



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-IB64

December 16, 2025

VIA EMAIL

Michael Platt
mplatt42@comcast.net

RE: FOIA Petition Regarding the City of New Castle

Dear Mr. Platt:

We write in response to your correspondence alleging that the City of New Castle 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 City did not violate FOIA in holding the November 9, 2025 meeting. The remaining claims are outside the scope of this Office's authority to decide through this petition process.

BACKGROUND

A private committee, completely separate and apart from City government, holds an annual "Spirit of Christmas" event, but this year, the committee announced the event was cancelled. One councilmember and the Mayor sought to revive this event and met on November 9, 2025. This Petition followed.

In the Petition, you argue that the City violated FOIA in several ways. You allege that the organizing councilmember used a private email account to selectively invite citizens to the November 9, 2025 meeting, which is an improper communication means to conduct public business. As a quorum of three councilmembers attended the November 9, 2025 meeting, you contend that this meeting constituted a public meeting under FOIA, but the City failed to post a proper notice or follow the other open meeting requirements under FOIA. You assert that the

November 9, 2025 meeting resulted in a decision that the City Administrator would assume responsibility for running the Spirit of Christmas event; you believe that this decision is public business which must be conducted during a properly noticed public meeting. You included a news article calling the meeting an “ad hoc group for Spirit of Christmas” and citing the Mayor giving thanks at the meeting for the City Administrator’s assistance in organizing the event.¹ You allege that the Mayor does not have authority to appoint the City Administrator for any duties, which you believe proves the decision was made at the November 9, 2025 meeting. Finally, you allege that statements made on the Mayor’s official Facebook page – asserting that the Mayor and organizing councilmember were acting as private citizens for the event, and not in their public official roles – are inconsistent with how the meeting was conducted as a public meeting, and “posting announcements of government decisions derived from non-compliant meetings raises further questions regarding transparency and lawful execution of official authority.”²

The City, through its legal counsel, replied to the Petition on December 1, 2025 (“Response”) and enclosed affidavits from the Mayor, City Administrator, and the councilmember who organized the November 9, 2025 meeting. The City acknowledges in its Response that a quorum of Council is three councilmembers, and three councilmembers attended this meeting. However, the Mayor and organizing councilmember attest that one of the councilmembers sat in the back and did not engage with other members or speak during the meeting. The City asserts that the meeting did not discuss public business, other than the City’s presumed role in logistics for the event. The City argues that this does not constitute a public meeting of the Town Council subject to FOIA. Moreover, any references to the City’s role at this meeting have been rendered moot, because another entity has since assumed responsibility for coordinating this event.

The City further asserts that the councilmember’s use of a private email account is not prohibited under FOIA, and there is no allegation that the City failed to produce any such emails in response to a request. The City maintains that the Petition’s assertion that the City Administrator was tasked with responsibility for the event at the meeting is not accurate and submitted sworn statements from a present councilmember and Mayor who attested there were no deliberations or decisions during the meeting. Finally, the City argues that the Facebook statements are not prohibited by FOIA, nor were they offered to circumvent FOIA’s requirements; they were based on the Mayor and councilmember’s belief they were participating in a volunteer capacity.

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.”³ FOIA mandates that public

¹ Petition.

² *Id.*

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

bodies meet specific requirements when holding public meetings, including advance notice, posting notices and agendas, an opportunity for public comment, and maintaining meeting minutes.⁴ A meeting of a public body must be open to the public, except in limited circumstances.⁵

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.”⁶ The City provided sworn statements that three members, constituting a quorum, attended the November 9, 2025 meeting. However, two affiants attested that one member “sat in the back of the room, did not engage the other councilmembers, and did not speak during the meeting.”⁷ Based on these representations under oath, we find that a quorum of members did not engage in discussions or taking action on public business, which means that this was not a “meeting” as defined by FOIA.⁸ Thus, we determine that the City did not violate FOIA in failing to follow the open meeting requirements for the November 9, 2025 meeting.

The remaining claims do not constitute violations of FOIA. FOIA does not address officials’ use of any communication means, the setting in which specific matters of public business must be decided, or requirements for government officials’ statements made on social media. As such matters are not within the scope of the statute, this Office may not opine on these issues through this petition process initiated under Section 10005.⁹

⁴ 29 *Del. C.* § 10004.

⁵ *Id.*

⁶ 29 *Del. C.* § 10002(j).

⁷ Response, Affs. of Mayor Valerie Leary and Councilmember Andrew Zelt dated Nov. 26, 2025.

⁸ *Del. Op. Att’y Gen.* 18-IB41, 2018 WL 4385004, at *2 (Aug. 28, 2018) (finding no violation of FOIA when a quorum attended a committee meeting but did not discuss, deliberate, or reach a vote or consensus regarding public business); *Del. Op. Att’y Gen.* 18-IB07, 2018 WL 1061277, at *2 (Feb. 9, 2018) (determining that a gathering of a quorum of councilmembers at a press conference did not constitute a “meeting” under FOIA because the Office had “no evidence of a discussion *among* the attending councilmembers during the press conference.”) (emphasis added).

⁹ 29 *Del. C.* § 10005(e) (“Any citizen may petition the Attorney General to determine whether a violation of [FOIA] has occurred or is about to occur.”); *see, e.g., Del. Op. Att’y Gen.* 20-IB28, 2020 WL 7663557, at *2 (Nov. 9, 2020) (“These matters of municipal law, concerning the authority of the Council President or Mayor, are outside the scope of the FOIA statute, and thus, we make no determination regarding these issues.”).

CONCLUSION

For the reasons set forth above, we conclude that the City did not violate FOIA in holding the November 9, 2025 meeting without complying with FOIA's open meeting requirements. The remaining claims are outside the scope of this Office's authority to decide through this petition process.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: Michael J. Hoffman, Attorney for the City