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## OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

### Attorney General Opinion No. 26-IB15

April 8, 2026

#### VIA EMAIL

Shyanne Miller  
[smiller@workingfamilies.org](mailto:smiller@workingfamilies.org)

#### **RE: FOIA Petition Regarding the City of Dover**

Dear Ms. Miller:

We write in response to your correspondence alleging that the City of Dover violated Delaware's Freedom of Information Act, 29 *Del. C.* §§ 10001-10008 ("FOIA"). We treat this correspondence as a Petition for a determination pursuant to 29 *Del. C.* § 10005 of whether a violation of FOIA has occurred or is about to occur. As discussed more fully herein, we determine that the City violated FOIA by failing to properly notice its rescheduled meeting.

#### **BACKGROUND**

The Petition alleges that the Dover City Council scheduled a regular meeting for February 23, 2026 with an agenda posted a few weeks in advance, but the City cancelled and rescheduled this meeting to February 25, 2026 due to inclement weather.<sup>1</sup> The agenda for the rescheduled February 25, 2026 meeting indicated that "this meeting has been rescheduled with less than seven (7) [days'] notice due to inclement weather closings," and several revisions to the initial agenda were made, including a note that consideration of Ordinance No. 2025-21 was changed to a final reading. This Petition alleges that the agenda for this rescheduled meeting was posted a few days before the meeting, which did not give sufficient notice of the final vote on this ordinance under FOIA.

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<sup>1</sup> Petition.

On March 18, 2026, the City, through its legal counsel, responded to this Petition (“Response”). The City argues that it did not violate FOIA in noticing this agenda item. The City asserts that the agenda indicated “the meeting was rescheduled to take place on February 25 on less than seven days’ notice ‘due to inclement weather closings.’”<sup>2</sup> As the agenda stated the explanation and the agenda was posted a few days before the meeting, the City contends it met the requirements of Section 10004(e)(4) to hold a rescheduled meeting. In an affidavit, the City Solicitor asserted, under oath, that the February 25, 2026 meeting notice and agenda were provided as soon as reasonably possible under the circumstances. Additionally, the City argues that the agenda for the initially scheduled meeting was posted a few weeks prior, which provided notice that the proposed ordinance would be discussed; and as agendas are only required to give a general statement of major issues to be discussed, this item was sufficiently described to provide notice this topic would be discussed. The City also points out that the public had several days’ advance notice that a final reading, rather than a first reading, was scheduled to occur.

### DISCUSSION

FOIA is intended to ensure that public business is done in the open, “so that . . . citizens shall have the opportunity to observe the performance of public officials and to monitor the decisions that are made by such officials in formulating and executing public policy.”<sup>3</sup> In any action brought under Section 10005, the public body has the burden of proof to demonstrate compliance with FOIA.<sup>4</sup> In certain circumstances, a sworn affidavit may be required to meet that burden.<sup>5</sup>

Section 10004(e)(2) of the FOIA statute requires that a public body give seven days’ advance notice of a regular meeting. For any special or rescheduled meeting, the public body must give public notice “as soon as reasonably possible, but in any event no later than 24 hours before such meeting.”<sup>6</sup> A “special or rescheduled meeting” is defined as “one to be held less than 7 days after the scheduling decision is made.”<sup>7</sup> “The public notice of a special or rescheduled meeting [must] include an explanation as to why [7 days’ notice] could not be given.”<sup>8</sup> This Office has previously advised that “it is the better practice, consistent with the purposes of FOIA, to limit the discussion at an emergency or special meeting of a public body solely to those issues which justify

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<sup>2</sup> Response.

<sup>3</sup> 29 *Del. C.* § 10001.

<sup>4</sup> 29 *Del. C.* § 10005(c).

<sup>5</sup> *Judicial Watch, Inc.*, 267 A.3d at 1008-1012.

<sup>6</sup> 29 *Del. C.* § 10004(e)(3).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

deviating from the seven-day notice rule.”<sup>9</sup> Additionally, the public body’s authority to call a special or rescheduled meeting is not absolute, and “in prior opinions, we have interpreted FOIA to require a public body to demonstrate exigency or compelling need to justify holding a special meeting.”<sup>10</sup>

Here, the City Council’s need to reschedule its meeting due to inclement weather is reasonable. However, we determine that the notice rescheduling the meeting for a few days later was not sufficient under FOIA. Specifically, the rescheduled meeting agenda included the reason, “inclement weather,” for giving less than seven days’ notice for considering these agenda items at the new, rescheduled meeting. This explains why the February 23, 2026 meeting needed to be rescheduled, but does not explain, as required by FOIA, the need to consider these agenda items, including the proposed ordinance, with less than seven days’ notice. As such, we found a violation in this regard.

Having found that the City violated FOIA, we consider whether any remediation is appropriate to recommend. Section 10005(a) states that any “action taken at a meeting in violation of this chapter may be voidable by the Court of Chancery.” The authority to invalidate a public body’s action, or to impose other relief, is reserved for the courts.<sup>11</sup> The Delaware Court of Chancery stated that the “remedy of invalidation is a serious sanction and ought not to be employed unless substantial public rights have been affected and the circumstances permit the crafting of a specific remedy that protects other legitimate public interests.”<sup>12</sup> In determining whether invalidation is appropriate, the court will consider the impact of “adverse consequences upon innocent parties.”<sup>13</sup> In this case, we recommend that the City Council discuss this ordinance and

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<sup>9</sup> *Del. Op. Att’y Gen.* 97-IB18, 1997 WL 606482, at \*3 (Sept. 2, 1997).

<sup>10</sup> *Del. Op. Att’y Gen.* 17-IB20, 2017 WL 3426260, at \*5 (July 12, 2017); *see, e.g., Del. Op. Att’y Gen.* 07-IB09, 2007 WL 4732792, at \*2 (May 10, 2007) (deciding that there was a compelling need for the elections committee to meet on less than seven days’ notice because the election was only a week away and that committee needed “to provide important information to voters as many days in advance of the elections as possible”); *Del. Op. Att’y Gen.* 05-IB05, 2004 WL 3266027, at \*2 (Feb. 22, 2004) (determining that there was nothing in the record suggesting exigent circumstances or a compelling need for the Town council to meet on three days’ notice to discuss removal of Town’s solicitor).

<sup>11</sup> 29 *Del. C.* § 10005.

<sup>12</sup> *Ianni v. Dep’t of Elections of New Castle Cnty.*, 1986 WL 9610, at \*7 (Del. Ch. Aug. 29, 1986).

<sup>13</sup> *Chem. Indus. Council of Del., Inc. v. State Coastal Zone Indus. Control Bd.*, 1994 WL 274295, at \*15 (Del. Ch. May 19, 1994).

ratify its vote at its next regular Council meeting held in compliance with FOIA's open meeting requirements.<sup>14</sup>

**CONCLUSION**

For the reasons set forth above, we conclude that the City violated FOIA by failing to properly notice its rescheduled meeting.

Very truly yours,

/s/ Dorey L. Cole

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Dorey L. Cole  
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

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Patricia A. Davis  
State Solicitor

cc: Daniel A. Griffith, City Solicitor

<sup>14</sup> This agenda was comprised of twenty-six items for the Council's consideration. The explanation for the shorter notice for these items was also not included in the agenda.