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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 26-IB07

February 13, 2026

VIA EMAIL

Collins White
collinswhite021@gmail.com

RE: FOIA Petition Regarding the Delaware Interscholastic Athletic Association

Dear Collins White:

We write in response to your correspondence alleging that the Delaware Interscholastic Athletic Association (“DIAA”) 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 DIAA violated FOIA by failing to meet its burden to demonstrate that its search for responsive records related to the fourth item in the November 20, 2025 request was sufficient under FOIA.

BACKGROUND

You submitted a FOIA request on November 20, 2025 to the Delaware Department of Education FOIA coordinator seeking four categories of DIAA records.¹ The third item sought the Action Plan mentioned at the November 20, 2025 DIAA Competition Committee meeting, and the fourth item sought any “models or scenarios that have been created or that have been or will be shared with the Competition Committee Chairman or Committee, illustrating potential school

¹ The Department of Education FOIA coordinator initially corresponded regarding DIAA’s records.

classifications or divisions, including any simulations or runs with adjusted weights or factors.”² On December 15, 2025, DIAA responded to the full request and supplied a copy of the Action Plan as the only record responsive to the third and fourth items.

On December 16, 2025, you sent a letter objecting to DIAA’s response to the fourth item, as that item did not relate to the Action Plan. You asserted DIAA’s response is incomplete and noted that DIAA is still obligated to produce records of DIAA’s contractor. You requested DIAA to confirm in writing, if no responsive records exist; if DIAA believes all responsive records have been produced, you made a second request to DIAA for “all emails and attachments sent or received to or from [the DIAA contractor’s email address] between October 1, 2025, and December 12, 2025.”³

An initial petition followed. You assert that the only record provided, the Action Plan, was not responsive to the fourth item and that DIAA failed to produce existing records responsive to the fourth item in your request. As evidence of the incomplete search, you point to the December 18, 2025 Competition Committee meeting, in which the Committee reviewed records that would have been responsive to your request. You contend that DIAA violated FOIA by failing to produce the responsive, existing records and to provide a timely response or justification for withholding records.

On January 15, 2026, DIAA, through its legal counsel, provided a response to the initial petition (“First Response”). DIAA asserts that the records considered at the December 18, 2025 meeting were not withheld, as they appear to be first created on December 17, 2025 and only distributed after the December 18, 2025 meeting; thus, they did not exist at the time it responded to your request. DIAA enclosed with its Response a copy of the December 18, 2025 email from DIAA staff to Committee members after the meeting, which states attached were “all of the documents discussed in today’s meeting with the following breakdowns” of 20-40-40, 50-30-20, and 50-50.⁴ DIAA asserts that it emailed you on January 9, 2026, providing a copy of this email with the six documents discussed at December 18, 2025 meeting and asking you to withdraw your petition now that DIAA has fully responded. In that January 9, 2026 email, DIAA also stated it would provide the emails sought in your second records request in your December 16, 2025 letter. DIAA requested the initial petition be denied.

Following receipt of this correspondence, you made two additional submissions, which were accepted, along with the initial petition, on January 15, 2026 as a new combined petition (“Petition”). The first submission, replying to DIAA’s January 9, 2026 email, stated the core issue remains whether DIAA “conducted an adequate and reasonable search for all responsive records at the time of my November 20, 2025 FOIA request.”⁵ You reiterated your belief that DIAA’s

² Petition, p. 6.

³ *Id.*, p. 35.

⁴ First Response, p. 23.

⁵ Petition, p. 40.

response was incomplete, as references in the November 20, 2025 and December 18, 2025 Competition Committee meetings indicate responsive records existed; you point out that DIAA has not provided sworn statements verifying that DIAA conducted a reasonable search for records responsive to the fourth item of your request.

In your second submission on January 15, 2026, you challenge DIAA’s allegation that the classification models responsive to your request were first created or shared on December 18, 2025, based on the additional documentation DIAA provided. You argue that these records show that DIAA possessed, but did not produce, records concerning the 20-40-40 classification model at the time of its response to your request. You argue that “the characterization of the December 18 materials as newly ‘created’ records is not supported by the record” and “[a]t most, the December 18 meeting involved further refinement or presentation of models that already existed in draft or working form.”⁶ You assert that at a minimum, this evidence raises questions regarding whether DIAA “conducted a reasonable and adequate search for responsive records, including records held by staff, contractors, or maintained in electronic formats” and because FOIA places the burden on the public body to demonstrate compliance, “[w]here the adequacy of a search is in dispute, sworn affidavits describing the custodians consulted, systems searched, and scope of the search are the appropriate and necessary mechanism for resolution.”⁷ You believe that DIAA is required to account for the adequacy of its records search.

On January 28, 2026, DIAA, through its legal counsel, replied to the new combined Petition, incorporating its First Response by reference (“Second Response”). DIAA acknowledges its failure to discover the 20-40-40 model document or to raise the draft document exception in response to the fourth item in your first request. However, DIAA argues it is unclear what you are seeking now, as you have been provided with the 20-40-40 model document as well as many other records. DIAA states in reviewing the records to provide for your second request, it discovered that, apart from the draft 20-40-40 model, the documents you sought in the fourth item of the November 20, 2025 request were not created until on or around December 18, 2025 and thus, would not have been included in either of the responses to your two requests. DIAA asserts it voluntarily included emails and documents from beyond your cut-off date to ensure they provided the models and other documents sought in the fourth item. Because DIAA has fully complied with both requests, DIAA asserts that there is no pending controversy, and this Petition should be considered moot.

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

⁶ *Id.*, p. 44.

⁷ *Id.*, p. 45.

bodies, as well as access to the public records of those entities.”⁸ FOIA requires that citizens be provided reasonable access to and reasonable facilities for the copying of public records.⁹ The public body has the burden of proof to justify its denial of access to records.¹⁰ In certain circumstances, a sworn affidavit may be required to meet that burden.¹¹

Judicial Watch, Inc. v. University of Delaware provides that Section 10005(c) “requires a public body to establish facts on the record that justify its denial of a FOIA request.”¹² “[U]nless it is clear on the face of the request that the demanded records are not subject to FOIA, to meet the burden of proof under Section 10005(c), a public body must state, under oath, the efforts taken to determine whether there are responsive records and the results of those efforts.”¹³ Generalized assertions in the affidavit will not meet the burden.¹⁴ For example, the Superior Court of Delaware determined that an affidavit outlining that legal counsel inquired about several issues, without indicating who was consulted, when the inquiries were made, and what, if any documents, were reviewed, was too generalized to meet this standard.¹⁵

Here, the Petition challenges the adequacy of DIAA’s search for records in response to the fourth item in the November 20, 2025 request. It is unclear from the face of the request whether the requested records would be subject to FOIA, but the search for responsive records and the results thereof are not described under oath with the specificity required by *Judicial Watch*.¹⁶ As such, DIAA violated FOIA by failing to meet its burden regarding the records sought in the fourth item of your November 20, 2025 request. We recommend that DIAA, in compliance with the timeframes set forth in Section 10003, supplement its response to the fourth item with any

⁸ *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996, 1004 (Del. 2021).

⁹ 29 Del. C. § 10003(a).

¹⁰ 29 Del. C. § 10005(c).

¹¹ *Judicial Watch, Inc.*, 267 A.3d at 1008-1012.

¹² *Id.* at 1010.

¹³ *Id.* at 1012.

¹⁴ *Judicial Watch, Inc. v. Univ. of Del.*, 2022 WL 2037923, at *3 (Del. Super. Jun. 7, 2022) (“The Court finds that the generalized statements in the Affidavit do not meet ‘the burden to create a record from which the Superior Court can determine whether the University performed an adequate search for responsive documents.’”).

¹⁵ *Id.*

¹⁶ *Judicial Watch, Inc.*, 267 A.3d at 1010-11 (“And the Court has held that when an attorney seeks to establish facts based on personal knowledge, those facts must be asserted under oath. A statement made under oath, like a sworn affidavit, will ensure that the court’s determination regarding the public body’s satisfaction of the burden of proof is based on competent evidence.”).

additional records, responses, or information, if appropriate under FOIA. To the extent access to any responsive records is denied, the reasons for such denials are also recommended to be stated in the supplemental response.

CONCLUSION

For the foregoing reasons, we conclude that DIAA violated FOIA by failing to meet its burden to demonstrate that its search for responsive records related to the fourth item in the November 20, 2025 request was sufficient under FOIA.

Very truly yours,



Daniel Logan
Chief Deputy Attorney General

cc: Jennifer Singh, Deputy Attorney General
Dorey Cole, Deputy Attorney General