

# **DELAWARE FREEDOM OF INFORMATION ACT**

**POLICY MANUAL FOR FOIA COORDINATORS**

**As of October 1, 2025**

## ***DISCLAIMER***

The Delaware Department of Justice (“DOJ”) strives to ensure the dissemination of timely, accurate public information. The information contained in this manual is provided for convenience. It is subject to change without notice. FOIA opinions issued by the DOJ and court decisions that interpret FOIA are issued frequently. At times, those authorities may contradict statements contained in this manual. Those authorities take precedence over any statement made in this Manual.

**This guide is NOT intended to address every possible FOIA scenario or to eliminate the need to consult with the deputy attorney general who represents a State agency or with other Delaware counsel with respect to the FOIA issues a public body may encounter.** The guide does not displace the statute, does not have the force of law or a court ruling, and is not binding on the DOJ, as every factual scenario will vary.

We will update this manual no less frequently than biennially to reflect changes in the FOIA statute, court decisions, and additions to the digest of FOIA opinions. The DOJ does not favor any one group over another, and the use of any link to an organization’s website herein does not constitute an endorsement of that organization. The DOJ disclaims responsibility for the content of any site referenced in this manual.

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# ***INTRODUCTION***

Delaware’s Freedom of Information Act, also known as “FOIA” (29 *Del. C.* §§ 10001-10008), promotes governmental transparency, informs voters, and acknowledges that the government should not be solely responsible for determining what the public has a right to know.<sup>1</sup> It also underscores the importance of each citizen’s ability to observe and monitor decision-making by public officials in a democratic society.

This manual is intended to be an “easy reference” guide to assist public body FOIA coordinators. It is intended to help FOIA coordinators and others to navigate the basic requirements of FOIA and to develop policies and protocols that will permit public bodies to more easily respond to FOIA requests in a timely manner. This guide is NOT intended to address every possible FOIA scenario or address every Attorney General Opinion or judicial opinion interpreting FOIA. The guide does not displace the statute and does not have the force of law of a court ruling. FOIA coordinators should continue to rely on their attorneys in order to ensure compliance with FOIA.

This manual will (i) define and discuss what constitutes a public body, (ii) define and discuss what constitutes a public record, (iii) explain the duties and responsibilities of the FOIA coordinator, (iv) identify important deadlines, (v) explain the fees a public body is permitted to collect in connection with FOIA records requests, (vi) outline the requirements for a public meeting and explain the reasons for calling an executive session, and (vii) describe FOIA petitions and determinations. There are two appendices: 1) a sample spreadsheet to track FOIA requests; and 2) summaries of Attorney General opinions<sup>2</sup> and judicial opinions from the past two years.

This manual and other FOIA resources of the DOJ are available at <https://attorneygeneral.delaware.gov/executive/open-government>. FOIA opinions are available at <https://attorneygeneral.delaware.gov/opinions/>.

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<sup>1</sup> See *Delaware Solid Waste Authority v. The News-Journal Co.*, 480 A.2d 628, 631 (Del. 1984).

<sup>2</sup> The Attorney General opinions included herein reflect an administrative review of FOIA petitions for determination and is different from an opinion of a court. Although we may rely on these opinions as persuasive authority, previous opinions are not binding precedent.

# ***SECTION 1. AN OVERVIEW OF FOIA***

## **I. WHAT IS A PUBLIC BODY?**

It is important to know what types of agencies or organizations constitute public bodies. Only agencies or organizations that are public bodies are required to comply with FOIA. Most public bodies are required to comply with open meeting and public records requirements. FOIA recognizes that an individual may be considered a public body of one member.<sup>3</sup>

### **A. Statutory Definition**

FOIA defines a “public body” as any regulatory, administrative, advisory, executive, appointive or legislative body of the State, or of any political subdivision of the State, including, but not limited to, any board, bureau, commission, department, agency, committee, ad hoc committee, special committee, temporary committee, advisory board and committee, subcommittee, legislative committee, association, group, panel, council or any other entity or body established by an act of the General Assembly of the State, or established by any body established by the General Assembly of the State, or appointed by any body or public official of the State or otherwise empowered by any state governmental entity, which:

- (1) Is supported in whole or in part by any public funds; **or**
- (2) Expends or disburses any public funds, including grants, gifts or other similar disbursements and distributions; **or**
- (3) Is impliedly or specifically charged by any other public official, body, or agency to advise or to make reports, investigations or recommendations.<sup>4</sup>

### **B. How Do You Determine Whether Your Organization is a Public Body?**

The determination of whether an entity is a public body is a two-part test. Both parts must be met for an entity to be considered a public body subject to FOIA.

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<sup>3</sup> 29 Del. C. § 10004(h)(6) (excluding public bodies with a single member from Section 10004).

<sup>4</sup> 29 Del. C. § 10002(k).

Part One: Look at the type of entity and how it was created. Is the entity a regulatory, administrative, advisory, executive, appointive or legislative body of the State, or of any political subdivision of the State, **which includes** any board, department, agency, committee, or any type of group or entity established by an act of the General Assembly of the State, or established by any body established by the General Assembly of the State, or appointed by any body or public official of the State or otherwise empowered by any state governmental entity?

Part Two: Look at the entity's funding and function. Is the entity supported in whole or in part by any public funds, or does it expend **or** disburse any public funds, **or** "is impliedly or specifically charged by any other public official, body, or agency to advise or to make reports investigations or recommendations?" "Public funds" are defined as funds derived from the State or any political subdivision of the State.<sup>5</sup>

### **C. Does the Group's Enabling Statute Subject the Group to FOIA?**

There are some groups that may not qualify as a public body as discussed above but instead are subject to FOIA simply because the law creating or authorizing the group made them so. As a result, look at the Delaware law that authorized or created the group (its enabling statute) to determine whether it subjects the group to FOIA. For example, some entities that are expressly subject to FOIA because of their enabling statutes are the Delaware Transportation Authority, the Agricultural Commodity Advisory Board, the Appalachia States Low-Level Radioactive Waste Commission, and the Health Resource Board.

### **D. Entities Previously Found to be Public Bodies**

The following agencies and organizations have been found to be public bodies in previous FOIA opinions:

School boards, Delaware Solid Waste Authority, Delaware Association of Professional Engineers, Council on Banking, Thoroughbred Racing Commission, Governor's Council on Equal Employment Opportunity, General Assembly (except when caucusing), Charter School Reform Working Group, Kent County Society for the Prevention of Cruelty to Animals, Camden-Wyoming Sewer & Water Authority, and the Trustees of New Castle Commons.

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<sup>5</sup> 29 *Del. C.* § 10002(m).

Stakeholder working groups and similar informal advisory groups convened by invitation (rather than by formal appointment) have also been found to be public bodies subject to FOIA.<sup>6</sup>

#### **E. Does the Group Fall Within an Exemption to the Definition of Public Body?**

There are certain groups that are specifically excluded from the definition of public body, even though they may otherwise qualify as a public body. These exemptions are listed at 29 *Del. C.* § 10002(k): a caucus of the House or Senate (“Caucus” means members of the House of Representatives or Senate, of the same political party), who assemble to discuss matters of public business; or those authorities established in by Chapter 14 of Title 16. Section 10002(l) also excludes the University of Delaware and Delaware State University from the definition of public body except each meeting of the full Board of Trustees of these universities are considered “meetings” under FOIA and university documents relating to the expenditure of public funds are “public records.”

#### **F. Organizations Previously Found Not to be Public Bodies**

In addition to those groups that are specifically exempt from FOIA as more fully discussed above, some groups are statutorily exempt or have been found not to be public bodies based on previous FOIA opinions.

For example, the Delaware courts, the arms of any Delaware court, and agencies directly supporting the courts are not considered public bodies.<sup>7</sup>

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<sup>6</sup> See *Del. Op. Att’y Gen.* 22-IB50 (Dec. 16, 2022) (determining that stakeholder workgroup was a public body where formed by invitation of executive branch official and tasked with evaluating data and providing feedback on potential solutions); *Del. Op. Att’y Gen.* 19-IB04 (Feb. 11, 2019) (holding that a working group comprised of seven members invited to join by a public official and charged with creating recommendations through a collaborative effort was an advisory group subject to FOIA); *Del. Op. Att’y Gen.* 13-IB05 (Oct. 1, 2013) (finding that a stakeholder working group comprised of various individuals invited by the Governor was a public body under FOIA). Cf. [Del. Op. Att’y Gen. 17-IB37](#) (Aug. 7, 2017) (concluding that a Governor-appointed commission of cabinet members was not a public body).

<sup>7</sup> This Office has determined that (i) the courts are not public bodies for purposes of

Additionally, there are also subsets of public bodies that have been found not to be public bodies, including: administrative staff meetings, “joint” meetings between various executive branch officials and consultants to review technical proposals, a chief administrative officer’s meetings with department heads to develop budget, a county attorney’s meetings with board of elections chair and consultant to draft redistricting ordinance, and meetings between city finance director and stakeholders to discuss electric rate structure.

*Bi-state entities like the Delaware River and Bay Authority.* Bi-state entities are a collaboration of two states and the Federal government; therefore, they are not subject to either state’s laws unless there is an express statement made by the states that they intend to abide by a particular state law.<sup>8</sup>

## **DO YOU THINK YOU MIGHT NOT BE A PUBLIC BODY?**

### **SUGGESTED APPROACH:**

IF YOU ARE NOT SURE WHETHER YOU ARE A PUBLIC BODY, OR WHETHER YOU MIGHT BE EXEMPT FROM FOIA'S REQUIREMENTS, ERR ON THE SIDE OF CAUTION AND CONSULT A DELAWARE ATTORNEY. FOIA IS TO BE LIBERALLY CONSTRUED AND ANY STATUTORY EXEMPTIONS ARE STRICTLY INTERPRETED.

## **II. WHAT ARE PUBLIC RECORDS?**

### **A. Why Is It Important To Know If a Public Body Has Created or Possesses a Public Record?**

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FOIA, *Del. Op. Att’y Gen.* 94-IO11 (Mar. 7, 1994), (ii) FOIA does not apply to the Board of Bar Examiners, because it is an “arm” of the Delaware Supreme Court, *Del. Op. Att’y Gen.* 95-IB01 (Jan. 18, 1995), (iii) the public records provisions of FOIA do not apply to the database maintained by the Administrative Office of the Courts to assist the clerks of the Delaware courts, notwithstanding that it is an agency created by act of the General Assembly, *Del. Op. Att’y Gen.* 94-IO11, and (iv) FOIA does not apply to the Court on the Judiciary, *Del. Op. Att’y Gen.* 95-IB02 (Jan. 24, 1995). *See also Del. Op. Att’y Gen.* 96-IB03 (Jan. 2, 1996) (“The courts are not public bodies within the meaning of [FOIA].”).

<sup>8</sup> *See Del. Op. Att’y Gen.* 20-IB08 (Feb. 25, 2020).

FOIA requires a public body to permit the inspection of or to provide copies of public records upon request.<sup>9</sup> Public bodies must be able to identify documents and electronically stored information that constitute public records to comply with their statutory obligations under FOIA. In addition, every public official and employee of state or local government has important legal obligations under the Delaware Public Records Law.<sup>10</sup> State and local government officials and employees must adequately document the transaction of public business, retain and protect all public records in their custody, and destroy or otherwise dispose of public documents only in accordance with retention and disposal schedules approved by Delaware Public Archives. Unlike FOIA violations, which have no criminal penalty, violations of the Delaware Public Records Law are deemed unclassified misdemeanors, the penalties for which include fines of up to \$500, up to three (3) months imprisonment, or both.

## **B. What Is a Public Record?**

The definition of “public record” under FOIA is very broad.<sup>11</sup> It includes all information contained in or on physical documents (typically paper), as well as information stored in electronic format (such as E-mails, Word, Excel, etc.) or databases, relating in any way to public business, or in any way of public interest, or in any way related to public purposes. **Thus, as a practical matter, FOIA’s concept of “public record” covers, at least initially, almost every conceivable type of physical or electronic record that may be created, maintained or possessed by a public body.**<sup>12</sup> The concept of a “public record” under FOIA is not limited to information relating to a particular matter of “public business” that may be up for consideration or discussion during a meeting of a public body. Instead,

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<sup>9</sup> See 29 Del. C. § 10003(a).

<sup>10</sup> 29 Del. C. §§ 501-526. A thorough description of the independent requirements of the Delaware Public Records Law is beyond the scope of this manual. Questions should be directed to the employee(s) charged with overseeing the agency’s or public body’s compliance with the Public Records Law, the Deputy Attorney General assigned to represent the agency or public body, or other counsel retained to assist the agency or public body. The DOJ is only authorized to provide legal advice and guidance to agencies and public bodies as described in Title 29, Chapter 25 of the Delaware Code.

<sup>11</sup> The definition of “public record” is subject to certain statutory and common law exemptions.

<sup>12</sup> See 29 Del. C. § 10002(o).

the definition expressly encompasses any information that may be a matter of “public interest,” or which relates in any way to “public purposes.” These expansive concepts (“public interest” and “public purposes”) are not defined in FOIA and have not been explained or refined by the courts.

### **C. Who May Request a Public Record?**

The purpose of FOIA is to grant citizens of the state of Delaware access to public records. A public body may grant requests from non-citizens, but it may also deny them based on non-citizenship alone.<sup>13</sup>

### **D. What Is a Public Body’s Obligation to Search Its Files to Identify Public Records in Response to a FOIA Request?**

Unless it is clear on the face of the request that the demanded records are not subject to FOIA, the public body must search for responsive records.<sup>14</sup>

Such a search must be conducted in a manner to determine whether the public body has any responsive documents in its possession.

### **E. What If Some of The Records Identified in Response to a FOIA Request Are Designated as Confidential,” “Private,” or “Privileged”?**

The public body will need to produce the information unless a FOIA statutory exemption or exclusion applies. For example, Section 10002(o)(6) exempts those records exempted from disclosure by statute or common law; thus, protected health information under the federal HIPAA or other state or federal privacy laws, FERPA records maintained by schools, and other information protected under state or federal law is confidential and not subject to disclosure regardless of whether the correspondence is marked “confidential.” The public body will need to determine whether and to what extent a particular record may be withheld under an exemption or exclusion. The public body may consult with the public body or private person or entity designating the information as “confidential,” “private,” or “privileged” to help make this determination. Consultation with counsel is advisable if the public body’s obligations are unclear.

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<sup>13</sup> *McBurney v. Young*, 569 U.S. 221 (2013).

<sup>14</sup> *See 29 Del. C. § 10003(d)(1).*

**F. Does The Format in Which the Original Document is Maintained Matter For Purposes of Responding to a FOIA Request?**

No, the format of the records maintained by the public body does not matter. A “public record” is defined as “information of any kind, owned, made, used, retained, received, produced, composed, drafted or otherwise compiled or collected...”<sup>15</sup> Therefore, a public body may be required to produce electronic information in certain circumstances.

**G. How Should the Record Be Provided? Would Allowing Public Inspection Satisfy the Request In Lieu of Providing Physical Copies?**

FOIA only requires that the public be provided reasonable access to and reasonable facilities for copying of records,<sup>16</sup> and that “[a]ll public records shall be open to inspection and copying during regular business hours by the custodian of the records for the appropriate public body.”<sup>17</sup> However, if a request for records can be accommodated with reasonable effort by providing those records by the method requested, the public body is encouraged to do so.

**H. Does a Public Body Have to Create New Records In Response To a FOIA Request? Does a Public Body Have to Produce Information from a Database?**

No. A public body does not have to create new records in order to respond to a FOIA request.<sup>18</sup> Manually compiling information into a new record or creating

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<sup>15</sup> 29 *Del. C.* § 10002(o).

<sup>16</sup> “FOIA does not require public bodies to send records in response to a request.” *Del. Op. Att’y Gen.* 17-IB58 (Nov. 15, 2017). “FOIA does not require a public body to provide immediate in-person access to records.” *Del. Op. Att’y Gen.* 18-IB01 (Jan. 2, 2018).

<sup>17</sup> 29 *Del. C.* § 10003(a).

<sup>18</sup> *Vanella v. Duran*, 2024 WL 5201305, at \*6 (Del. Super. Dec. 23, 2024) (“First, as a general matter, a public body has no obligation to create a new record in response to a request. Rather, FOIA requires only the production of existing records possessed or controlled by a public body. That is because one of FOIA’s core aims is to provide the public access to the records that a public body *actively relies upon* in making decisions that affect the community. Records created purely for the purpose of

new computer programming is not required to respond to a request.<sup>19</sup> However, “producing easily disclosable information stored in a computer system does not require the creation of a new record.”<sup>20</sup>

## **I. May a Public Body Charge to Search Its Files to Identify Public Records?**

Yes. The General Assembly has made clear that, beyond a limited threshold, the costs of producing records may be shifted to the requestor.<sup>21</sup>

## **III. WHAT RECORDS ARE NOT PUBLIC RECORDS?**

FOIA excludes several categories of records from its definition of public record, which are also known as FOIA “exemptions.” If an exemption applies, the public body is not obligated under FOIA to produce the exempt records but may choose to do so. FOIA exemptions do not create an affirmative right of nondisclosure and are not confidentiality provisions.<sup>22</sup> Before producing an exempt record, the public body must consider if there are other reasons why the public body is not permitted to or should not produce the records. For example, student records that would constitute an invasion of personal privacy are not public records under FOIA; however, public bodies may not produce these types of records under the Family Educational Rights and Privacy Act. The ultimate decision to produce exempt records or not rests with the public body.

FOIA is to be construed narrowly to further open access to records. If you have  

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responding to a FOIA request fall outside that aim.”).

<sup>19</sup> See, e.g., *Del. Op. Att’y Gen. 25-IB18* (Mar. 20, 2025); *Del. Op. Att’y Gen. 22-IB26* (Aug. 12, 2022).

<sup>20</sup> *Id.*

<sup>21</sup> See 29 *Del. C.* § 10003(m) and Section 3 of this Manual for a discussion of fees and other costs that may be charged in connection with fulfilling a FOIA request.

<sup>22</sup> *Reeder v. Del. Dep’t of Ins.*, 2006 WL 510067, at \*11 (Del. Ch. Feb. 24, 2006) (“Although the exemptions limit public access in certain circumstances, they do not purport to create an affirmative right of non-disclosure.”).

questions regarding whether a specific exemption applies to a FOIA request, consult the attorney for your agency or organization.

The following list, based on Sections 10002(o)(1)-(19), describes most records excluded from the definition of public record by FOIA:

- **Personnel files:** Files created as a condition of an employee’s employment with a public body or relating to the employee’s status and performance as an employee, if disclosure would constitute an invasion of personal privacy. A “personnel file” for purposes of FOIA is defined as a “file containing information that would, under ordinary circumstances, be used in determining whether an individual should be promoted, demoted, given a raise, transferred, reassigned, dismissed, or subject to such other traditional personnel actions.”<sup>23</sup> The exemption applies even if the requesting party is seeking their own personnel file.<sup>24</sup>
- **Medical files:** Files containing any individual’s medical information, if disclosure would constitute an invasion of personal privacy.
- **Pupil files:** Records containing protected student information if disclosure would constitute an invasion of personal privacy.
- **Trade secrets:** Confidential and proprietary information which, if it falls into a rival’s hands, will cause serious competitive disadvantage.<sup>25</sup>
- **Confidential commercial or financial information:** Commercial or financial information obtained from a person which is of a privileged or confidential nature.
- **Investigatory files (civil or criminal):** Files relating to pending or completed civil or criminal law-enforcement investigations, including, but not limited to, pretrial and presentence investigations, and child

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<sup>23</sup> *Del. Op. Att’y Gen.* 17-IB19 (July 12, 2017).

<sup>24</sup> *Del. Op. Att’y Gen.* 25-IB44 (September 3, 2025); *Del. Op. Att’y Gen.* 18-IB13 (Mar. 6, 2018).

<sup>25</sup> *Del. Op. Att’y Gen.* 14-IB04 (July 18, 2014).

custody/adoption files.<sup>26</sup>

- **Criminal files and criminal records:** Files containing an individual’s criminal records or history, if release would constitute an invasion of privacy.
- **Intelligence files compiled for law enforcement purposes:** Information assembled for a law enforcement purpose that could cause risk to public safety if released.
- **Records specifically exempted by statute or common law:** This category includes records protected from disclosure by a specific statute or a recognized common law doctrine, such as the attorney-client privilege, the attorney work-product doctrine, and privacy.<sup>27</sup>
- **Records which disclose the identity of the contributor of a bona fide and lawful charitable contribution where public anonymity has been requested by the contributor.**
- **Records involving labor negotiations or collective bargaining.**
- **Records pertaining to pending or potential litigation that are not records of any court.**<sup>28</sup>

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<sup>26</sup> The FOIA Office has “broadly and properly interpreted [this exemption] to apply to a wide variety of criminal and civil investigative files.” *Del. Op. Att’y Gen.* 21-IB19 (Aug. 18, 2021) (quoting *Del. Op. Att’y Gen.* 17-IB21 (July 13, 2017)). For example, the DOJ has interpreted this exemption to include information contained in call logs of various agencies. *See Del. Op. Att’y Gen.* 18-IB02 (Jan. 10, 2018); *Del. Op. Att’y Gen.* 19-IB36 (July 5, 2019). And, to extend to complaints against Delaware State Police law-enforcement officers. *Del. Op. Att’y Gen.* 18-IB48 (Oct. 8, 2018).

<sup>27</sup> A public body does not have to produce a privilege log to support a denial of documents under either the attorney-client privilege or attorney work product privilege. *Del. Op. Att’y Gen.* 18-IB10 (Feb. 2, 2018). However, “a public body may meet its burden by producing an affidavit signed by counsel attesting the records have been reviewed for certain privileges, along with an explanation of the privileges applied.” *Del. Op. Att’y Gen.* 21-IB15 (July 2, 2021). *See also Flowers v. Office of the Governor*, 167 A.3d 530, 549 (Del. Super. 2017).

<sup>28</sup> Potential litigation: This exemption only applies to potential litigation against the public body that was asked for the records or a closely affiliated person or entity. *See Del. Op. Att’y Gen.* 18-IB10; *Del. Op. Att’y Gen.* 19-IB13 (Mar. 1, 2019); *ACLU*

- **Any records of discussions held in executive session pursuant to FOIA Sections 10004(b) and (c) only “so long as public disclosure would defeat the lawful purpose for the executive session, but no longer.”<sup>29</sup>**
- **Records that disclose the identity or address of any person holding a permit to carry a concealed deadly weapon.**
- **Records of a public library which contain the identity of a user and the books, documents, films, recordings or other property of the library which a patron has used.**
- **Records in the possession of the Department of Correction, if disclosure is sought by an inmate in custody of the Department of Correction.<sup>30</sup>**
- **Investigative files compiled or maintained by the Victim’s Compensation Assistance Program.**
- **Photographs, video records or audio recordings of a postmortem examination in the possession of the Division of Forensic Science.**
- **Emails received or sent by members of the Delaware General Assembly or their staff.<sup>31</sup>**

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*v. Danberg*, 2007 WL 901592 (Del. Super. Mar. 15, 2007). The test for applying the exemption for potential litigation is as follows: “(1) litigation must be likely or reasonably foreseeable; and (2) there must be a ‘clear nexus’ between the requested documents and the subject matter of the litigation.” Indicators of potential litigation “might include ‘previous or preexisting litigation between the parties or proof of ongoing litigation concerning similar claims or proof that a party has both retained counsel with respect to the claim at issue and has expressed an intent to sue.’” *Del. Op. Att’y Gen.* 20-IB09 (citing *ACLU v. Danberg*, 2007 WL 901592, at \*4 (Del. Super. Mar. 15, 2007)).

Pending litigation: This exemption includes quasi-judicial proceedings like administrative appeals. *Del. Op. Att’y Gen.* 20-IB09 (Feb. 27, 2020).

<sup>29</sup> See 29 Del. C. § 10004(f).

<sup>30</sup> See *Del. Op. Att’y Gen.* 21-IB10.

<sup>31</sup> See *Flowers v. Office of the Governor*, 167 A.3d 530, 543-46 (Del. Super. 2017).

- **Various records which, if copied or inspected, could jeopardize the security of any structure owned by the State or any of its political subdivisions, or could facilitate the planning of a terrorist attack, or could endanger the life or physical safety of an individual.**
- **Military service discharge document or documents, a discharge, separation notice, certificate of service, report of transfer or discharge, or any other document which is evidence of severance or transfer from military service and which contains a service record from the armed forces of the United States.**
- **Any communications between a member of the General Assembly and that member's constituent, or communications between members of the General Assembly.**

As noted above, there may be other applicable exceptions to the definition of “public record.” For example, this Office has opined that certain drafts are not public records, including working drafts that the author is still revising prior to presentation to a public body and draft contracts under negotiation, in which the premature disclosure could harm the public body’s competitive position.<sup>32</sup> Similarly, personal notes will not constitute public records, provided they meet the requisite qualifications.<sup>33</sup>

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## **DO YOU THINK A FOIA REQUEST SEEKS DOCUMENTS THAT MAY NOT BE PUBLIC RECORDS?**

### **SUGGESTED APPROACH:**

**IF YOU ARE NOT SURE WHETHER THE INFORMATION REQUESTED IS A PUBLIC RECORD, OR WHETHER DISCLOSURE MIGHT BE EXEMPT FROM FOIA’S REQUIREMENTS, CONSULT AN ATTORNEY.**

**THE EXEMPTIONS LISTED IN FOIA ARE TO BE NARROWLY CONSTRUED AND ANY STATUTORY EXEMPTIONS ARE STRICTLY**

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<sup>32</sup> *Del. Op. Att’y Gen.* 21-IB15 (July 2, 2021).

<sup>33</sup> *See, e.g., Del. Op. Att’y Gen.* 17-IB66 (Dec. 29, 2017); *Del. Op. Att’y Gen.* 02-IB30 (Dec. 2, 2002).

INTERPRETED.<sup>34</sup>

## ***SECTION 2. WHAT ARE THE DUTIES & RESPONSIBILITIES OF A FOIA COORDINATOR?***

FOIA defines “FOIA coordinator” as the person designated by the public body to receive and process FOIA requests. Each public body is required to designate a FOIA coordinator, and various duties are delegated to the coordinator.<sup>35</sup> The FOIA coordinator’s name and contact information must be published on the public body’s website and shared with the DOJ’s FOIA Office at [opengovernment@delaware.gov](mailto:opengovernment@delaware.gov). Updates must be made within twenty working days of any change.<sup>36</sup> The FOIA coordinator is permitted to delegate specific duties and functions to other public body employees.<sup>37</sup>

The FOIA coordinator is required to take the actions listed below.

- 1) Serve as the point of contact for FOIA requests;
- 2) Coordinate the public body’s responses to FOIA requests;
- 3) Assist the requesting party in identifying the records sought;
- 4) Assist the public body in locating and providing the requested records;
- 5) Work to foster cooperation between the public body and requesting party,<sup>38</sup>

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<sup>34</sup> See *ACLU v. Danberg*, 2007 WL 901592, at \*3 (Del. Super. Mar. 15, 2007) (“The enumerated statutory exceptions to FOIA, including the ‘pending or potential litigation’ exception, pose a barrier to the public’s right to access and are, therefore, narrowly construed.”).

<sup>35</sup> See 29 Del. C. § 10003(g).

<sup>36</sup> See 29 Del. C. § 10003(g)(1).

<sup>37</sup> *Id.*

<sup>38</sup> An analysis of the FOIA coordinator’s obligations under this section requires a fact-based examination of the circumstances. *Del. Op. Att’y Gen. 22-IB47* (determining that FOIA coordinator did not violate duty to foster cooperation under

- 6) Maintain a document that tracks all FOIA requests, which includes the following minimum information:
  - a) The requesting party's contact information;
  - b) The date the public body received the FOIA request;
  - c) The public body's response deadline;
  - d) The date of the public body's response (including the reasons for any extension);
  - e) The names, contact information and dates of correspondence with individuals contacted in connection with the FOIA requests;
  - f) The dates of review by the public body;
  - g) The names of individuals who conducted such reviews;
  - h) Whether documents were produced in response to the FOIA request;
  - i) The amount of copying and administrative fees assessed; and
  - j) The date of final disposition.<sup>39</sup>

FOIA coordinators should also become familiar with the policies governing the examination, copying, and disclosure of public records located within FOIA Sections 10003(a)-(m). These provisions include procedures that govern:

- 1) The form of FOIA requests;
- 2) The specific roles and duties of the FOIA coordinator;

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Section 10003(g) when the FOIA coordinator interpreted a request inconsistent with the requesting party's intent, and upon further clarification of the scope of the request, promptly responded within two days); *Del. Op. Att'y Gen.* 19-IB43 (July 22, 2019) ("Cooperation requires both parties to participate in good faith.").

<sup>39</sup> See 29 *Del. C.* §§ 10003(g)(1)-(3).

- 3) A public body's response to FOIA requests;
- 4) A public body's response to a request for emails;
- 5) A public body's response to requests for noncustodial records;
- 6) A public body's review of records requested to determine whether records are exempt from disclosure pursuant to Section 10002(o);
- 7) The access a public body must provide for review of records; and
- 8) The applicable fees.

### ***SECTION 3. WHAT ARE THE IMPORTANT DEADLINES FOR FOIA RECORDS REQUESTS?***

FOIA Section 10003(h) sets specific deadlines for public bodies' responses to FOIA requests:

- 1) Public bodies must respond to FOIA requests as soon as possible, but no later than 15 business days after the receipt of the request. A FOIA request is considered received by the public body when the designated FOIA coordinator receives the request.<sup>40</sup>
- 2) The public body's response must indicate one of the following:
  - a) The public body is granting access to the records requested.
  - b) Additional time is needed because the request is for voluminous records, requires legal advice, or a record is in storage or archived.
    - i) Note: If the public body's response is that it needs additional

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<sup>40</sup> A request misdirected to another employee in the public body does not constitute a public body's receipt of the request. *See Del. Op. Att'y Gen.* 19-IB06 (Feb. 13, 2019). If the public body misses the deadline, it is within its best interest to provide a response as soon as possible even if a petition has been filed with the Attorney General's office. *See Del. Op. Att'y Gen.* 17-IB65 (Dec. 29, 2017).

time, the public body must also include the permissible reason additional time is needed and provide a good-faith estimate of how much additional time is required to fulfill the request.

c) The FOIA request is denied.

i) If a FOIA request is denied in whole or in part, the public body must include a reason for the denial.

ii) Unless it is clear on the face of the request that the demanded records are not subject to FOIA, the public body must search for responsive records.<sup>41</sup>

iii) A description of the search and the outcome of the search (factual representations on which a public body relies) must be reflected through statements made under oath, such as statements in an affidavit, in order for the public body to satisfy its burden of proof.<sup>42</sup> Counsel's unsworn statements, describing the factual basis for determining that the requested records were not subject to FOIA, are insufficient.<sup>43</sup>

iv) Finally, the public body is not required to provide an index or any other compilation listing each record or part of a record that was denied.<sup>44</sup> As an example, a public body does not have to produce a privilege log to support a denial of documents under either the attorney-client privilege or attorney work product privilege.

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<sup>41</sup> *Judicial Watch, Inc. v. Univ. of Delaware*, 267 A.3d 996, 1012 (Del. 2021).

<sup>42</sup> *See Judicial Watch, Inc. v. Univ. of Del.*, 2022 WL 10788530, at \*1 (Del. Super. Ct. Oct. 19, 2022), *aff'd*, 2023 WL 4377918 (Del. July 6, 2023).

<sup>43</sup> *Del. Op. Att'y Gen.* 23-IB21 (July 25, 2023) (citing *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996, 1010-11 (Del. 2021)).

<sup>44</sup> Section 10003(h)(2) requires the public body to "indicate the reasons" for a denial of a FOIA request but notes that the public body "shall not be required to provide an index, or any other compilation, as to each record or part of a record denied." *But see Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996, 1008-12 (Del. 2021).

## ***SECTION 4. WHAT FEES MAY AN AGENCY COLLECT IN CONNECTION WITH PUBLIC RECORDS REQUESTS?***

FOIA permits public bodies to defray the costs of complying with a records request by collecting certain fees, but it specifies the types of fees that may be charged, the circumstances under which they may be charged and the manner in which they may be collected. There are few exceptions.<sup>45</sup> The rules regarding the various charges permitted by FOIA are summarized below.

### **A. Photocopying Fees**

Section 10003(m) of FOIA sets forth the following rules respecting photocopies:

*Standard-sized, black and white copies:* Public bodies may not charge citizens for the first 20 pages of standard-sized, black and white copies. The charge for copying standard sized, black and white public records for copies over and above 20 are: \$0.10 per sheet (\$0.20 for a double-sided sheet). This charge applies to copies on the following standard paper sizes: 8.5" x 11", 8.5" x 14", and 11" x 17".

*Oversized copies/printouts:* The charge for copying oversized public records is as follows: 18" x 22", \$2.00 per sheet; 24" x 36", \$3.00 per sheet; documents larger than 24" x 36", \$1.00 per square foot.

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<sup>45</sup> The General Assembly may establish different rules respecting fees in the Delaware Code, and counties and municipalities may establish different rules in their respective codes. *See 29 Del. C. § 10003(m)*. If the General Assembly, a county, or a municipality adopts legislation for different fee rules in its code, the DOJ does not review this fee structure to determine if the fees are reasonable; the General Assembly, through its 2012 legislative changes, intended to confine the determination of reasonableness of any such fees to the local or state political process. *Del. Op. Att’y Gen. 19-IB14* (Mar. 11, 2019). In addition, administrative fees may be waived pursuant to the public body’s statutorily mandated FOIA policy.

*Color copies/printouts:* An additional charge of \$1.00 per sheet is to be assessed for all color copies or printouts for standard-sized copies (8.5" x 11", 8.5" x 14", and 11" x 17") and \$1.50 per sheet for larger copies.

## **B. Administrative Fees**

Although FOIA appears to require a public body to charge administrative fees under certain circumstances,<sup>46</sup> the statute allows agencies to waive those fees.<sup>47</sup> FOIA prohibits collection of administrative fees for requests requiring less than one hour of staff time to process.<sup>48</sup>

If a public body chooses to charge administrative fees, it must attempt to minimize those fees and assess only those fees that are reasonably required to process a request.<sup>49</sup> Administrative fees may include staff time associated with processing FOIA requests, including, without limitation (a) identifying records, (b) monitoring file reviews, and (c) generating computer records (electronic or paper print-outs).

Public bodies may not charge fees associated with the “legal review” of records. Determining whether a record or portion thereof may or must be withheld based on one of FOIA’s exemptions, is considered “legal review” regardless of whether the review was conducted by an attorney or not.<sup>50</sup> This is an important note for public bodies that do not routinely rely on counsel to determine whether any of the FOIA exemptions apply.

Administrative fees must be billed per quarter hour, and **they must be billed at the hourly pay grade of the lowest-paid employee capable of performing the**

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<sup>46</sup> See 29 Del. C. § 10003(m)(2).

<sup>47</sup> The policy mandated by Section 10003(b) “may include provisions for the waiver of some or all of the above administrative fees; provided that such waiver shall apply equally to a particular class of persons (i.e., nonprofit organizations).” *Id.*

<sup>48</sup> See *id.*

<sup>49</sup> See *id.*

<sup>50</sup> See *id.* (“Administrative fees shall not include any cost associated with the public body’s legal review of whether any portion of the requested records is exempt from FOIA.”).

service.<sup>51</sup>

### **(1) Working with Third-Party Technology Service Providers to Fulfill a Request for Email Records**

Section 10003(i)(1) requires that the public body fulfill requests for email records using its own staff and from its own records, if it can do so with reasonable effort. To the extent that the public body cannot do so, it must seek assistance from its information and technology personnel or custodians. Thus, in most circumstances, a third-party provider should NOT be a public body's first point of contact for email records.

For most State agencies, Delaware Department of Technology and Information ("DTI"), which provides third-party computer hosting services, will constitute an appropriate technology custodian.

In most instances, FOIA coordinators should take the following steps to comply with Section 10003(i).

- 1) Identify the public employee most likely to have access to the email records identified in the FOIA request.
- 2) Request the employee to search email records for responsive documents.
- 3) If such an employee cannot be identified or is otherwise not able to conduct the search, work with the public body's information technology personnel to obtain the email records.
- 4) If the public body cannot obtain the email records requested from its own records with reasonable effort, contact the public body's third-party service provider to assist with the search.
- 5) If any fees are assessed for retrieving the email records, the public body must provide an itemized written cost estimate listing all charges expected to be incurred in retrieving the records prior to retrieving those records.

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<sup>51</sup> See 29 Del. C. § 10003(m)(2).

### **C. Other Charges**

Section 10003(m)(3) sets forth the following rules respecting materials on microfilm and microfiche:

*Microfilm and/or microfiche printouts:* Public bodies may not charge citizens for the first 20 pages of standard-sized, black and white material copied from microfilm and/or microfiche. The charge for microfilm and/or microfiche printouts over and above 20 is \$0.15 per sheet.

Section 10003(m)(4) permits the following charges for providing electronically generated records:

*Electronically generated records:* Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including but not limited to DVD, CD, or other electronic storage costs) and administrative costs.

Section 10003(j) permits a public body to recover the costs of obtaining its non-custodial records from other custodians to the extent that the public body cannot fulfill a request from the records in its possession.

### **D. Estimates**

In most cases, before a public body may impose charges on a requesting party in connection with a records request, the public body must first “provide an itemized written cost estimate to the requesting party, listing all charges expected to be incurred.”<sup>52</sup> Since administrative fees must be billed at the “current hourly pay grade (prorated for quarter hour increments) of the lowest paid employee capable of performing the service,”<sup>53</sup> public bodies are encouraged to include the hourly rate and reviewing employee’s position in its cost estimates.<sup>54</sup> Upon receiving the estimate, the requesting party may choose to proceed with the request or revise,

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<sup>52</sup> See 29 Del. C. § 10003(i)(2) (email search); (j)(2) (noncustodial records search); (m)(2) (administrative fees).

<sup>53</sup> See 29 Del. C. § 10003(m)(2).

<sup>54</sup> Del. Op. Att’y Gen. 21-IB22 (Sept. 29, 2021).

narrow or abandon its request in response to the estimate. Public bodies may not prepare an estimate of any charges in bad faith – either too high (to discourage the request) or too low (with the expectation of pursuing a later collection action).

#### **E. Advance Payment**

A public body may require some or all of the charges permitted under Section 10003 to be paid prior to any service being performed.<sup>55</sup>

### **HOW SHOULD YOU ESTABLISH FEES?**

#### **SUGGESTED APPROACH:**

FOIA COORDINATORS SHOULD VERIFY THAT THEIR AGENCY'S FEE COLLECTION PRACTICES COMPLY WITH THE FOIA STATUTE AND ANY APPLICABLE POLICIES OF THE AGENCY.

## ***SECTION 5. OPEN MEETINGS***

### **I. GENERAL REQUIREMENTS**

FOIA generally mandates that “[e]very meeting of all public bodies shall be open to the public” unless expressly exempted by statute.<sup>56</sup> FOIA also contains requirements respecting notice of the meeting, the agenda for the meeting, the preparation of meeting minutes, and other matters described below.

#### **A. “Meeting” and “Public Business” Defined**

A “meeting” is a formal *or* informal gathering of a quorum of the members of

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<sup>55</sup> See 29 Del. C. § 10003(m)(5); *Del. Op. Att’y Gen.* 19-IB51 (Sept. 16, 2019).

<sup>56</sup> 29 Del. C. § 10004(a) (emphasis supplied). For example, public bodies with only one member, such as the Governor, a town’s mayor, or a county administrator, are exempt from open meeting requirements. Determining whether a public body is exempt from open meeting requirements is a fact-specific determination and should not be made without consulting legal counsel. Also exempt from open meeting requirements are jury deliberations, court deliberations, and meetings and deliberations of the Board of Pardons and Parole. See 29 Del. C. § 10004(h) for the list of exceptions to FOIA’s open meeting requirements.

any public body for the purpose of discussing or taking action on public business.<sup>57</sup> “Public business” is broadly defined as “any matter over which the public body has supervision, control, jurisdiction or advisory power.”<sup>58</sup>

Several examples of meetings that a public body might hold and that may fall within FOIA’s open meeting requirements are listed below.

- 1) Breakfast meetings: Breakfast meetings of at least a quorum of a public body that include the discussion of public business are subject to the open meeting law.
- 2) Informal meetings: Informal meetings of members of a public body in advance of public meetings or in informal locations such as restaurants have been subject to FOIA’s open meeting requirements.<sup>59</sup> Informal meetings can be subject to FOIA’s open meeting requirements even if no formal decision about the public business discussed is reached.<sup>60</sup>
- 3) Workshops: Workshops held by public bodies that discuss public business are subject to FOIA’s open meeting requirements.<sup>61</sup>
- 4) Non-public activities: Non-public activities of a quorum of members, such as a tour, may be viewed with suspicion by the public and the courts. Consult with counsel if you are unsure whether such activity might be a public meeting.
- 5) Joint meetings of agencies: Whether FOIA applies to joint meetings

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<sup>57</sup> 29 *Del. C.* § 10002(j) (emphasis added).

<sup>58</sup> See 29 *Del. C.* § 10002(m); *Del. Op. Att’y Gen. Op.* 21-IB17 (July 23, 2021).

<sup>59</sup> In contrast, in *Del. Op. Att’y Gen.* 95-IB20 (June 15, 1995), this Office found no FOIA violation where the school board held administrative staff meetings attended by less than a quorum of the board, and the board members who attended did not make “any formal or informal, express or implied recommendations” to the full board based upon what was discussed at the administrative staff meetings.

<sup>60</sup> See *Levy v. Board of Education of Cape Henlopen School District*, 1990 WL 154147, at \*6 (*Del. Ch.* Oct. 1, 1990) (“Because informal gatherings or workshops are part of the decision-making process they too must be conducted openly.”).

<sup>61</sup> See *id.*

attended by less than a quorum of the members of each agency represented must be assessed on a case-by-case basis.

- 6) **Special Note About Constructive Quorums:** A series of interactions between the members of a public body that involve public business, whether by phone, email or in person, may constitute a quorum, even though none of the individual interactions within the series involved a quorum of the public body. When the series of interactions implicates the number of members necessary for a quorum, the public body may have a “constructive quorum” that triggers the open meeting requirements of FOIA. The relevant inquiry is fact-specific and focuses on the nature, timing, and substance of the communications. Constructive quorums have been found when there was an interactive exchange of thoughts and opinions and members were asked to vote or adopt a particular point of view or reach a consensus on what action to take.<sup>62</sup>

## **B. Meetings of Committee and other Subordinate Entities**

Committees, whether *ad hoc* or standing committees, subcommittees and other subordinate bodies established by a public body, whether formally or informally created, may meet the broad definition of “public body” in Section 10002(k) of FOIA. If so, then their meetings must also adhere to FOIA’s open meeting and executive session requirements. A committee’s or other subordinate entity’s FOIA obligations will be triggered the same as other public bodies—namely, whenever a quorum of the members of the entity meet to discuss or act on public business. The same concerns with constructive quorums apply to subordinate entities.

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<sup>62</sup> See *Del. Op. Att’y Gen.* 22-IB34 (Sept.15, 2022) (serial phone calls and visits between town councilmembers created a constructive quorum and violated FOIA where the members privately reached a consensus to execute a check for a grant award); *Del. Op. Att’y Gen.* 21-IB17 (July 23, 2021) (town council violated FOIA by voting, via a series of emails and calls among members, to designate Juneteenth as a holiday); *Del. Op. Att’y Gen.* 17-IB09 (April 25, 2017) (committee of town assembly violated FOIA by reaching agreement on public business via email exchanges); *Del. Op. Att’y Gen.* 03-IB11 (May 19, 2003) (committee of the City of Newark violated FOIA by meeting and conducting public business via an exchange of e-mails).

### **C. Meeting Location**

Section 10004(g) limits the permissible locations for public body meetings. For example, every regularly scheduled meeting of a public body must be held within the geographic jurisdiction of that public body.<sup>63</sup> Additionally, if the public body serves a political subdivision of the State (including any city, town or school district), that public body must hold all meetings within its jurisdiction or within the county in which its principal office is located.<sup>64</sup>

FOIA includes a limited exception to this requirement for “any emergency meeting which is necessary for the immediate preservation of the public peace, health or safety, or to a meeting held by a public body outside of its jurisdiction which is necessary for the immediate preservation of the public financial welfare.”<sup>65</sup>

### **D. The “Open” Requirement**

For a public meeting to be truly “open,” it must be held in a place where anyone who wishes to attend can be accommodated. Holding a public meeting in a facility that is inadequate or too small to accommodate all the people who may wish to attend may violate FOIA.<sup>66</sup>

### **E. Virtual Meetings**

A public body may at the discretion of the chair or president officer, allow the public to monitor or participate in the meeting through the use of electronic means of communication like a computer or telephone line.<sup>67</sup>

FOIA defines a virtual meeting as a “meeting of a public body that 1 or more members attend through the use of an electronic means of communication.”<sup>68</sup> A

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<sup>63</sup> 29 *Del. C.* § 10004(g). A “regularly scheduled meeting” is defined as any meeting of a public body held on a periodic basis. 10004(g)(2).

<sup>64</sup> 29 *Del. C.* § 10004(g)(1). There is an exception for certain school board training sessions. *Id.*

<sup>65</sup> 29 *Del. C.* § 10004(g)(3).

<sup>66</sup> *Del. Op. Att’y Gen.* 16-IB17 (July 28, 2016).

<sup>67</sup> *See* 29 *Del. C.* § 10006A(b).

<sup>68</sup> 29 *Del. C.* § 10002(r).

virtual meeting may be triggered one of two ways: (1) the chair or president officer decides to conduct a virtual meeting; or (2) a member of the public body requests to attend a meeting electronically as a reasonable accommodation for a disability.<sup>69</sup> A public body must adhere to all the following rules to conduct a virtual meeting:<sup>70</sup>

- The public notice must include information on how the public can monitor or participate in the meeting.
- The meeting must have an anchor location which is defined in Section 10002(b) as “the physical location within the geographic jurisdiction of the public body that is open to the public and at which 1 or more members of a public body attend a virtual meeting.”<sup>71</sup>
- The identities and actions of members or witnesses must be verified.
- All participating members and witnesses must be able to simultaneously do one of the following:
  - Hear the comments of each member or witness.
  - Hear and view the comments of each member and witness.
- Documents used during the meeting must be provided immediately to participating members or witnesses.
- Minutes must be maintained.
- The public must be able to monitor the meeting and provide public comment if the public body is required to accept, or provides an opportunity for, public comment.

Virtual meetings may be held by any public body without an anchor location during a state of emergency or pursuant to an executive order adopted to prevent a public health emergency. In addition, a public body may have independent statutory

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<sup>69</sup> 29 *Del. C.* § 10006A(a).

<sup>70</sup> *See* 29 *Del. C.* § 10006A(c).

<sup>71</sup> During a state of emergency, a public body may hold a meeting fully virtually without an anchor location. 29 *Del. C.* § 10006A(e).

authority to meet and conduct business virtually without an anchor location. Please see Section 10006A(e) and (f) for additional details about how to notice and conduct this type of virtual meeting.

## **F. Public Attendance and Participation**

FOIA does not require that any member of the public attend a public meeting; it requires that citizens have timely notice of public meetings so that they can attend if they so choose.

FOIA requires that citizens be permitted to observe public meetings. Prior to 2022, FOIA provided no express right to participate in a public meeting.<sup>72</sup>

However, under the 2022 amendment to the FOIA statute, an open meeting must include a time for public comment notated on the agenda, unless the meeting is held by a public body within the General Assembly which is governed by the rules of proceedings adopted under Section 9, Article II of the Delaware Constitution.<sup>73</sup> The time for public comment must provide a “meaningful opportunity” for the public to engage with the public body.<sup>74</sup> A public body may impose reasonable time, place, and manner restrictions on the length of the period and the amount of time allotted for each comment.<sup>75</sup> Additionally, FOIA authorizes

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<sup>72</sup> See *Reeder v. Delaware Dept. of Ins.*, 2006 WL 510067, at \*12 (Del. Ch. Feb. 24, 2006) (“There is nothing in the text of the declaration of policy or the open meeting provision requiring public comment or guaranteeing the public the right to participate by questioning or commenting during meetings. What is provided by FOIA generally, and by the open meetings provision in particular, is public access to attend and listen to meetings.”) (citations omitted).

<sup>73</sup> 29 *Del. C.* § 10004(a)(2). *Del. Op. Att’y Gen.* 24-IB26 (June 26, 2024) (“[P]ublic comment period is a major issue for discussion, and citizens must receive public notice of their opportunity for public comment so they can decide whether they wish to attend the meeting.”) *Cf. Del. Op. Att’y Gen.* 25-IB12 (February 27, 2025) (there was no violation found when the public body did not call for public comment during a meeting at which no member of the public was present.)

<sup>74</sup> 29 *Del. C.* § 10004(a)(2).

<sup>75</sup> See *Del. Op. Att’y Gen.* 23-IB33 (December 4, 2023) (not allowing rebuttal from council members or members of the public was not found to violate FOIA.)

“the removal of any person from a public meeting who is willfully and seriously disruptive of the conduct of such meeting.”<sup>76</sup> Excluding an individual from publicly commenting because he was an intern at the public body was found to be a violation of FOIA.<sup>77</sup>

## **G. Exempt Bodies or Proceedings**

Unless a public body or specific portion of its procedure is exempted from the requirements by FOIA or another statute, FOIA’s open meeting provisions will be liberally construed in favor of application to the public body. Section 10004(h) provides that the open meeting requirements do not apply to the proceedings of the following entities:

- 1) Grand juries;
- 2) Petit juries;
- 3) Special juries;
- 4) The deliberations of any court;
- 5) The Board of Pardons and Parole;
- 6) Public bodies having only one (1) member; or
- 7) Certain public bodies within the legislative branch of the State that are not specified in the Delaware Code, such as standing ethics committees. (But the full House and Senate, their standing committees and committees and task forces created by legislative resolution are subject to open meeting requirements.)<sup>78</sup>

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<sup>76</sup> 29 *Del. C.* § 10004(d).

<sup>77</sup> *Del. Op. Att’y Gen.* 25-IB26 (April 16, 2025).

<sup>78</sup> The “public bodies within the legislative branch” that are listed follow the phrase “other than,” which means that they are subject to the open meeting requirements (with the exception of “ethics committees”). The enumerated legislative bodies that are expressly subject to the open meeting requirement are “the House of Representatives, the Senate, the Joint Finance Committee, the Joint Committee on Capital Improvement, the Joint Sunset Committee, Legislative Council, committees

Section 10004(h)(9) provides that the deliberations in case decisions of Delaware’s Industrial Accident Board, Human Relations Commission, Victims Compensation Appeal Board and Tax Appeals Board are exempt from the open meeting requirements.

## **H. Notice Requirements**

Regular Meetings: A “regular meeting” is one that is held on a periodic basis.<sup>79</sup> Section 10004(e)(2) of FOIA mandates that all public bodies provide the public with notice of their regular meetings and, if applicable, of their intent to hold an executive session closed to the public. Notice of a regular meeting must be provided at least seven (7) days in advance of the date of the meeting.

Special Meetings: A “special meeting” is a meeting “to be held less than seven (7) days after the scheduling decision.”<sup>80</sup> Section 10004(e)(4) of FOIA requires that special meetings be noticed as soon as is reasonable, and no less than twenty-four (24) hours before the meeting. The notice of a special meeting must contain an explanation why the public body could not provide at least seven (7) days’ notice.

Virtual Meetings: A virtual meeting is a meeting in which one or more members attend through the use of electronic means of communication. Section 10006A mandates that meeting notice must include information on how the public can monitor the meeting and if public comment is scheduled, how the public can participate in the meeting.

### Notice requirements for open meetings:

- 1) The notice must include the meeting agenda.
- 2) The notice must include the date, time, and place of the meeting, including whether the meeting will be conducted by video conference.

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... specifically enumerated and created by Resolution of the House of Representatives and/or Senate or task forces specifically enumerated and created by Resolution of the House of Representatives and/or Senate.”

<sup>79</sup> See 29 Del. C. § 10004(g)(2).

<sup>80</sup> 29 Del. C. § 10004(e)(4).

- 3) A reasonable number of copies of the notice must be made available at the meeting.
- 4) The notice must be posted.
  - a) All public bodies must post notice conspicuously at the principal office of the public body, or if no such office exists, at the place where meetings of the public body are regularly held. Virtual meetings during a state of emergency or pursuant to an executive order adopted to prevent a public health emergency, held in compliance with Section 10006A, are excluded from this posting requirement.<sup>81</sup>
  - b) All non-county and non-municipal public bodies must also post the notice electronically on a designated State of Delaware website that has been approved by the Registrar of Regulations by May 1, 2013.
  - c) In addition, public bodies in the executive branch of state government that are subject to FOIA, must post the notice electronically on the designated State of Delaware website approved by the Secretary of State. Notices of public meetings for public bodies in the executive branch of Delaware State government are at <https://publicmeetings.delaware.gov/#/>.

## I. Agenda Requirements

**An “agenda” shall include but is not limited to a general statement of the major issues expected to be discussed at a public meeting, as well as a statement of intent to hold an executive session and the specific ground or grounds therefore under Section 10004(b) of this title.**<sup>82</sup>

“An agenda serves the important function of notifying the public of the matters which will be discussed and possibly voted on at a meeting, so that members of the public can decide whether to attend the meeting and voice their ideas or concerns.”<sup>83</sup> The statutory language only requires the agenda to include a “general

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<sup>81</sup> 29 Del. C. § 10006A(e), (f).

<sup>82</sup> 29 Del. C. § 10002(a).

<sup>83</sup> Del. Op. Att’y Gen. 97-IB20 (Oct. 20, 1997).

statement” of the topic to be discussed by the public body. The agenda should be worded “in plain and comprehensible language”<sup>84</sup> so that those members of the public with an “intense interest” in a subject will know what it is being discussed.<sup>85</sup> If the public body knows that the subject is important to the community, “it satisfies neither the spirit nor the letter of the [Act] to state it in broad generalities so as to fail to draw the public’s attention.”<sup>86</sup>

**The adequacy of an agenda will be judged in light of the factual circumstances pertaining to each case.<sup>87</sup> This Office has found public meeting agendas to be deficient for a variety of reasons, but the most common is inadequate disclosure. Following the suggested approach below will minimize the risk of committing a disclosure violation:**

- The agenda must alert the public to the major issues expected to be discussed at the meeting.<sup>88</sup>
- The agenda must include public comment on the agenda to alert the public to its opportunity to comment.<sup>89</sup>

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<sup>84</sup> *Chemical Industry Council of Delaware, Inc. v. State Coastal Zone Industrial Control Board*, 1994 WL 274295, at \*8 (Del. Ch. May 19, 1994); *see also Del. Op. Att’y Gen.* 08-IB08 (May 23, 2008).

<sup>85</sup> *Lechliter v. Delaware Dep’t of Env’tl. Control and Natural Res.*, 2017 WL 2687690, at \*2 (Del. Ch. Jun. 22, 2017); *Del. Op. Att’y Gen.* 19-IB55 (Sep. 30, 2019); *Del. Op. Att’y Gen.* 21-IB0321 (Feb. 25, 2021).

<sup>86</sup> *Ianni v. Department of Elections of New Castle County*, 1986 WL 9610, at \*5 (Del. Ch. Aug.29, 1986); *see also Del. Op. Att’y Gen.* 01-IB10 (June 12, 2001); *Del. Op. Att’y Gen.* 02-IB20 (Aug. 30, 2002); *Del. Op. Att’y Gen.* 07-IB01 (Jan. 25, 2007); *Del. Op. Att’y Gen.* 07-IB03 (Feb. 23, 2007).

<sup>87</sup> *See Del. Op. Att’y Gen.* 12-IB04 (Mar. 27, 2012) (finding the posting of a “tentative agenda” to be misleading under the circumstances of the case).

<sup>88</sup> *See Del. Op. Att’y Gen.* 97-IB13 (June 2, 1997); *Del. Op. Att’y Gen.* 21-IB-21 (Feb. 25, 2021).

<sup>89</sup> 29 *Del. C.* § 10004(a)(2); *Del. Op. Att’y Gen.* 24-IB26 (June 26, 2024) (“[P]ublic comment period is a major issue for discussion, and citizens must receive public notice of their opportunity for public comment so they can decide whether they wish to attend the meeting.”); *Del. Op. Att’y Gen.* 25-IB05 (Jan. 21, 2025).

- It is not enough to identify “most” of the major issues to be discussed at the meeting. The failure to disclose even one or two matters of public business expected to be discussed in the public meeting is a FOIA violation.<sup>90</sup>
- Noting that the agenda “is subject to change” will not excuse the failure to provide public notice of matters of public business expected to be discussed at the public meeting.<sup>91</sup>
- The matters to be discussed should be described with enough specificity to provide fair notice to the public.<sup>92</sup> An agenda’s statement that a public body will consider an item is sufficient notice to the public that the Board may take a vote on that item.<sup>93</sup>

FOIA permits some flexibility regarding the contents of the agenda. Section 10004(e)(3) of FOIA provides: “the agenda shall be subject to change to include additional items including executive sessions or the deletion of items including executive sessions which arise at the time of the public body’s meeting.” This section has been interpreted narrowly. A new agenda item may only be discussed if it arose at the time of the meeting, as a natural evolution of discussions of a related publicly noticed item. A public body may not simply amend its agenda during the meeting to adopt a new agenda item.<sup>94</sup>

Additionally, Section 10004(e)(6) of FOIA recognizes that there may be rare and exceptional circumstances in which a public body may not be able to post the meeting agenda at the time it posts the meeting notice. When a public body must amend an agenda less than seven (7) days prior to the date of the scheduled meeting, the agenda must be posted at least six (6) hours in advance of the public meeting,

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<sup>90</sup> See *Del. Op. Att’y Gen.* 97-IB17 (Aug. 28, 1997) (failure to disclose even one or two subjects constitutes FOIA violation). See also *Del. Op. Att’y Gen.* 05-IB24 (Aug. 18, 2005); *Del. Op. Att’y Gen.* 06-IB15 (July 24, 2006); *Del. Op. Att’y Gen.* 11-IB12 (Aug. 18, 2011).

<sup>91</sup> See *Del. Op. Att’y Gen.* 03-IB22 (Oct. 6, 2003).

<sup>92</sup> See *Del. Op. Att’y Gen.* 03-IB17 (July 31, 2003); *Del. Op. Att’y Gen.* 05-IB05 (Feb. 22, 2005); *Del. Op. Att’y Gen.* 05-IB26 (Aug. 29, 2005).

<sup>93</sup> *Lechliter v. Becker*, 2017 WL 117596, at \*2 (Del. Ch. Jan. 12, 2017).

<sup>94</sup> *Del. Op. Att’y Gen.* 19-IB48 (Sept. 9, 2019).

and the reasons for the delayed posting must be set forth briefly in the agenda. “This exception does not authorize a public body to amend the agenda prior to a meeting for any reason, but rather applies ‘to add items that come up suddenly and cannot be deferred to a later meeting.’”<sup>95</sup>

## **J. Meeting Minutes**

Section 10004(f) of FOIA provides that public bodies must keep minutes of all public meetings, including executive sessions.<sup>96</sup> The minutes must include a record of members present and a record, by individual member, of each vote taken and each action agreed upon. Minutes may contain more than the required information but must be written in a way that accurately reflects the votes and actions taken by the public body during the meeting. The minutes must be made available for public inspection and copying as a public record. Executive session minutes may be temporarily withheld from public disclosure for so long as public disclosure would defeat the lawful purpose for the executive session.

## **K. Cancelling or Rescheduling a Public Meeting**

FOIA does not prohibit the cancellation of a public meeting, and a public body may decline to reschedule the meeting if it is no longer needed. If the meeting will be rescheduled, the public body must provide another notice.

FOIA allows a public body to hold a “rescheduled” meeting within seven (7) days of the original meeting date. In that case, the public body must give notice of the meeting “as soon as reasonably possible,” but no later than 24 hours before such meeting. In addition, the notice must include an explanation as to why the seven-day notice required by Section 10003(e)(2) could not be provided.<sup>97</sup>

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<sup>95</sup> *Del. Op. Att’y Gen.* 20-IB26 (Oct. 28, 2020) (citing *Del. Op. Att’y Gen.* 05-IB15 (June 20, 2005)).

<sup>96</sup> FOIA does not require a public body to transcribe, or tape record the entirety of its meetings, with the exception of virtual meetings held during a state of emergency or pursuant to an executive order adopted to prevent a public health emergency. These types of virtual meetings must be recorded, and those recordings must be made available for public review within a reasonable time after the meeting concludes. Additionally, a public body’s enabling statute may have transcription or recording requirements.

<sup>97</sup> *See* 29 *Del. C.* § 10004(e)(4).

If a meeting is scheduled more than seven (7) days after the original meeting date noticed, FOIA does not consider the meeting to be a “rescheduled” meeting. Rather, this is a new meeting, and the ordinary notice provisions apply.

## II. MEETING IN EXECUTIVE SESSION

FOIA requires that “[e]very meeting of all public bodies . . . be open to the public except those closed pursuant to subsections (b), (c), (d) and (h)” of 29 *Del. C.* § 10004.<sup>98</sup> In limited circumstances, a public body is permitted to hold all or a portion of its meeting without public attendees, or in “executive session.”

### A. When is an Executive Session Permitted?

Unless otherwise permitted by the public body’s enabling statute, the circumstances listed in FOIA “**are exclusive and form the only basis for entering into closed session.**”<sup>99</sup> Section 10004(b) provides that a public body may, but is NOT required to, hold meetings in executive session when discussing the following topics:

- 1) Individual’s qualifications to hold a job or pursue training (unless the individual requests that the meeting be open). This exemption does not apply “to the discussion by a licensing board or commission subject to [29 *Del. C.* § 8375], of an individual citizen’s qualifications to pursue any profession or occupation for which a license must be issued by a public body in accordance with Delaware law.”<sup>100</sup>
- 2) Preliminary discussions of site acquisitions for any publicly funded capital improvements or sales or leases of real property. This basis for executive session exists “to ‘protect the government when it enters the marketplace to purchase real property as an ordinary commercial buyer or seller.’”<sup>101</sup>

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<sup>98</sup> 29 *Del. C.* § 10004(a).

<sup>99</sup> See *Del. Op. Att’y Gen.* 12-IIB09 (July 13, 2012) (quoting *Del. Op. Att’y Gen.* 80-FOI3 (Aug. 30, 1980)).

<sup>100</sup> 29 *Del. C.* § 10004(b)(1).

<sup>101</sup> *Del. Op. Att’y Gen.* 05-IB24 (Aug. 18, 2005) (quoting *Del. Op. Att’y Gen.* 02-IB27 (Nov. 4, 2002)).

- 3) Activities of any law-enforcement agency in its efforts to collect information leading to criminal apprehension.
- 4) Strategy sessions with respect to collective bargaining or pending or potential litigation. **Special Note:** This exception only covers a public body's discussion with its attorney *if* the discussion involves pending or potential litigation, and *only* when an open meeting would have the adverse effect on the bargaining or litigation position of the public body.<sup>102</sup>
- 5) Discussions which would disclose the identity of a lawful/bona fide contributor of a charitable contribution to a public body when public anonymity has been requested.
- 6) Discussion of the content of documents excluded from the definition of "public record." **Special Note:** The definition of "public record" is set forth above. This exemption does not permit discussions of legal advice contained in attorney-client privileged or work product documents in executive session; any discussion of legal advice must meet the requirements of 29 *Del. C.* 10004(b)(4).<sup>103</sup>
- 7) Student disciplinary cases (unless the student requests an open public hearing). Employee disciplinary or dismissal cases (unless the employee requests an open public hearing).
- 8) Personnel or student matters in which the names, competency and abilities of individual employees or students are discussed (unless the

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<sup>102</sup> See 29 *Del. C.* § 10004(b)(4); see also *Chemical Industry Council of Delaware, Inc. v. State Coastal Zone Industrial Control Board*, 1994 WL 274295, at \*11 (May 19, 1994); *Del. Op. Att'y Gen.* 24-IB42 (October 9, 2024) (statements made by an event organizer purportedly made to a news outlet that the events organizer contacted attorneys about possible legal action were not sufficient to support a denial under the potential litigation exemption).

<sup>103</sup> See *Chemical Industry Council of Delaware, Inc. v. State Coastal Zone Industrial Control Board*, 1994 WL 274295, at \*11 (May 19, 1994); *Del. Op. Att'y Gen.* 19-IB16 (Mar. 22, 2019); *Del. Op. Att'y Gen.* 19-IB07 (Feb. 15, 2019).

employee or student requests an open public meeting).<sup>104</sup> This exemption does not apply to situations where a specific employee's name is mentioned unrelated to competency or ability. Similarly, general employee-related discussions that do not directly relate to name, competency, and ability are not eligible.<sup>105</sup>

## **B. Requirements for Meeting in Executive Session**

A public body must satisfy the following requirements in connection with meetings in executive session:

- 1) Advance Notice: The intent to convene in executive session must be announced in the notice of the meeting, whether it is a “regular” meeting, “virtual” meeting or a “special or rescheduled” meeting.<sup>106</sup> Likewise, a brief statement of the reasons for convening in executive session must be set forth in the agenda for the meeting.<sup>107</sup> While the public body must disclose the purpose of the executive sessions in the agenda, it does not have to specify what legal, personnel, or other subjects will be discussed in executive session.<sup>108</sup> However, any

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<sup>104</sup> *Del. Op. Att’y Gen. 17-IB20* (July 12, 2017) (noting that the agenda need not identify the names of the individual to be discussed and contains no mandate that the public body notify the individual that he/she is the subject of the executive session or to affirmatively present the individual the option to have the discussion occur in open session).

<sup>105</sup> *Del. Op. Att’y Gen. 22-IB41* (Nov. 14, 2022) (holding that items concerning “employee compensation, leave, and vehicle usage” were general discussion topics that did not fall under an exception for open meeting requirements).

<sup>106</sup> *See 29 Del. C. §§ 10004(e)(2)-(4)*. Notwithstanding the fact that FOIA requires public notice of a public body’s intent to convene an executive session, FOIA recognizes that in limited circumstances, a public body shall be permitted to amend its agenda to add or delete an executive session for matters “that arise at the time of the public body’s meeting.” *29 Del. C. § 10004(e)(3)*.

<sup>107</sup> *See 29 Del. C. § 10004(e)(2)*.

<sup>108</sup> *See Common Cause of Del. v. Red Clay Consol. Sch. Dist.*, 1995 WL 733401,

discussions or actions anticipated to follow the executive session may require additional elaboration to meet the notice requirements for open session items.<sup>109</sup> Circumstances will vary; consultation with counsel is advised if the public body's obligations are unclear.

- 2) **Public Body Vote:** The public body must approve the decision to enter executive session by a majority vote at the meeting, during the open portion of the meeting. If the matter discussed in executive session is one upon which the public body must vote, the vote may not be taken in executive session. The public body must return to the public session to take the vote.<sup>110</sup>
- 3) **Limited Discussion:** The public body must limit the discussion during the closed session to public business that falls within one of the purposes allowed by Section 10004(b) for such meetings.
- 4) **Prepare Minutes:** The public body must prepare minutes of any closed session and make them available as public records for public inspection, except that the minutes may be temporarily withheld from public disclosure for so long as disclosure would defeat the lawful purpose for holding the executive session, but no longer.<sup>111</sup> The minutes must also reflect who was present in the executive session.<sup>112</sup>

The foregoing requirements must be met even when a public body is meeting to discuss only matters that are authorized for executive session.

### **C. Permitted Attendees at an Executive Session**

It is clear from the language of FOIA that executive sessions are generally closed to non-members of a public body. The public body may not invite non-

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at \*4 (Del. Ch. Dec. 5, 1995).

<sup>109</sup> See *Del. Op. Att'y Gen.* 23-IB28 (Oct. 3, 2023); *Del. Op. Att'y Gen.* 19-IB31 (June 24, 2019).

<sup>110</sup> See 29 *Del. C.* § 10004(c).

<sup>111</sup> See *Levy*, 1990 WL 154147, at \*3; 29 *Del. C.* § 10004(f); *Del. Op. Att'y Gen.* 17-IB59 (Nov. 20, 2017).

<sup>112</sup> See 29 *Del. C.* § 10004(f).

member observers.

However, the statute implicitly permits the attendance of certain non-members necessary to conduct the proceedings expressly authorized to be held in executive session. For example, a public body may invite persons to present testimony or opinions limited to the purpose of the session, provided that such attendance is limited to the portion of the discussion in connection with which such testimony or opinion is needed. The exceptions also implicitly permit the presence of attorneys to discuss litigation strategy, or teachers and school administrators in student discipline cases. There may be other limited circumstances in which FOIA may permit a public body to invite individuals to attend an executive session to provide subject matter expertise relating to the subject for which the executive session is authorized or because they hold unique status that warrants the individual's inclusion.<sup>113</sup>

Conversely, if a member of the public body recuses themselves from whatever the subject of the executive session is, the member should remove themselves from the executive session.

## **SHOULD A PUBLIC BODY MEET IN EXECUTIVE SESSION?**

### **SUGGESTED APPROACH:**

IT IS IMPORTANT THAT THE PUBLIC BODY INCLUDE NOTICE OF ITS INTENTION TO MEET IN EXECUTIVE SESSION ON THE NOTICED AGENDA OF ITS MEETING. THE AGENDA MUST ALSO INCLUDE A BRIEF DESCRIPTION OF THE REASONS FOR CALLING THE EXECUTIVE SESSION. DO NOT MEET IN EXECUTIVE SESSION UNLESS YOU ARE CERTAIN ONE OF THE PERMITTED REASONS FOR MEETING IN EXECUTIVE SESSION IS APPLICABLE. OTHERWISE, IN CERTAIN CIRCUMSTANCES, ANY ACTION TAKEN BY THE PUBLIC BODY MAY BE STRUCK DOWN AS VOID BY THE DELAWARE COURTS.

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<sup>113</sup> *Del. Op. Att'y Gen. 22-IB44* (July 12, 2017) (allowing for admission of an elected but not yet sworn member because “due to his unique status as an elected [but unsworn] member, to the exclusion of others, [the inclusion] did not transform the executive sessions into meetings that must be open to the public”).

## ***SECTION 6. FOIA PETITIONS AND DETERMINATIONS***

FOIA allows any citizen to petition the DOJ for a determination as to whether a violation of FOIA has occurred or is about to occur.<sup>114</sup> These determinations are limited to the issue of whether a FOIA violation has occurred or is about to occur and will not address ancillary legal questions.

The DOJ maintains rules of procedures for the FOIA petition process, which were most recently updated in May 2023. The procedures may be found at <https://attorneygeneral.delaware.gov/executive/open-government/>.

### **A. Overall Process**

The process begins when a citizen files a petition with the DOJ FOIA Coordinator. A petition is considered received by the FOIA Coordinator on the date of electronic or fax submission or physical delivery by postal carrier or other means; provided that if the submission or delivery occurs on a weekend, a State-recognized holiday or after 3:00 pm on any weekday, the date of the receipt of the petition shall be the first business day following the submission or delivery. All petitions must be prominently marked to the attention of the DOJ FOIA Coordinator.

Once received, the FOIA Office will review the petition for completeness and complete an initial examination. The petition may not be anonymous. At a minimum, the petitioner's name and contact information must be noted on the petition. The petition must describe how FOIA was violated or will be violated and include all relevant evidence available to the petitioner. Formal citation to the statute is not required.

For petitions alleging an improper response to a records request, the petition must include, at a minimum, a copy of the original request (if available) and the public body's response. For petitions alleging violations related to meeting agendas or minutes, copies of those relevant agendas or minutes should be submitted. These evidentiary records, including the request, response, minutes, and agenda, should be attached to the petition in their original format. For

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<sup>114</sup> 29 *Del. C.* § 10005.

example, evidentiary emails may be attached to the emailed petition or forwarded separately.

The FOIA Office will send a letter to the petitioner and the respondent notifying the parties of the petition. In most situations, the letter will also request a response from the respondent. The FOIA Office will review the submissions and issue an opinion as either an Attorney General Opinion posted on the Open Government website: <https://attorneygeneral.delaware.gov/opinions/> or a letter sent to the parties.

## **B. Time Limitations on Filing a Petition**

Petitions alleging an improper denial of records by a State agency, department, or board must be received by the DOJ within sixty (60) days of the denial. All other petitions must be received by the DOJ within six (6) months from the date of the alleged violation.

## **C. Burden of Proof**

In a FOIA petition, “the burden of proof is on the custodian of records to justify the denial of access to records and is on the public body to justify a decision to meet in executive session or any failure to comply with this chapter.”<sup>115</sup> In answering a petition, unless 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. The facts necessary to support a search will depend on the circumstances, but the affidavit should describe, at a minimum, where a public body searched (including who, by position or title, was asked and when), what, if any, records were reviewed, and any other relevant aspects.<sup>116</sup> It is also recommended that a public body, as appropriate, explain why the locations were selected to be searched. The public body has the burden to create a record from which the DOJ or the court can determine whether the public body performed an adequate search for responsive documents.

However, in answering a petition, the public body is not required to provide an index or any other compilation listing each record or part of a record that was

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<sup>115</sup> 29 *Del. C.* § 10005(c).

<sup>116</sup> *Judicial Watch, Inc. v. Univ. of Del.*, 2022 WL 2037923, at \*3 (Jun. 7, 2022).

denied.<sup>117</sup> As an example, a public body is not required to produce a privilege log to support a denial of documents under either the attorney-client privilege or the attorney work product doctrine.

#### **D. Judicial Actions**

A citizen has the option to pursue FOIA claims through judicial actions as provided in Section 10005.

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<sup>117</sup> 29 *Del. C.* § 10003(h)(2).

# APPENDIX A

## Opinion Summaries for Prior Two Years

**Summary of Delaware State Court Opinions Discussing FOIA Matters  
(October 1, 2023 to September 25, 2025)**

***Judicial Watch, Inc. v. Univ. of Del., 2024 WL 3650205 (Del. Super. Aug. 5, 2024)***

The Appellant, Judicial Watch, Inc., filed a Motion for Relief from Judgment, arguing that additional information calls into question the affidavit that was the subject of the Court’s October 19, 2022 opinion. The Court found that the newly discovered evidence is not so material and relevant that it would probably change the result of the Court’s October 19, 2022 decision that the University met its burden of justifying its denial of the Appellant’s FOIA requests. The Court also determined that the newly discovered evidence does not establish such extraordinary circumstances so as to require relieving the Appellants of the Court's October 19, 2022 judgment in the interest of justice. The Motion for Relief from Judgment was denied.

***In re: Delaware Real Estate Commission, 2024 WL 4888922 (Del. Super. Nov. 25, 2024)***

Three licensees appealed decisions of the Delaware Real Estate Commission assessing civil penalties and publicly reprimanding them to the Superior Court of Delaware. Among other issues, the Appellants argued that the Commission’s reprimands should not have been done publicly. As the Commission is a public body subject to FOIA and FOIA’s limited exceptions were not applicable, the Court found that the Commission’s final order presumptively becomes a public record. As the General Assembly did not override FOIA to allow private reprimands, the Court determined that the Commission did not act outside of its statutory authority or abuse its discretion when issuing public reprimands.

***Vanella v. Duran, et al., 2024 WL 5201305 (Del. Super. Dec. 23, 2024)***

The Appellant, on behalf of the Delaware Call, appealed the Chief Deputy’s determination that the Delaware State Police did not violate FOIA in denying the Appellant’s FOIA request. The Appellant submitted a FOIA request to DSP on October 3, 2023, seeking: the identity of all current and former Delaware law enforcement officers; salary information; their employment status, rank, past employers, job titles, resumes; a list of formerly certified officers, their “current status,” and demographical data for each officer (age, sex, and race). DSP denied the FOIA request, but did provide Petitioner with resources to obtain certain of the

information sought. DSP noted it did not possess information as to all Delaware officers and asserted the “safety exception” in 29 *Del. C.* § 10002(o)(17) and the personnel file exception to FOIA (§ 10002(o)(1)). As to the safety exception, DSP provided affidavits in support of its denial detailing that DSP had received an increasing number of disturbing messages from the public, through voicemail, phone calls and its social media platforms. In one case, an individual was determined to antagonize troopers and Division civilian employees created alarm by circling DSP headquarters with his canine.

The Superior Court affirmed in part and reversed in part. The Court disagreed with the Chief Deputy that the safety exception applied and ordered that the identity of DSP troopers (not all Delaware officers) must be disclosed as well as their rank and salaries. The Court held it was not enough for DSP to point to public information in response to the request for salaries. The Court upheld the denial of providing past employers, job titles, and resumes of the troopers. The Court reasoned that disclosure of one’s resume impacts an individual’s privacy interests differently than would the disclosure of mere names, ranks, and salaries. The Court recognized that the “personal privacy interests of law enforcement officers who served undercover duty or in other highly sensitive roles are often heightened in comparison to those of many other public employees.” The Court also upheld the denial of records for formerly certified troopers and the request for demographic information for all troopers. The Court recognized the sensitive nature of work performed by law enforcement officers. The Court noted that “a trooper may need to serve in an undercover capacity and disclosing such information would significantly compromise his or her personal privacy (not to mention his or her safety which should be deemed as aspect and goal of one’s personal privacy).” In summary, the Court ruled only that ranks and salaries should be disclosed.

**Harvey v. Garrett, 2025 WL 71134 (Mar. 5, 2025)**

The Appellant appealed the Commissioner’s Order denying Appellant’s Motion to Set Aside Judgment and the Attorney General’s decision finding the Appellee, Wilmington Housing Authority, did not violate FOIA. The Appellant argued that (1) the Attorney General’s Office violated his rights by not directing the WHA to release the records associated with Compton Towers’ Secretary, (2) the Commissioner violated Appellant’s rights by not ruling on his Motion for a Subpoena Duce Tecum against the Appellees, and (3) the Commissioner denied Appellant due process because Appellees did not submit a copy of the Executive Director's Affidavit to the Court and denied Appellant’s Petition without allowing

him to challenge the Appellee's response. Because Appellant did not request any records related to Compton Towers' Secretary prior to his Appeal, that argument was not ripe for the Court's review on appeal. In addition, the Court denied Appellant's Motion for Subpoena Duces Tecum, because it failed the reasonableness test. Lastly, Appellant's argument that Appellees failed to produce an affidavit to the Court is without merit because the Court received and reviewed the Executive Director's Affidavit on December 18, 2024. Accordingly, the Commissioner's Order and the Attorney General's decision was affirmed.

**Linehan v. Mills, 2025 WL 1516782 (Del. Ch. May 28, 2025)**

Citizens of the City of Rehoboth Beach filed suit against the City and its officials related to the hiring of the City Manager. This opinion decides the Defendants' motion to dismiss the complaint. In addition to other objections, the Defendants argued that the FOIA claims should be dismissed. The Court dismissed the FOIA claims, finding that the Plaintiffs were time barred from bringing the claims challenging executive sessions in November 2023 through March 2024. The Court determined that the Plaintiffs knew of the actions taken at the executive sessions by the end of May, when they petitioned the AG's Office, but waited to file this action until more than sixty days later. The Plaintiffs' claim regarding the July 8, 2025 meeting was also dismissed, as the complaint's allegations did not support an inference that the Commissioners failed to provide a meaningful opportunity for public engagement in violation of FOIA at the July 8th meeting.

**Vanella v. Duran, et al., 2025 WL 2549424 (Del. Super. Sep. 4, 2025)**

Following the above decision, the Appellant sought in excess of \$100,000 in fees and costs allegedly incurred in pursuing the Superior Court appeal of the Chief Deputy's determination on DSP's FOIA denial. DSP objected on a couple grounds, including that fees are not recoverable in FOIA appeals (and are only available in the context of lawsuits). The Court ruled that the language and legislative history of the FOIA statute does not permit an award of attorneys' fees for FOIA appeals. The Court held that fees may only be recovered by successful *plaintiffs* in lawsuits.

**Attorney General Opinions Issued October 1, 2023 to September 25, 2025**

*The full opinions can be found at [www.attorneygeneral.delaware.gov/opinions](http://www.attorneygeneral.delaware.gov/opinions).*

**Attorney General Opinion No. 23-IB28**

Issued to Randall Chase re: FOIA Complaint Concerning the Indian River School District (“Board”) on 10/3/23.

Petitioner alleged that at the August 16, 2023 meeting, the Board unconstitutionally restricted free speech; the Board failed to state the reason for the executive session when voting to go into executive session; the Board voted on “personnel agendas” at its June 26, 2023 and August 16, 2023 meetings that do not give information about the positions or the individuals in question; and the District’s refusal to provide information about staff suspensions is improper under state law and violates the District’s own past practices.

DECIDED: The Board violated FOIA by providing insufficient notice to the public in its June 26, 2023 and August 16, 2023 agendas. However, the Board did not violate FOIA by failing to state verbally the purpose of the executive sessions during its vote to enter the August 16, 2023 executive session. This Office lacked the authority to decide the remaining claims.

**Attorney General Opinion No. 23-IB29**

Issued to Melissa Steele re: FOIA Complaint Concerning the Delaware Department of Safety and Homeland Security (“DSHS”) on 10/10/23.

Petitioner alleged that the DSHS violated FOIA by denying a request for investigatory records related to three teens’ criminal arrests.

DECIDED: The DSHS did not violate FOIA by denying access to the requested records.

**Attorney General Opinion No. 23-IB30**

Issued to Randall Chase re: FOIA Complaint Concerning the Delaware Department of Health and Social Services (“DHSS”) on 11/8/23.

Petitioner alleged that the DHSS provided only some redacted pages in response to the request for certain employment records and claimed all other records were

exempt. Petitioner further alleged that the requested records were inappropriately denied under the right of privacy.

DECIDED: The DHSS violated FOIA by failing to meet its burden of demonstrating that it appropriately searched for responsive records and by denying access to the employee's attendance and leave records. The DHSS did not violate FOIA by denying access to the performance and discipline records under the personnel file exemption or by its assertion of Section 10002(o)(6) without elaboration in its denial letter.

### **Attorney General Opinion No. 23-IB31**

Issued to Ian Riden re: FOIA Complaint Concerning the Delaware Health Information Network ("DHIN") on 11/13/23.

Petitioner alleged that the DHIN improperly denied its request for records based on citizenship.

DECIDED: As DHIN does not require public bodies to provide noncitizens with access to public records, DHIN did not violate FOIA by denying access to the requested records.

### **Attorney General Opinion No. 23-IB32**

Issued to Jamila Davey re: FOIA Complaint Concerning the City of Wilmington on 12/1/23.

Petitioner alleged that the City is not permitted to assess any fees for processing this request and the City staff will not require three hours to fulfill the request.

DECIDED: The FOIA statute authorizes fees for processing FOIA requests in accordance with Section 10003, and the City did not violate FOIA by estimating three hours of staff time in this cost estimate.

### **Attorney General Opinion No. 23-IB33**

Issued to Tamara Skis re: FOIA Complaint Concerning the Ellendale Town Council on 12/4/23.

Petitioner alleged that the Ellendale Town Council's November 1, 2023 meeting agenda violated FOIA by failing to provide the public a meaningful opportunity for engagement as required by the FOIA statute and by failing to disclose the reasons for the executive session.

DECIDED: The Town Council's November 1, 2023 meeting agenda did not violate FOIA as alleged in the Petition. The statement in the agenda prohibiting rebuttals during the public comment period did not violate Section 10004(a), and the reasons given for the executive session on this agenda are sufficient under FOIA.

### **Attorney General Opinion No. 23-IB34**

Issued to Dan Shortridge re: FOIA Complaint Concerning the City of Dover on 12/13/23.

Petitioner alleged that the City violated FOIA by failing to create an agenda and minutes for its review committee meeting for the Old Post Office property and to produce those records when the petitioner requested them.

DECIDED: The City's review committee violated FOIA by failing to prepare an agenda and maintain minutes for its August 29, 2023 meeting.

### **Attorney General Opinion No. 24-IB01**

Issued to Robert Vanella, Delaware Call, re: FOIA Complaint Concerning the Division of State Police of the Delaware Department of Safety and Homeland Security ("DSP") on 01/11/24.

Petitioner alleged that the DSP improperly denied six of its requests seeking various records related to certified law enforcement officers, as these records were not exempt under 29 *Del. C.* § 10002(o)(1) and (17). Petitioner asserted that the DSP should fulfill these requests from its existing records.

DECIDED: The DSP did not violate FOIA by denying access to the requested records.

### **Attorney General Opinion No. 24-IB02**

Issued to Jennifer Antonik re: FOIA Complaint Concerning the Caesar Rodney School District ("District") on 01/17/24.

Petitioner alleged that the District violated FOIA by (1) failing to provide estimated fees for the November 7, 2023 request that are reasonable and minimized in compliance with the FOIA statute; (2) inappropriately denying the request for complaints; (3) failing to respond to the November 3, 2023 request and improperly combining it with the other pending request for purposes of fees; and (4) violating the open meetings laws with respect to the virtual Manga Review Committee meeting held on November 2, 2023.

DECIDED: The District violated FOIA by failing to provide sufficient evidentiary support demonstrating its cost estimate was compliant with FOIA's requirements and its search for the requested complaints was adequate. However, the Manga Review Committee was found not to be a public body subject to FOIA's open meeting requirements, and thus, no violation of the open meeting law occurred. The District was recommended to process the November 3, 2023 request in accordance with the FOIA statute, including its fee provisions.

### **Attorney General Opinion No. 24-IB03**

Issued to Crystal Long re: FOIA Complaint Concerning the City of Seaford on 01/24/24.

Petitioner alleged that the City violated FOIA by not responding to each request individually and made additional non-FOIA claims.

DECIDED: The City did not violate FOIA by failing to provide an individual communication for each of the eighteen requests submitted. The other claims do not relate to the FOIA statute and are outside the scope of this Office's authority to consider.

### **Attorney General Opinion No. 24-IB04**

Issued to Joelle Polesky and Michael O'Mara on behalf of Holt Logistics Corporation re: FOIA Complaint Concerning the Delaware Department of Natural Resources and Environmental Control ("DNREC") on 01/29/24.

Petitioner alleged that the DNREC provided a procedurally deficient response to its request for records and improperly denied access to the requested records under the pending or potential litigation exemption. Petitioner also claimed that it is entitled to an award of attorneys' fees and costs in this matter.

DECIDED: DNREC’s response did not violate FOIA as alleged, and this Office lacks the statutory authority to award attorneys’ fees and costs in connection with a FOIA petition.

**Attorney General Opinion No. 24-IB05**

Issued to Brian Geller re: FOIA Complaint Concerning the Town of Leipsic’s Museum Review Committee (the “Committee”) on 02/02/24.

Petitioner alleged that the Committee is a public body and held a meeting in violation of FOIA’s open meeting laws.

DECIDED: The Committee is a public body and violated FOIA at its November 6, 2023 Committee meeting by failing to comply with FOIA’s open meeting requirements.

**Attorney General Opinion No. 24-IB06**

Issued to Joelle Polesky and Michael O’Mara on behalf of Holt Logistics Corporation re: FOIA Complaint Concerning the Diamond State Port Corporation (“DSPC”) on 02/05/24.

Petitioner alleged that the DSPC provided a procedurally deficient response to its request for records and improperly denied access to the requested records under pending or potential litigation exemption. Petitioner also claimed that it is entitled to an award of attorneys’ fees and costs in this matter.

DECIDED: The DSPC’s response was not procedurally deficient as alleged and the DSPC did not violate FOIA by denying access to the requested records under the pending or potential litigation exemption, except the tenth and eleventh items. The DSPC did not meet its burden of proof with respect to the tenth and eleventh items in the request and is in violation of FOIA with respect to those two items. This Office lacks the authority to award attorneys’ fees and costs in connection with this Petition.

**Attorney General Opinion No. 24-IB07**

Issued to Todd Austin re: FOIA Complaint Concerning the Division of Delaware State Police of the Department of Safety and Homeland Security (“DSP”) on 02/09/24.

Petitioner alleged that the DSP violated FOIA by denying access to certain video footage pursuant to the investigatory files exemption.

DECIDED: The DSP did not violate FOIA by denying access to the requested records.

### **Attorney General Opinion No. 24-IB08**

Issued to Jan Konesey re: FOIA Complaint Concerning the City of Rehoboth Beach on 02/13/24.

Petitioner alleged that the City violated FOIA's open meeting requirements by failing to provide notice on the agenda about selecting a solicitor, discussing the vacancy and selection of a new solicitor in executive session, and failing to provide adequate notice of this discussion in executive session on the agenda.

DECIDED: The City's Mayor and Commissioners violated FOIA at the November 6, 2023 Special Meeting by holding a vote about selecting the new City Solicitor without sufficient public notice and by failing to meet its burden to justify that the discussions in the November 6, 2023 Special Meeting's executive session about selecting the new City Solicitor were proper under FOIA.

### **Attorney General Opinion No. 24-IB09**

Issued to Xerxes Wilson re: FOIA Complaint Concerning the Delaware Department of Correction ("DOC") on 02/19/24.

Petitioner alleged that the DOC failed to assert the reasons for the redactions in the document production and improperly withheld access to the remaining items that were requested.

DECIDED: The DOC did not violate FOIA by denying access to the requested policies, procedures, and memoranda. The remaining items in the Petition are moot.

### **Attorney General Opinion No. 24-IB10**

Issued to Joshua Carter re: FOIA Complaint Concerning the City of Dover on 02/21/24.

Petitioner alleged that the City failed to release documents in a timely manner and failed to fulfill the entirety of the request; the exemption cited in the City's response

does not apply to the records requested; the City must provide redacted documents if any material is nonexempt; and the City failed to provide formal correspondence citing the specific material that is exempt or redacted.

DECIDED: The City violated FOIA by failing to meet its burden to justify the denial of access to the requested records. No violation occurred with respect to the remaining claims in the Petition.

### **Attorney General Opinion No. 24-IB11**

Issued to Isabel Hughes re: FOIA Complaint Concerning the Division of Delaware State Police of the Department of Safety and Homeland Security (“DSP”) on 02/23/24.

Petitioner alleged that the DSP violated FOIA by denying a request for the date and type of calls for service/response to an address.

DECIDED: DSP did not violate FOIA by denying access to the requested records.

### **Attorney General Opinion No. 24-IB12**

Issued to Erin Frederick re: FOIA Complaint Concerning the Division of Delaware State Police of the Department of Safety and Homeland Security (“DSP”) on 02/26/24.

Petitioner alleged that the DSP improperly denied three requests seeking various records, including policies and procedures, as pending and potential litigation pursuant to 29 Del. C. § 10002(o)(9).

DECIDED: The DSP did not violate FOIA by denying access to the requested records.

### **Attorney General Opinion No. 24-IB13**

Issued to Carol DiGiovanni re: FOIA Complaint Concerning the Village of Arden on 03/05/24.

Petitioner alleged that the Village violated FOIA by failing to timely post the notice and agenda of the February 13, 2024 Advisory Committee meeting.

DECIDED: The Village violated FOIA by failing to post the February 13, 2024 Advisory Committee meeting notice and agenda with an explanation regarding why seven days' advance notice for this meeting could not be given.

**Attorney General Opinion No. 24-IB14**

Issued to Randall Chase re: FOIA Complaint Concerning the Delaware Department of Elections on 04/15/24.

Petitioner alleged that the Department did not provide all responsive records and withheld records without providing proper justification in its response.

DECIDED: The Department met its burden of proof demonstrating it did not violate FOIA as alleged.

**Attorney General Opinion No. 24-IB15**

Issued to Carol DiGiovanni re: FOIA Complaint Concerning the Village of Arden on 04/22/2024.

Petitioner alleged that the Village failed to post a notice for its March 25, 2024 Town Assembly meeting.

DECIDED: As the Village posted this notice as required by FOIA and promptly reposted it upon learning the notice was missing, no violation of FOIA was found.

**Attorney General Opinion No. 24-IB16**

Issued to Brian Geller re: FOIA Complaint Concerning the Town of Leipsic on 04/29/24.

Petitioner alleged that the Town Council of Leipsic held an executive session on March 26, 2024 in violation of FOIA.

DECIDED: The Town violated FOIA by failing to meet its burden to demonstrate that the Town Council held an executive session for an appropriate purpose under FOIA and by failing to conduct a public vote to enter executive session at its March 26, 2024 meeting.

**Attorney General Opinion No. 24-IB17**

Issued to Warren Rosenkranz re: FOIA Complaint Concerning the Village of

Arden on 05/01/24.

Petitioner alleged that the Village of Arden failed to respond to a resubmitted request, improperly engaged a law firm, and improperly denied records that should have been made available to the petitioner as a member of the Village's Town Assembly.

DECIDED: The Petition's claims are not appropriate for this Office's determination.

### **Attorney General Opinion No. 24-IB18**

Issued to Shannon Marvel McNaught re: FOIA Complaint Concerning Sussex County on 05/07/24.

Petitioner alleged that Sussex County improperly denied access to records related to a notice of violation pursuant to the investigatory files exemption.

DECIDED: As the County provided an affidavit supporting that this exemption was appropriate, no violation of FOIA was found.

### **Attorney General Opinion No. 24-IB19**

Issued to Richard Abbott re: FOIA Complaint Concerning the Delaware Department of Transportation on 05/22/2024.

Petitioner alleged that Delaware Department of Transportation violated FOIA by failing to reduce its cost estimate.

DECIDED: As the cost estimate met FOIA's requirements, no violation was found.

### **Attorney General Opinion No. 24-IB20**

Issued to Joshua Morgan, Sr. re: FOIA Complaint Concerning the Division of Delaware State Police, Department of Safety and Homeland Security ("DSP") on 05/22/24.

Petitioner alleged that the DSP improperly denied information about his case.

DECIDED: As the DSP appropriately denied the request under the investigatory files exemption, no FOIA violation occurred.

### **Attorney General Opinion No. 24-IB21**

Issued to Edward Bintz re: FOIA Complaint Concerning the Association of Coastal Towns (“ACT”) on 05/28/24.

Petitioner alleged that ACT is a public body that has not followed FOIA’s requirements. Specifically, Petitioner asserted that ACT violated FOIA by failing to conduct its December 5, 2023, December 7, 2023, and December 20, 2023 meetings in accordance with FOIA’s public notice and comment requirements; failing to hold its alleged December 1, 2023 committee meeting in accordance with the public notice and comment requirements; and failing to meet Section 10003’s requirements to designate a FOIA coordinator, implement a FOIA request policy, and to create a web portal for accepting requests.

DECIDED: ACT is found to be a public body. As ACT did not meet its burden to demonstrate compliance with respect to the Petition’s claims, we find that ACT violated FOIA as alleged.

### **Attorney General Opinion No. 24-IB22**

Issued to Craig McGowan re: FOIA Complaint Concerning the Town of Georgetown on 06/18/24.

Petitioner alleged that the Town of Georgetown violated FOIA by releasing certain police officer records in response to a FOIA request and by refusing to hold a hearing in executive session.

DECIDED: The Town did not violate FOIA by providing records in response to this request or by declining to hold an executive session as requested.

### **Attorney General Opinion No. 24-IB23**

Issued to Hayley J. Reese, Esq. re: FOIA Complaint Concerning the Delaware Department of State on 06/25/24.

Petitioner alleged that the Delaware Department of State improperly denied access to records regarding the voluntary disclosure program under its relevant statutory authority.

DECIDED: The Department did not violate FOIA by denying access to the requested records.

### **Attorney General Opinion No. 24-IB24**

Issued to Warren Rosenkranz re: FOIA Complaint Concerning the Village of Arden on 06/25/24.

Petitioner alleged that the Village violated FOIA by privately discussing and approving the posting of the December 7, 2023 meeting minutes of the Governance Task Force via emails among the Task Force members.

DECIDED: The Village's Task Force conducted a "meeting" as defined by FOIA and committed a violation of FOIA by failing to follow the open meeting requirements.

### **Attorney General Opinion No. 24-IB25**

Issued to State Representatives Madinah Wilson-Anton, Paul Baumbach, Cyndie Romer, Sophie Phillips, and Eric Morrison re: FOIA Complaint Concerning the Christina School District Board of Education on 06/26/24.

Petitioners alleged that the Christina School District Board of Education violated FOIA by: 1) holding an unannounced executive session at its May Board meeting to discuss Robert's Rules of Order, which is not a permitted reason for an executive session; 2) conducting a vote of no confidence in the superintendent at the May meeting without proper notice on the agenda; and 3) discussing and voting to rescind a contract and to suspend the superintendent without appropriate public notice on the March Board meeting agenda.

DECIDED: The Board violated FOIA by holding an unannounced executive session for an improper purpose and by failing to provide adequate notice in its March and May meeting agendas for the votes regarding the contract rescission and vote of no confidence. No violation was found with respect to the notice of the executive sessions on the March Board meeting agenda and the notice for the vote on the employee suspension on this same agenda.

### **Attorney General Opinion No. 24-IB26**

Issued to Thomas Gaynor, Steven Linehan, and Concerned Citizens of Rehoboth Beach re: FOIA Complaint Concerning the City of Rehoboth Beach on 06/26/24.

Petitioners alleged that the City of Rehoboth Beach failed to follow open meeting requirements when hiring the new City Manager at a much higher compensation package than advertised.

DECIDED: The City violated FOIA by holding an executive session for an improper purpose and failing to discuss the employment contract and compensation package in open public session, by failing to properly notice two executive sessions, and by failing to notice a public comment period on the agendas of the meetings.

### **Attorney General Opinion No. 24-IB27**

Issued to Casey Hall re: FOIA Complaint Concerning the Delaware Department of Natural Resources and Environmental Control on 7/12/24.

Petitioner alleged that the Delaware Department of Natural Resources and Environmental Control improperly denied a request for records related to a Division of Fish and Wildlife law enforcement incident.

DECIDED: No violation of FOIA was found.

### **Attorney General Opinion No. 24-IB28**

Issued to Carol DiGiovanni re: FOIA Complaint Concerning Village of Arden on 7/26/24.

Petitioner alleged that the Village violated FOIA by holding a June 23, 2024 information session without proper notice.

DECIDED: The Village violated FOIA by failing to meet its burden to demonstrate the June 23, 2024 meeting was not subject to the open meeting requirements of FOIA.

### **Attorney General Opinion No. 24-IB29**

Issued to Connie Merlet re: FOIA Complaint Concerning Christina School District Board of Education on 08/09/24.

Petitioner alleged that the Board used computers to vote at a Board meeting but

did not inform the meeting attendees what those votes were or how the individual members voted. In addition, the petition claimed that the Board President improperly refused to hear a point of order, in violation of Robert's Rules of Order.

DECIDED: The Board violated FOIA by failing to meet its burden to demonstrate that its votes at the July 9, 2024 Board meeting complied with FOIA. The second claim regarding Robert's Rules of Order was not appropriate for consideration.

### **Attorney General Opinion No. 24-IB30**

Issued to Jonathan Hamburg re: FOIA Complaint Concerning Cape Henlopen School District on 08/09/24.

Petitioner alleged that the District inappropriately denied this request for communications regarding the selection of the candidates for eight District positions pursuant to the personnel file exemption.

DECIDED: No violation of FOIA was found, as the requested communications are protected by Section 10002(o)(6), which includes the right of privacy.

### **Attorney General Opinion No. 24-IB31**

Issued to Ken Grant re: FOIA Complaint Concerning City of Wilmington on 08/12/24.

Petitioner alleged that the City improperly denied requests for information about its parking enforcement program under the pending or potential litigation exemption.

DECIDED: As the City demonstrated the records were appropriately denied under the pending litigation exemption, no violation of FOIA was found.

### **Attorney General Opinion No. 24-IB32**

Issued to Randall Chase re: FOIA Complaint Concerning Department of Elections on 08/14/24.

Petitioner alleged that the Delaware Department of Elections failed to provide responsive records to his FOIA request.

DECIDED: As the Department demonstrated that an appropriate search was conducted and no public records were found, no violation of FOIA occurred.

### **Attorney General Opinion No. 24-IB33**

Issued to Karl Baker re: FOIA Complaint Concerning State of Delaware Office of Pensions on 08/15/24.

Petitioner alleged that the Office of Pensions improperly denied access to his request for records regarding the legislative pension.

DECIDED: As the Office of Pensions demonstrated that the records were appropriately withheld under Section 10002(o)(6), no violation of FOIA occurred.

### **Attorney General Opinion No. 24-IB34**

Issued to Rita M. Carnevale re: FOIA Complaint Concerning City of Wilmington on 08/28/24.

Petitioner alleged that the City untimely responded to the petitioner's request and failed to provide responsive records.

DECIDED: As the timeliness claim was moot and the City met its burden to demonstrate that its failure to produce the requested list is compliant with FOIA, no violation of FOIA was found.

### **Attorney General Opinion No. 24-IB35**

Issued to Tamara Skis re: FOIA Complaint Concerning Town of Ellendale on 09/02/24.

Petitioner alleged that the Town failed to timely respond to a request and did not provide the audio recording that was requested.

DECIDED: As the timeliness claim was moot and the Town met its burden to demonstrate that the recording did not exist, no violation of FOIA was found.

### **Attorney General Opinion No. 24-IB36**

Issued to Aaron Wieczorek re: FOIA Complaint Concerning Caesar Rodney School District on 09/17/24.

Petitioner alleged that the District violated FOIA by inappropriately denying this request.

DECIDED: As the District demonstrated that the pending litigation exemption applies, no violation of FOIA was found.

### **Attorney General Opinion No. 24-IB37**

Issued to Jeremy Goldman re: FOIA Complaint Concerning New Castle County on 09/17/24.

Petitioner alleged that New Castle County Department of Land Use failed to provide responsive records to a request for complaints regarding a particular property's grading.

DECIDED: As the County demonstrated that an adequate search was conducted and no responsive records were found, it was concluded that no violation of FOIA occurred.

### **Attorney General Opinion No. 24-IB38**

Issued to Ferdell Harvey re: FOIA Complaint Concerning Wilmington Housing Authority ("WHA") on 09/24/24.

Petitioner alleged that the WHA failed to respond to four requests for records related to Compton Towers.

DECIDED: As the WHA provided sufficient sworn evidence supporting its response, it was found that the WHA did not violate FOIA by denying access to the requested records.

### **Attorney General Opinion No. 24-IB39**

Issued to Devin Coleman re: FOIA Complaint Concerning Office of the Governor on 10/01/24.

Petitioner alleged that the Office of the Governor violated Section 10003(j) by failing to request noncustodial records from the prior administration responsive to the request.

DECIDED: As Section 10003(f) does not apply in these circumstances, the Governor's Office did not violate Section 10003(f).

### **Attorney General Opinion No. 24-IB40**

Issued to Warren Rosenkranz re: FOIA Complaint Concerning Village of Arden on 10/03/24.

Petitioner alleged that the Village violated FOIA by allowing the Town Assembly officers to hold monthly office hours without preparing and maintaining meeting minutes.

DECIDED: As the Town Assembly officers do not constitute a public body under FOIA, no violation of FOIA occurred in this regard.

### **Attorney General Opinion No. 24-IB41**

Issued to Branden Moore re: FOIA Complaint Concerning Town of Camden on 10/08/24.

Petitioner alleged that Town failed to provide him with requested video footage.

DECIDED: The Town provided a sworn statement that Town contacted the entity in charge of camera and security and was informed that the remaining requested video footage did not exist. FOIA does not require a public body to provide a record that does not exist.

### **Attorney General Opinion No. 24-IB42**

Issued to Brianna Hill re: FOIA Complaint Concerning City of Wilmington on 10/09/24.

Petitioner alleged that the City of Wilmington violated FOIA by denying the FOIA request for copies of any and all correspondence between the Mayor's Office, the City, Wilmington Police Department, and the Urban Arts Exchange as it relates to the Positive Vibes in the Park: Justice for All event that was moved from the Urban Arts Exchange to the Route 9 library on August 23, 2024. The City argued that the records were not public records as they related to potential litigation between the event organizer and the City based on statements the event organizer purportedly made to a news outlet that the events organizer contacted attorneys about possible legal action. Petitioner argued that they were a journalist and not a party to any potential litigation between the event organizer and the City.

DECIDED: The Opinion held that City violated FOIA by denying access to the correspondence under the potential litigation exemption because there was no evidence of potential litigation between the event organizer and the City because there was nothing to support the assertion that the event organizer engaged an attorney to file a private civil cause of action against the City and no history of litigation between these parties.

### **Attorney General Opinion No. 24-IB43**

Issued to Shannon McNaught re: FOIA Complaint Concerning Sussex County on 10/17/24.

Petitioner alleged that the County failed to provide responsive audio records and/or documents in violation of FOIA.

DECIDED: The County asserted that any responsive document was part of an investigatory file and, thus, not a public record under FOIA. The investigatory files exemption from the definition of public record does not change once an investigation is closed.

### **Attorney General Opinion No. 24-IB44**

Issued to Jordan Howell re: FOIA Complaint Concerning Office of Lieutenant Governor on 10/18/24.

Petitioner alleged the Lieutenant Governor's Office failed to provide a complete response to his request for FOIA logs.

DECIDED: The Lieutenant Governor’s Office provided a sworn statement that it provided all the FOIA logs in its possession that were responsive to the Request and conducted both a physical and electronic search for older FOIA logs to no avail. The Lieutenant Governor’s Office met its burden to demonstrate that it provided all records in its possession responsive to the request.

### **Attorney General Opinion No. 24-IB45**

Issued to Sarah Mueller re: FOIA Complaint Concerning Christina School District on 10/23/24.

Petitioner alleged that the Christina School District did not provide all the requested records in response to its FOIA request. The petition also alleged that one document’s remaining information, after redactions, was not comprehensible.

DECIDED: Based on the District’s sworn statements in its affidavit, it was found that the alleged violations did not occur. The District demonstrated that it sufficiently searched for responsive records and that no other responsive public records were found as a result of this search.

### **Attorney General Opinion No. 24-IB46**

Issued to Randall Chase re: FOIA Complaint Concerning Diamond State Port Corporation (DSPC”) on 10/25/24.

Petitioner alleged that the DSPC was about to violate FOIA at its September 27, 2024 Board of Directors meeting by failing to post adequate notice of its executive session for legal advice and by potentially discussing the improper topic of a potential labor strike in executive session.

DECIDED: The DSPC did not violate FOIA by failing to give sufficient notice of the executive session regarding legal advice on its September 27, 2024 meeting agenda. In addition, the DSPC did not violate FOIA by discussing the labor strike in executive session, as the DSPC provided sworn evidence that this topic was not discussed in executive session at the meeting.

### **Attorney General Opinion No. 24-IB47**

Issued to James Lamb re: Delaware Department of Transportation (“DelDOT”) on 11/06/24.

Petitioner alleged that DelDOT improperly denied the request for certain records regarding the legislative ratification of an agreement due to the petitioner's lack of Delaware citizenship.

DECIDED: No violation of FOIA was found.

#### **Attorney General Opinion No. 24-IB48**

Issued to Monica Moriak re: Christina School District Board of Education on 11/14/24.

Petitioner alleged that the Christina School District Board of Education violated the open meeting requirements of FOIA during the August 13, 2024 meeting by privately discussing public matters.

DECIDED: No violation of FOIA was found.

#### **Attorney General Opinion No. 24-IB49**

Issued to Michael Strange re: City of Rehoboth Beach on 11/18/24.

Petitioner alleged that the City of Rehoboth Beach Board of Adjustment gave insufficient notice of a variance related to a certain parking lot on its September 30, 2024 meeting agenda and that the Board failed to properly mail notices and post signage for this same item on its October 16, 2024 meeting.

DECIDED: No violation of FOIA was found.

#### **Attorney General Opinion No. 24-IB50**

Issued to Andrew Bernstein re: Delaware Department of Correction ("DOC") on 11/26/24.

Petitioner alleged that the DOC improperly denied a request for certain records related to inmates.

DECIDED: As the DOC demonstrated that the requested records do not exist, no violation of FOIA was found.

### **Attorney General Opinion No. 24-IB51**

Issued to Janet Todd re: Town of Greenwood on 11/26/24.

Petitioner alleged that the Town of Greenwood Council violated FOIA because: 1) the Council's executive session for personnel discussions was improper, as the petitioner requested these discussions be public; 2) the executive session documents were typed by a councilmember's relative; and 3) a quorum of the Council improperly discussed public business over email.

DECIDED: The Town Council's executive session at its August 27, 2024 meeting was appropriately held under Section 10004(b)(4). The Town Council violated FOIA by holding a "meeting" as defined by FOIA through email communications without satisfying FOIA's open meeting requirements. The authorship of the executive session materials is a matter outside the scope of this opinion.

### **Attorney General Opinion No. 24-IB52**

Issued to Dwayne Bensing re: Delaware Department of Correction ("DOC") on 12/20/24.

Petitioner alleged that the DOC improperly denied a request for the names, State Bureau of Identification numbers, and dates of incarceration for inmates in certain age ranges.

DECIDED: As the DOC demonstrated that the requested information was appropriately withheld pursuant to 29 *Del. C.* § 10002(o)(6), no violation of FOIA was found.

### **Attorney General Opinion No. 25-IB01**

Issued to Randall Chase re: Delaware Office of Lieutenant Governor ("OLG") on 1/03/25.

Petitioner alleged that the OLG violated FOIA because the OLG refused to provide records in response to three requests, and its response to a fourth request appeared to be incomplete.

DECIDED: The OLG violated FOIA by failing to assert and support the reasons for withholding records in its response to the July 31, 2024 request, by failing to demonstrate it performed an adequate search for records for the July 31, 2024

request, and by failing to properly assert the need for additional time for the three remaining requests.

### **Attorney General Opinion No. 25-IB02**

Issued to Alicia Battaglino re: City of Wilmington on 1/13/25.

Petitioner alleged that the City of Wilmington did not provide a full response to the request for citations issued by a specified inspector.

DECIDED: As the City provided sufficient sworn statements to support its response, no violation of FOIA was found.

### **Attorney General Opinion No. 25-IB03**

Issued to Jennifer Pawloski re: Town of Bethany Beach on 1/13/25.

Petitioner alleged that the Town of Bethany Beach violated FOIA by failing to respond to a request for a modified request.

DECIDED: The Town violated FOIA, as the Town did not engage with the petitioner regarding the modified request.

### **Attorney General Opinion No. 25-IB04**

Issued to Representative Sean Lynn re: Delaware General Assembly, Division of Legislative Services on 1/17/25.

Petitioner alleged that the Division of Legislative Affairs of the Delaware General Assembly violated FOIA by failing to provide an affidavit with its response to his request, failing to provide all requested confidentiality policies, and making improper redactions to the employee confidentiality policies. In addition, the petition asserted non-FOIA claims regarding the legality of the requested policies and the General Assembly members' rights regarding records access.

DECIDED: The Division did not violate FOIA by failing to provide an affidavit with its response to the request or by redacting the employee names from the documents provided. As the remaining claims were moot or outside the scope of this Office's jurisdiction, they were declined for consideration.

### **Attorney General Opinion No. 25-IB05**

Issued to Jennifer Pawloski re: Association of Coastal Towns (“ACT”) on 1/21/25.

Petitioner alleged that ACT violated FOIA by failing to provide notice of the public comment period on its December 13, 2024 meeting agenda and by dissolving instead of following this Office’s recommendations.

DECIDED: ACT violated FOIA by failing to include the public comment period on its agenda. The remaining claim is outside the scope of this Office’s statutory authority.

### **Attorney General Opinion No. 25-IB06**

Issued to Randall Chase re: Delaware General Assembly, Division of Legislative Services on 1/21/25.

Petitioner alleged that the Division of Legislative Affairs of the Delaware General Assembly violated FOIA by failing to provide an affidavit with its response to his request and making improper redactions to the employee confidentiality policies.

DECIDED: The Division did not violate FOIA by failing to provide an affidavit with its response to the request or by redacting the employee names from the documents provided.

### **Attorney General Opinion No. 25-IB07**

Issued to Jennifer Pawloski re: Delaware Department of Natural Resources and Environmental Control (“DNREC”) on 2/03/25.

Petitioner alleged that DNREC had not responded to one request within 15 days and that DNREC improperly denied two requests from Petitioner for records pursuant to the pending litigation exemption.

DECIDED: It was determined that the timeliness claim was moot and DNREC did not violate FOIA by denying access to the requested records.

### **Attorney General Opinion No. 25-IB08**

Issued to Shyanne Miller re: City of Wilmington on 2/06/25.

Petitioner alleged that the City of Wilmington improperly responded to a FOIA request by asserting the attorney-client privilege.

DECIDED: The City violated FOIA, as it did not meet its burden of demonstrating that its denial of access to the requested records was proper.

### **Attorney General Opinion No. 25-IB09**

Issued to Edward E. Bintz re: Association of Coastal Towns (“ACT”) on 2/07/25.

Petitioner alleged that ACT included a “Background” section in the December 13, 2024 meeting agenda that was substantively inaccurate and misleading; that ACT failed to include an agenda item for this Office’s remediation recommendations; that ACT failed to include in its agenda time for public comment; that ACT did not provide notice of the location of the meeting at least seven days in advance; and that ACT has not yet designated a FOIA coordinator, implemented a request policy, or maintained an online portal for accepting FOIA requests.

DECIDED: ACT violated FOIA by failing to include a time for public comment on this meeting agenda and by failing to timely post the notice of the meeting location and the information for monitoring and participating in the meeting.

### **Attorney General Opinion No. 25-IB10**

Issued to Jared Silberglied re: Sussex County Vocational Technical School District on 2/19/25.

Petitioner alleged that that the Sussex County Vocational Technical School District violated FOIA by failing to follow FOIA’s requirements in selecting this employee’s hourly rate for the cost estimate and by collecting the responsive records before sending the cost estimate.

DECIDED: The District did not violate FOIA, as it met its burden of demonstrating that its cost estimate included the hourly rate of the lowest-paid employee capable of collecting the responsive records. The ACLU is permitted to cancel, modify, or proceed with the request.

### **Attorney General Opinion No. 25-IB11**

Issued to Jared Silberglied re: Seaford School District on 2/19/25.

Petitioner alleged that that the Seaford School District violated FOIA by failing to charge the hourly rate of the lowest-paid employee capable of performing the service in the cost estimate.

DECIDED: The District did not violate FOIA, as it met its burden of demonstrating that the Supervisor of Instruction was the lowest-paid employee capable of collecting the responsive records.

### **Attorney General Opinion No. 25-IB12**

Issued to David Moskowitz re: Town of Dewey Beach on 2/27/25.

Petitioner alleged that that the Town of Dewey Beach’s Climate Change Committee violated FOIA during its January 18, 2025 meeting by voting on the appointment of a liaison without adequate notice in the agenda and by failing to call for public comment before adjourning the meeting, despite a public comment period appearing on the agenda.

DECIDED: The Committee did not violate FOIA at this meeting by voting on a liaison position for its public education campaign or by not calling for public comment when no member of the public was present at the meeting.

### **Attorney General Opinion No. 25-IB13**

Issued to Lee Lifeng Hsu re: Delaware Department of Insurance on 2/28/25.

Petitioner alleged that the Delaware Department of Insurance improperly denied a request for certain database information.

DECIDED: As the Department provided sworn statements that it did not have responsive records, no violation of FOIA was found.

### **Attorney General Opinion No. 25-IB14**

Issued to Matthew E. O’Byrne re: Delaware State Police, Department of Safety and Homeland Security (“DSP”) on 2/28/25.

Petitioner alleged that the DSP improperly denied request for certain photographs and video footage resulting from a vehicle accident.

DECIDED: As the DSP appropriately denied these requests under the investigatory files exemption, the criminal files exemption, and the pending litigation exemption, no violation of FOIA was found.

### **Attorney General Opinion No. 25-IB15**

Issued to The Honorable John Kowalko, et al. re: City of Newark on 3/03/25.

Petitioners alleged that the City violated FOIA by: (1) by not publishing their intent to initiate a contract to convert a municipal park to playing fields, (2) by keeping secret the minutes of their contract discussions and not allowing any public review or discussion of this major capital project, and (3) by selling the Folk Memorial Park in secrecy.

DECIDED: The City did not violate FOIA's open meeting requirements by meeting with the Newark Charter School on the three identified occasions to discuss the Folk Memorial Park proposal. The remaining allegations are not FOIA claims that this Office is authorized to consider.

### **Attorney General Opinion No. 25-IB16**

Issued to Earle Dempsey re: The Delaware Board of Electrical Examiners, Division of Professional Regulation, Department of State on 3/05/25.

Petitioner alleged that the Delaware Board of Electrical Examiners did not timely post the agenda for the February 5, 2025 meeting.

DECIDED: The Board violated FOIA as alleged.

### **Attorney General Opinion No. 25-IB17**

Issued to Samuel Smith re: City of Newark on 3/06/25.

Petitioner alleged that the City of Newark violated FOIA by failing to provide access to the body camera footage and the 911 call audio related to a specific incident.

DECIDED: The City did not violate FOIA by denying access to the requested records under Section 10002(o)(3).

### **Attorney General Opinion No. 25-IB18**

Issued to Meryem Y. Dede re: Delaware State Police, Department of Safety and Homeland Security (“DSP”) on 3/20/25.

Petitioner alleged that the DSP violated FOIA by denying access to the requested statistics for expungements issued pursuant to Delaware’s Clean Slate bill for certain timeframes.

DECIDED: As the DSP provided statements under oath demonstrating the information was not currently available, the DSP did not violate FOIA by denying access to the requested records.

### **Attorney General Opinion No. 25-IB19**

Issued to David Vezmar re: City of Milford on 3/24/25.

Petitioner alleged that the City of Milford delayed its response and improperly asserted that it would withhold emails to and from a state representative.

DECIDED: As emails to and from a member of the General Assembly are exempt from disclosure under FOIA, the City did not violate FOIA by denying access to the emails requested. In addition, the claim regarding the timing of the City’s response is moot.

### **Attorney General Opinion No. 25-IB20**

Issued to Sarah Bucic, Dr. Amy Roe, et al. re: Joint Legislative Oversight and Sunset Committee, Delaware General Assembly on 3/28/25.

Petitioners alleged that the Joint Legislative Oversight and Sunset Committee of the Delaware General Assembly violated FOIA at its February 13, 2025 meeting by discussing topics that were not appropriately noticed on the meeting agenda.

DECIDED: The Committee’s February 13, 2025 meeting agenda did not violate FOIA, as the General Assembly is exempted from FOIA’s meeting notice requirements.

### **Attorney General Opinion No. 25-IB22**

Issued to Isabel Hughes, Delaware Online/The News Journal re: Brandywine School District on 4/8/25.

Petitioner alleged that the Brandywine School District violated FOIA by denying access to a request for the hearing officer's report and the exhibits related to a public employee termination hearing.

DECIDED: Because these records are exempt from FOIA pursuant to the personnel file exemption, the District did not violate FOIA by denying access to the requested records.

### **Attorney General Opinion No. 25-IB23**

Issued to Brooke Bovard re: Village of Arden on 4/10/25.

Petitioner alleged that the Village of Arden violated FOIA by not providing all the responsive emails and by improperly redacting materials from the production.

DECIDED: The Village violated FOIA by failing to support its search for responsive records was adequate and by failing to support its redactions of comments that were personal in nature. No violation was found with respect to the redactions for nonresponsive communications.

### **Attorney General Opinion No. 25-IB24**

Issued to Retired State Representative John Kowalko, Jr. and John Flaherty, Director re: Senate Judiciary Committee, Delaware General Assembly on 4/11/25.

Petitioners alleged that the Senate Judiciary Committee of the Delaware General Assembly violated the notice requirements of FOIA by failing to post its revised agenda at least six hours before its March 12, 2025 meeting with the reasons for delay articulated in the agenda.

DECIDED: The Committee's March 12, 2025 meeting agenda did not violate FOIA, as the General Assembly is exempted from FOIA's meeting notice requirements.

### **Attorney General Opinion No. 25-IB25**

Issued to Shyanne Miller re: City of Wilmington on 4/15/25.

Petitioner alleged that the City of Wilmington violated FOIA by denying access to the requested records.

DECIDED: As the City demonstrated the records were exempt, the City did not violate FOIA by denying access to the requested records.

### **Attorney General Opinion No. 25-IB26**

Issued to Ronald Poliquin, Esq. re: City of Milford on 4/16/25.

Petitioner alleged that the City of Milford violated FOIA by not permitting his client to speak about two ordinances at the January 13, 2025 City Council meeting.

DECIDED: The City violated FOIA by not permitting the petitioner's client to give public comment at this meeting.

### **Attorney General Opinion No. 25-IB27**

Issued to Jared Silberglied/ACLU Delaware re: Department of Corrections ("DOC") on 4/25/25.

Petitioner alleged that the DOC failed to respond to the revised requests for certain correctional records and did not provide a complete response to the request for special counsel records. Petitioner also asked the DOC about the special counsel policy records provided.

DECIDED: The DOC violated FOIA by failing to timely respond to the revised requests for various correctional records and by failing to meet its burden of demonstrating it performed an adequate search for the agreements and invoices related to the special counsel records request. No violation is found with respect to the DOC's failure to answer a question posed in the Petition.

### **Attorney General Opinion No. 25-IB28**

Issued to Caitlin E. McAndrews, Esq. re: Smyrna School District on 5/07/25.

Petitioner alleged that the Smyrna School District improperly denied a request for records related to the use of restraints and seclusion.

DECIDED: As the District demonstrated that the requested records were exempt from disclosure pursuant to the potential litigation exemption, the District did not violate FOIA by denying access to these records.

### **Attorney General Opinion No. 25-IB29**

Issued to Tom Somers, Jr. re: Delaware State Police, Department of Safety and Homeland Security (“DSP”) on 5/20/25.

Petitioner alleged that the DSP violated FOIA by improperly denying access to records related to police officer encounter.

DECIDED: As the investigatory files exemption applies, DSP did not violate FOIA in denying access to the requested records.

### **Attorney General Opinion No. 25-IB30**

Issued to Brianna Hill re: City of Wilmington on 5/27/25.

Petitioner alleged that the City of Wilmington violated FOIA by improperly denying a FOIA request for a copy of the presentation from a March 2025 meeting involving the City and Riverfront Development Corporation officials.

DECIDED: The City violated FOIA by failing to demonstrate that it appropriately asserted the commercial and financial information exemption in response to this request. However, the City did not violate FOIA by failing to include an affidavit with its response to the request.

### **Attorney General Opinion No. 25-IB31**

Issued to Tom Somers, Jr. re: Delaware Department of Correction (“DOC”) and Delaware State Police, Department of Safety and Homeland Security (“DSP”) on 6/04/25.

Petitioner alleged that the DSP and DOC violated FOIA by improperly denying access to records and by failing to provide an index of withheld records and sufficient specificity about the facts in response to the requests.

DECIDED: The DOC and DSP did not violate FOIA, as the requested records are exempt from disclosure under the pending litigation exemption, and neither the additional specificity nor an index were required to be included with the public bodies’ responses to the requests.

### **Attorney General Opinion No. 25-IB32**

Issued to Joseph M. Donahue, Jr. and Keith Redmond re: Town of Blades on 6/17/25.

Petitioners alleged that the Town of Blades officials held a private meeting with a property developer in violation of FOIA and other legal authority.

DECIDED: The Town violated FOIA by failing to demonstrate that the referenced meeting was held in compliance with FOIA. The non-FOIA claims are outside of this Office's authority to consider.

### **Attorney General Opinion No. 25-IB33**

Issued to ACLU/Jared Silberglied re: Town of Camden on 6/26/25.

Petitioner alleged that the Town of Camden violated FOIA in responding to its records request by improperly redacting its police department's communications with a federal agency.

DECIDED: The Town violated FOIA by failing to meet its burden to demonstrate that the redacted communications were appropriately withheld.

### **Attorney General Opinion No. 25-IB34**

Issued to Douglas Stewart re: Smyrna School District on 7/02/25.

Petitioner alleged that the Smyrna School District violated FOIA in responding to two requests and requested that this Office provide oversight of a third request that was recently filed.

DECIDED: The District did not violate FOIA, as alleged, in responding to the first FOIA request. However, the District's affidavit failed to meet the burden of demonstrating that it conducted a sufficient search for records in response to the second request. This Office lacks the authority to provide oversight of the District's processing of the third request, and this oversight request was declined.

### **Attorney General Opinion No. 25-IB35**

Issued to Jennifer Pawloski re: Delaware Center for the Inland Bays on 7/08/25.

Petitioner alleged that the Delaware Center for the Inland Bays violated FOIA by failing to maintain an online portal and designated FOIA Coordinator, deficient meeting agendas, untimely posting of meeting agendas and meeting minutes, failing to allow public comment during open meetings, and delayed or deficient responses to records requests.

DECIDED: DCIB violated FOIA by failing to timely respond to one of Petitioner's records requests, failing to maintain an online portal and designated FOIA Coordinator, untimely and deficient meeting agendas, and failing to allow public comment during open meetings. DCIB did not violate FOIA when it sought multiple extensions of time to respond to one of Petitioner's records requests or when it delayed posting certain meeting minutes until approved.

### **Attorney General Opinion No. 25-IB36**

Issued to Xerxes Wilson re: Office of the Governor on 7/22/25.

Petitioner alleged that the Office of the Governor improperly withheld and redacted records in its production of responsive records.

DECIDED: As the Governor's Office satisfied its burden of justifying its denial of access to the requested records pursuant to the attorney-client privilege, executive privilege, and the exemption for legislative emails in Section 10002(o)(16), no such violation was found.

### **Attorney General Opinion No. 25-IB37**

Issued to Shannon Marvel McNaught re: Indian River School District on 7/29/25.

Petitioner alleged that the Indian River School District improperly redacted parent names from the settlement agreements it produced in response to the petitioner's FOIA request.

DECIDED: The District did not violate FOIA by making these redactions.

### **Attorney General Opinion No. 25-IB38**

Issued to Stephanie Stranick re: Delaware State Police, Department of Safety and Homeland Security ("DSP") on 7/31/25.

Petitioner alleged that the DSP violated FOIA by denying a request for police reports, service call summaries, and related records for a certain residential property and community.

DECIDED: As the records were exempt under the investigatory files exemption, the DSP did not violate FOIA by denying access to these records.

### **Attorney General Opinion No. 25-IB39**

Issued to Kane Dennison-Gomez re: Christina School District on 8/01/25.

Petitioner alleged the Policy Review Committee of the Christina School District Board of Education violated FOIA by failing to include a proposed policy about qualifications for the Board presidency on its agenda, which was discussed at the July 1, 2025 Committee meeting.

DECIDED: The Committee violated FOIA by discussing this proposed policy at this meeting without adequate public notice on its agenda.

### **Attorney General Opinion No. 25-IB40**

Issued to Georgette Ondobo re: Delaware Department of Transportation (“DelDOT”) on 8/05/25.

Petitioner alleged that the DelDOT violated FOIA by denying access to certain toll records.

DECIDED: As the records are statutorily exempt from disclosure, DelDOT did not violate FOIA in denying access to these records.

### **Attorney General Opinion No. 25-IB41**

Issued to James Lisehora re: City of Rehoboth Beach on 8/07/25.

Petitioner alleged that the City of Rehoboth Beach violated FOIA by failing to provide minutes from a June 2023 meeting in response to a FOIA request and to post the minutes online and by failing to respond to a request for an updated zoning map.

DECIDED: The City violated FOIA by failing to maintain the minutes for the June 2023 meeting and make them available to the petitioner. No further violations were found with respect to the remaining claims.

### **Attorney General Opinion No. 25-IB43**

Issued to Ben Mace re: City Dover on 8/27/25.

Petitioner alleged that the City of Dover violated FOIA, because the City required payment of \$8.68 for a first request, but after payment was made, the City advised that the petitioner would not receive some of the information requested. The petition also alleged that the City's \$511.57 charge to retrieve the records responsive to a second request is excessive.

DECIDED: The City violated FOIA by failing to demonstrate it appropriately responded to the first request and by failing to demonstrate its cost estimate for the second request was compliant with FOIA.

### **Attorney General Opinion No. 25-IB44**

Issued to Phillip Hudson re: Christina School District on 9/03/25.

Petitioner alleged that the Christina School District violated FOIA's public records provisions by: (1) requiring in-person verification of the petitioner's identity with two forms of identification in order to receive the responsive personnel records; (2) refusing to transmit responsive records by email or mail; and (3) missing the extended response deadline for the request.

DECIDED: The District did not sufficiently support that two items in the request were exempt and not required to be made available through its FOIA request process. A supplemental response specific to those two items was recommended. The remaining claims were determined to be inappropriate for consideration.

### **Attorney General Opinion No. 25-IB45**

Issued to Irina Genseruk re: New Castle County on 9/09/25.

Petitioner alleged New Castle County violated FOIA in the following ways: (1) the County's response did not cite specific statutory exemptions for the denial of documents; (2) the response did not provide a log or index of withheld records, (3) the response was formulaic and non-individualized; (4) the response referenced only publicly available websites and avoided questions related to decision-making and enforcement actions; (5) no clarification was provided regarding the

grandfathered use status of the parcel; and (6) the County's initial denial of your request based on your citizenship violated FOIA. The petition also made non-FOIA claims related to misconduct and other issues.

DECIDED: As the County's response did not violate FOIA as alleged above and FOIA does not require a public body to provide an index of withheld records or to answer questions, no violation of FOIA was found. The remaining claims were not appropriate for consideration.

## APPENDIX B

### Sample FOIA Request Tracking Sheet

