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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 25-IB56

November 10, 2025

VIA EMAIL

Kane Dennison-Gomez
dennisongomezk@hotmail.com

RE: FOIA Petition Regarding the Christina School District

Dear Kane Dennison-Gomez:

We write regarding your correspondence alleging that the Christina School District Board of Education 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 that the Board did not violate FOIA’s open meeting requirements by meeting privately or through a constructive quorum on the occasions alleged in the Petition.

BACKGROUND

This Petition alleges that the Board violated FOIA by conducting multiple, closed strategy sessions where public business was discussed without following FOIA’s open meeting requirements. The first claim is that a violation occurred on July 31, 2025, because a District staff member summarized that meeting in an August 5, 2025 email, stating the session included “what appeared to be the majority of CSD legislators.”¹ You state that four of the seven members of the Board constitute a quorum, and you believe that this statement signified a quorum of members must have attended. The referenced email names three Board members that attended this meeting.²

The Petition’s second claim is that a pattern of nonpublic, serial meetings occurred from July 27, 2025 to August 1, 2025. These meetings were summarized in the same August 5, 2025

¹ Petition.

² Response, Ex. 1.

District email.³ The Petition states that on July 27, 2025, Board Members Moriak and Manley met with the District’s Chief Financial Officer, attorney, and superintendent. Additionally, the Petition alleges that on July 29, 2025, Board President Moriak hosted a meeting focused on the property reassessment; the cited email lists two Board members in attendance.⁴ The Petition argues that the coordinated strategy with the District staff bypassed public policy channels.

The Board, through its legal counsel, replied to your Petition (“Response”). The Board argues that the Petition fails to carry the burden of establishing a *prima facie* case that a private meeting of a quorum of members occurred to decide or deliberate towards a decision on a matter of public business. The Board affirms that four of the seven members constitutes a quorum for purposes of a Board meeting. For the first claim, as the Petition alleges that three Board members were present, the Board states that the allegations fail to show that a quorum at the July 31, 2025 meeting and notes that the presence of a majority of legislators is a separate matter and is not relevant to calculating a quorum of the Board. The Board notes that the Petition does not list the attendees at the July 29, 2025 meeting. For the second claim regarding a constructive quorum in the July 27 to August 1, 2025 meetings, the Board argues that this allegation also fails on its face, as the Petition cites to only three members as parties to these discussions. The Board asserts that “had the meetings between July 28-31 referenced by Petitioner occurred at the same time and place, it still would not have involved enough members of the public body that would have amounted to a quorum of the Board.”⁵

DISCUSSION

FOIA mandates that public bodies meet specific requirements when holding public meetings, including advance notice, posting notices and agendas, an opportunity for public comment, and maintaining meeting minutes.⁶ A meeting of a public body must be open to the public, except in limited circumstances.⁷ A meeting under FOIA is defined as “the formal or informal gathering of a quorum of the members of any public body for the purpose of discussing or taking action on public business.”⁸ When a petitioner makes a claim of a secret meeting between public body members, the petitioner carries the initial burden of making a *prima facie* case that a meeting occurred.⁹ “A plaintiff must show substantive proof of a secret meeting rather than mere

³ The full email chain was provided with the Response.

⁴ Response, Ex. 1.

⁵ Response, p. 3.

⁶ 29 Del. C. § 10004.

⁷ *Id.*

⁸ 29 Del. C. § 10002(j).

⁹ *Del. Op. Att’y Gen.* 17-IB20, 2017 WL 3426260, at *7 (July 12, 2017).

speculation in order to shift the burden of proof going forward.”¹⁰ The allegations must be sufficiently specific to allow consideration.¹¹ “Once a plaintiff has made a *prima facie* case that a quorum of a public body has met in private for the purpose of deciding on or deliberating toward a decision on any matter,” the burden then shifts to the public body to prove that no violation of the open meeting requirements occurred.¹² The Petition’s first claim is that the July 31, 2025 meeting was privately held in violation of FOIA’s open meeting requirements. However, the Petition alleges only three members met for the July 31, 2025 discussion. As four members are required for a quorum, we find that the *prima facie* case has not been met for this first claim and determine no violation occurred.

The Petition’s second claim is that the Board met through constructive quorum in meetings from July 27, 2025 to August 1, 2025, which were held privately in violation of FOIA’s open meeting requirements. “[S]erial telephone, email or other electronic communications among members of a public body may amount to a meeting of the public body.”¹³ “It is the nature, timing, and substance of the communications which together may turn serial discussions into a constructive quorum.”¹⁴ For example, “a public body may achieve a quorum for purposes of FOIA through serial discussions which allow members of a public body ‘to receive and comment on other members’ opinions and thoughts, and reach consensus on action to take.’”¹⁵ It is further required that the communications involve “‘an active exchange of information and opinions’ as

¹⁰ *Del. Op. Att’y Gen.* 05-IB10, 2005 WL 1209240, at *2 (Apr. 11, 2005) (citing *Gavin v. City of Cascade*, 500 N.W.2d 729, 732 (Iowa App. 1993)).

¹¹ *See Del. Op. Att’y Gen.* 16-IB18, 2016 WL 5888777, at *5 (Sept. 29, 2016) (finding that the petitioner did not sufficiently support its *prima facie* case: “without specific information regarding specific dates, the number of Council members present, and the number of Council members to whom you allege the Mayor passed notes during specific meetings, these allegations are too vague to warrant consideration”).

¹² *Del. Op. Att’y Gen.* 05-IB10, 2005 WL 1209240, at *2 (citing *Harris v. Nordquist*, 771 P.2d 637, 641 (Or. App. 1989)).

¹³ *Del. Op. Att’y Gen.* 17-IB09, 2017 WL 2345247, at *5 (Apr. 25, 2017) (citing *Del. Op. Att’y Gen.* 03-IB11, 2003 WL 21431171, at *4 (May 19, 2003); *see also See GO4PLAY, Inc. v. Kent Cnty. Bd. of Adjustment*, 2022 WL 2718849, n. 28 (Del. Super. July 12, 2022) (“There were no votes cast or exchanged during the email exchange. The members, for the most part, affirmed what they had already stated in the public hearing with the parties present, and the emails show no active exchange of ideas. . . . Therefore, the email exchange was not a means of circumventing FOIA.”) (citing *Del. Op. Att’y Gen.* 10-IB17, 2010 WL 5186152 at *3 (Dec. 15, 2010) and *Tryon v. Brandywine Sch. Dist. Bd. of Educ.*, 1990 WL 51719 (Del. Ch. Apr. 20, 1990)).

¹⁴ *Del. Op. Att’y Gen.* 06-ID20, 2006 WL 2724980, at *2 (Sept. 11, 2006) (citation omitted).

¹⁵ *Id.* (quoting *Del. Op. Att’y Gen.* 03-IB11, 2003 WL 21431171, at *4).

opposed to ‘the mere passive receipt of information.’”¹⁶ The members’ exchanges cannot supplant a public meeting.¹⁷

In this case, we reviewed the provided emails and determine that the communications presented do not show a quorum of members were involved in the discussions occurring between July 27 and August 1, 2025, including the meetings on July 27, 2025 and July 29, 2025. The Petition indicates that these meetings involved Board Members Moriak, Lou, and Manley. As three members do not make a quorum, we find that the *prima facie* case has not been met and find no violation for the second claim.

CONCLUSION

For the foregoing reasons, we determine that the Board did not violate FOIA’s open meeting requirements by meeting privately or through a constructive quorum on the occasions alleged in the Petition.

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

¹⁶ *Del. Op. Att’y Gen.* 06-IB16, 2006 WL 2435111, at *4 (Aug. 7, 2006) (quoting *Del. Op. Att’y Gen.* 03-IB11, 2003 WL 21431171, at *5).

¹⁷ *Del. Op. Att’y Gen.* 21-IB17, 2021 WL 3609560, at *2 (July 23, 2021) (“Thus, we find that this vote was not a poll to understand whether the Council was ready to discuss and vote on this issue at a subsequent meeting like the facts of the *Tryon* case; this vote by a series of emails and calls actually supplanted a meeting in which the Council could consider and vote on whether to designate this Juneteenth as a holiday.”).