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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 26-IB08

February 19, 2026

VIA EMAIL

Amy Roe, Ph.D.
amywroe@gmail.com

RE: FOIA Petition Regarding the Lead-Based Paint Remediation Certification Committee

Dear Dr. Roe:

We write in response to your correspondence, alleging that the Lead-Based Paint Remediation Certification Committee, Delaware State Housing Authority, 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 Committee violated FOIA by failing to meet its burden to demonstrate its compliance with FOIA.

BACKGROUND

The Lead-Based Paint Remediation Certification Committee held a meeting on January 7, 2026, with two participation methods: a physical anchor location and a virtual option through Microsoft Teams. You attended this meeting through virtual means. While you were giving public comments during the meeting, your audio was disconnected, and you believe that the meeting participants at the on-site location could no longer hear you. You allege that although your public comment was captured in full on the meeting recording posted online, shortly after your comment and without any audio from the meeting room, the meeting abruptly ended. You allege that after you were disconnected, the meeting at the on-site location resumed, but you were unable to observe this portion of the meeting, and it was not captured on the meeting recording. This Petition followed.

In the Petition, you seek determinations of whether the Committee violated FOIA by (1) prohibiting your ability to provide public comment; (2) resuming a hybrid public meeting during public comment in the anchor location; and (3) potentially preventing additional public comments after your comment. You also inquire about the remedies for any such violations.

The Committee, through its legal counsel, replied to this Petition on January 29, 2026 (“Response”). The Committee states that a technical failure occurred during the meeting outside of the Committee’s control; it believes the disconnection was the result of a local power failure. The Committee asserts that you appeared to have lost audio or were disconnected mid-comment, and after attempting to troubleshoot, the Committee shortly thereafter lost connection to the Microsoft Teams meeting. The Committee states that “[d]ue to the technical failure, the Committee Chair promptly adjourned the meeting.”¹ The Committee verifies that its “inability to hear the conclusion of [your] remarks was due to a loss of signal, not any action taken to prevent or limit public comment.”² The Committee points out that, despite this disconnection, you were able to provide a full public comment, which was captured on the meeting recording. Following the meeting, the Committee asserts that you were contacted about your concerns and offered the opportunity to speak publicly at the next meeting and submit public comments electronically, to be preserved with the meeting records. The Committee asserts the offer was declined.

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 The public body has the burden of proof to demonstrate compliance with FOIA.⁴ In certain circumstances, a sworn affidavit may be required to meet that burden.⁵

FOIA mandates that the meetings of public bodies, with limited exceptions, be open to the public⁶ and when certain requirements are satisfied, permits public bodies to hold a meeting virtually.⁷ A virtual meeting is a meeting of a public body that one or more members attend using

¹ Response.

² *Id.*

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

⁴ 29 *Del. C.* § 10005(c).

⁵ *Judicial Watch, Inc.*, 267 A.3d at 1008-1012.

⁶ 29 *Del. C.* § 10004.

⁷ 29 *Del. C.* § 10006A.

an electronic means of communication. Among other requirements, Section 10006A mandates that the public be permitted “through an electronic means of communication,” to “monitor the meeting” and “provide public comment, if the public body is required to accept, or provides an opportunity for, public comment.”⁸ Under FOIA, every open meeting, including virtual meetings, must include “time for public comment” during the meeting, which may be subject to reasonable restrictions on the length of the public comment period and the “amount of time allotted for each public comment.”⁹ Section 10006A(d)(4) provides that a “technological problem that prevents or limits public access otherwise required under this chapter does not invalidate a virtual meeting or an action taken at a virtual meeting.”

The Committee has the burden of proof to demonstrate its compliance with FOIA and when presenting the essential facts to support its position, those representations must be made under oath.¹⁰ In this case, the Committee’s counsel describes the circumstances surrounding the disconnection during your public comment and this meeting, but the statements are not sworn. On this record, we cannot determine the Petition’s issues and are compelled to find a violation of FOIA occurred due to the Committee’s failure to satisfy its burden. As your complete public comment was recorded, the Committee is recommended to present your full public comment during its next public meeting comment period.¹¹

CONCLUSION

For the reasons set forth above, we conclude that the Committee violated FOIA by failing to meet its burden to demonstrate its compliance with FOIA.

⁸ 29 *Del. C.* § 10006A(c)(6).

⁹ 29 *Del. C.* § 10004(a).

¹⁰ *Judicial Watch, Inc.*, 267 A.3d at 1010-11 (“Thus, the University is asking this Court to determine that it has met its burden of proof, fully resolving the dispute, based solely on these factual representations. But the resolution of a legal action must rest on competent, reliable evidence. 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.”).

¹¹ The authority to invalidate a public body’s action at a meeting, or to impose other types of judicial remedies, is reserved for the courts. 29 *Del. C.* § 10005.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: Bryce A. Gates, Esq., General Counsel, Delaware State Housing Authority