request under the investigatory files exemption. You argue that the FOIA request was not properly answered, as the Town merely advised you where to search for answers. You further allege that the meeting minutes are not clear because no or minimal information is provided; only after research were you able to discern that you were referenced in the meeting discussions. You do not consider the agendas to be public as you must go to the Town hall to view them and object to the fact that the agendas have not been published on the Town’s website.

The Town, through its legal counsel, replied to this Petition and enclosed the affidavits of the FOIA coordinator and Town Manager (“Response”). The Town asserts it properly withheld the complaints pursuant to the investigatory files exemption in 29 *Del. C.* § 10002(o)(3). The Town contends that the code enforcement office is the type of investigative agency covered by the exemption, and whether a chicken complaint was filed with the police department or the building and code official, the Town appropriately denied access under this exemption. The Town also argues that the reference to the links where the records could be found was appropriate, because some of your requests specifically asked for a link, and providing website links has been previously found to be a sufficient response under FOIA. The Town also notes, upon receiving this Petition, the Town Manager did an additional search for court records out of an abundance of caution and found one more responsive document believed to be inadvertently misfiled, which was enclosed with the Town Manager’s affidavit. The Town further alleges that its minutes complied with FOIA, as the topics of the meeting are not required to be summarized, nor does FOIA define how specific any summaries must be. The Town states that the agendas are posted on the door of Town hall but not online; FOIA does not require the online posting of agendas for municipal bodies.

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.”² The public body has the burden

¹ Petition.

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

of proof to justify its denial of access to records and to demonstrate compliance with the FOIA statute.³ In certain circumstances, a sworn affidavit may be required to meet that burden.⁴ This Petition presents both issues related to public records and open meetings for review.

Claims Related to Public Records

The Petition alleges that the chicken complaints were improperly withheld. FOIA requires that citizens be provided reasonable access to and reasonable facilities for the copying of public records.⁵ However, “[i]nvestigatory files compiled for civil or criminal law-enforcement purposes” are excluded from the definition of “public record.”⁶ In this case, the affidavit of the FOIA coordinator attached to the Response states that complaints about chickens were received by the Town Police Department and the Building and Code Official. As these complaints pertain to investigations for civil code enforcement and criminal law enforcement purposes, the complaints themselves are considered part of the investigatory file and are exempt under 29 *Del. C.* § 10002(o)(3).⁷

The Petition also alleges that the Town merely provided website links in its response to some items, which required you to locate the records. Several requests expressly sought website links, so the Town did not violate FOIA in providing a requested link. For the fourth and fifth items in the request, the Town provided a link where the meeting records were kept. You have not indicated that you lack access to the internet to view these records, nor that the records were not present on the website. Thus, the responses directing you to the Town’s website for access to

³ 29 *Del. C.* § 10005(c).

⁴ *Judicial Watch, Inc.*, 267 A.3d at 1008-1012.

⁵ 29 *Del. C.* § 10003(a).

⁶ 29 *Del. C.* § 10002(o)(3).

⁷ *News-Journal Co. v. Billingsley*, 1980 WL 3043, at *3 (Del. Ch. Nov. 20, 1980) (determining that the investigatory files exemption attaches as soon as a public body is made aware of a potential issue and the exemption survives after the investigation is completed); *Del. Op. Att’y Gen.* 17-IB05, 2017 WL 1317847, at *3 (Mar. 10, 2017) (“... Delaware courts have made clear that, for purposes of FOIA, the investigatory exemption attaches as soon as an agency is first made aware of a potential issue.”); *Del. Op. Att’y Gen.* 09-IB06, 2009 WL 1805911, at *1 (June 9, 2009) (“A public body that enforces the law has the right pursuant to [29 *Del. C.* § 10002(o)(3)] to withhold from the public letters of complaint about violations of the law. This protection is necessary to avoid ‘a chilling effect on those who might bring pertinent information to the attention of’ law enforcement’ [and] this chilling effect would occur whether the public body chose to investigate the complaint or ignore it.”) (citations omitted); *Del. Op. Att’y Gen.* 98-IB13, 1998 WL 910199, at *1-2 (Dec. 8, 1998) (determining that a town code enforcement officer’s notices of housing code violations constituted records of an investigatory file that were exempt from FOIA).

public records is compliant with FOIA's mandate that public records be made available to citizens.⁸

Claims Related to Open Meetings

The Petition argues that the meeting minutes were unclear, as you could not discern that you were the subject of some discussions without additional research. Public bodies are not required to create specific summaries for every discussion that occurs in their minutes. FOIA merely requires "a record of those members present and a record, by individual members (except where the public body is a town assembly where all citizens are entitled to vote), of each vote taken and action agreed upon."⁹ Accordingly, as such level of specificity is not required, we find no violation occurred with respect to your claim that the minutes on their face do not allow you to identify the meeting discussions pertaining to you.

You also contend that the posting of the meeting agendas at the Town hall, and not online, does not constitute "public" notice. FOIA does not require municipal public bodies to post their agendas online. Rather, municipal public bodies must post "said notice at the principal office of the public body holding the meeting."¹⁰ Thus, we do not find a violation for the Town's failure to post its agendas online.

CONCLUSION

For the reasons set forth above, we conclude that the Town did not violate FOIA as alleged in responding to this request and did not commit the asserted meeting-related violations.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

⁸ *Del. Op. Att'y Gen.* 16-IB22, 2016 WL 6684919, at *2 (Oct. 24, 2016) (finding a reference to a website is an appropriate FOIA response when there is no indication the requesting party does not have internet access).

⁹ 29 *Del. C.* § 10004(f).

¹⁰ 29 *Del. C.* § 10004(e)(5).

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: Mary R. Schrider-Fox, Town Solicitor