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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 25-IB53

October 20, 2025

VIA EMAIL

Warren Rosenkranz
wrosenk@yahoo.com

RE: FOIA Petition Regarding the Village of Arden

Dear Mr. Rosenkranz:

We write in response to your correspondence alleging that the Village of Arden 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 Village violated FOIA by failing to post a sufficient notice for the meeting initially scheduled for September 22, 2025, but rescheduled for September 29, 2025.

BACKGROUND

The Village of Arden is a small municipality with a governing body, known as the Town Assembly, that consists of all residents of the Village.[1] The Petition alleges that the Village's Town Assembly met on September 22, 2025, but that the meeting notice posted on the bulletin board did not give notice of the time and place for the meeting. The Petition also argues that the meeting was not properly noticed on the mailed postcard. The Petition attached a photograph of the posted notice; the agenda for the September 22, 2025 meeting included a "call to order," a motion about polling, and an indication the meeting was to adjourn and reconvene on September 29, 2025. The September 29, 2025 meeting included an agenda of items as well.

[1] Arden, Del., C. (Charter) § 4.

On October 3, 2025, the Village, through its legal counsel, replied to the Petition ("Response"). The Petition includes the affidavit of the Town Chair of the Village Assembly, who attests to the factual accuracy of the Response to the best of the Chair's knowledge. The Village states that the notice included agendas for both the September 22, 2025 and September 29, 2025 meetings, with the "September 22 Agenda reflecting the need for that meeting to be rescheduled for September 29."[2] The Village states that the September 22, 2025 meeting was rescheduled due to the holiday, and the notice was timely posted on the bulletin board on September 11, 2025.

DISCUSSION

The public body has the burden of proof to demonstrate compliance with FOIA.[3] In certain circumstances, a sworn affidavit may be required to meet that burden.[4] FOIA requires a meeting notice for a regular public meeting to be posted at least seven days in advance of a meeting.[5] This notice is to include the agenda, if it has been determined, and the date, time, and place of the meeting, including whether the meeting would be conducted under the virtual meeting provisions in Section 10006A.[6]

As the mailed notice of the meeting is not required by FOIA, the sufficiency of that mailing is not appropriate for this Office's consideration. This Office is limited to reviewing alleged FOIA violations and issuing determinations.[7] Your claim in the Petition regarding the sufficiency of the mailed notice exceeds the scope of what this Office may consider under a petition initiated pursuant to 29 *Del. C.* § 10005.

The Petition contends that the posted meeting notice does not give adequate notice of the time and place of the September 22, 2025 meeting. We agree. Although the Town's September 22, 2025 meeting was cancelled and rescheduled for September 29, 2025, this posted notice does not clearly reflect the intended meeting and agenda, along with a date, time, and location for that meeting. Rather, the notice seemingly indicates a meeting for September 22, 2025, without identifying the time or location, to address a motion with the intent to reconvene on September 29, 2025. We find that this posted notice constitutes a violation of FOIA.

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2 Response.

3 29 *Del. C.* § 10005(c).

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

5 29 *Del. C.* § 10004(e)(2).

6 *Id.*

7 29 *Del. C.* § 10005(e).

CONCLUSION

For the reasons set forth above, we conclude that the Village violated FOIA by failing to post a sufficient notice for the meeting initially scheduled for September 22, 2025, but rescheduled for September 29, 2025.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: Edward B. Rosenthal, Attorney for the Village of Arden