



KATHLEEN JENNINGS
ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
820 NORTH FRENCH STREET
WILMINGTON, DELAWARE 19801

CIVIL DIVISION: (302) 577-8400
CRIMINAL DIVISION: (302) 577-8500
FAMILY DIVISION: (302) 577-8400
FRAUD DIVISION: (302) 577-8600
DIVISION OF CIVIL RIGHTS & PUBLIC TRUST: (302) 577-5400
FAX: (302) 577-2610

Office of the Attorney General of the State of Delaware

Attorney General Opinion No. 26-IB22

May 7, 2026

Via Email

John Reiss
jlireiss@comcast.net

RE: FOIA Petition Regarding the Town of Blades

Dear Mr. Reiss:

We write in response to your correspondence, alleging that the Town of Blades 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 Town violated FOIA at its February 9, 2026 Council meeting by failing to give sufficient public notice of its intent to vote to hire a plumbing company. The issue related to the Town's contractual requirements is beyond this Office's authority to consider.

Background

Blades' Town Council held a public meeting on February 9, 2026, and the agenda included an executive session for "personnel."¹ You filed a Petition following this meeting, alleging that the Town violated FOIA, because upon exiting this executive session, the Council voted "to accept the hiring for Seaside Plumbing to replace the water meters and identify the unknown service lines, also to purchase the new meter pit lids."² You argue that because this item was not listed on the agenda, citizens were not made aware of the item. In addition, you allege that an amount of the contract was also not disclosed. The Town did not provide a timely response to this Petition.

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.”¹ FOIA requires a meeting of a public body to be open to the public, except in limited circumstances.² In any action brought under Section 10005, the public body has the burden of proof to demonstrate compliance with FOIA.³

FOIA requires sufficient notice to be provided in any meeting agenda for the items intended to be discussed. An agenda for a public meeting must include a “general statement of the major issues” which a public body expects to discuss, including a “statement of intent to hold an executive session and the specific ground or grounds therefor”⁴ and must be worded in “plain and comprehensible language.”⁵ “In order that the purpose of the agenda requirement be served, [a meeting item] should, at least, ‘alert members of the public with an intense interest in’ the matter that the subject will be taken up by the [public body].”⁶ “In other words, members of the public interested in an issue should be able to review a notice and determine that an issue important to them will be under consideration.”⁷

In this case, we determine that the February 9, 2026 Council meeting agenda lacks sufficient notice for this item regarding the hiring of a plumbing company. The notice for the preceding executive session is for “personnel.” The agenda contains no indication of the hiring of a plumbing company.⁸ A member of the public with an intense interest in this item would not be

¹ 29 Del. C. § 10001.

² 29 Del. C. § 10004.

³ 29 Del. C. § 10005(c).

⁴ 29 Del. C. § 10002(a).

⁵ *Chem. Indus. Council of Del. v. State Coastal Zone Indus. Control Bd.*, 1994 WL 274295, at *8 (Del. Ch. May 19, 1994).

⁶ *Lechlitter v. Del. Dep’t of Natural Res. & Env’tl. Control*, 2017 WL 2687690, at *2 (Del. Ch. Jun. 22, 2017) (quoting *Ianni v. Dep’t of Elections of New Castle Cnty.*, 1986 WL 9610, at *4 (Del. Ch. Aug. 29, 1986)).

⁷ *Id.*

⁸ Under 29 Del. C. § 10004(e)(3), FOIA allows the amendment of the agenda for those items that “arise at the time of the public body’s meeting,” but this exception has been narrowly construed. *Del. Op. Att’y Gen.* 03-IB22 (Oct. 6, 2003) (“ . . . [This section] of FOIA must be construed narrowly ‘lest the exception swallow the rule.’”). Under Section 10004(e)(3), an item that arose at the time of the meeting, as a natural evolution of discussions of a related publicly-

able to review the notice and determine this topic would be under consideration. Thus, we find a violation in this regard.

Having found a FOIA violation has occurred, we must consider what remediation is appropriate. In response to a violation of the open meeting requirements, we may recommend remediation when a public body has acted on a matter affecting substantial public rights.⁹ However, the authority to invalidate a vote or impose other injunctive relief is reserved for the courts.¹⁰ In this case, we recommend that the Town Council revisit this item and ratify the vote regarding this item in open session at a future meeting with proper notice to the public.

In addition, the Petition asserts that the vote on this item did not indicate the intended contract amount and includes a copy of the Town's contracting requirements. As this Office's authority is limited to deciding allegations of FOIA violations, this second issue is not appropriate for consideration.¹¹

Conclusion

Based on the foregoing, we conclude that the Town violated FOIA by failing to give sufficient public notice of its intent to vote to hire a plumbing company. Any issues related to the Town's contractual requirements are beyond this Office's authority to consider.

noticed item, may be added to the agenda. *Del. Op. Att'y Gen.* 97-IB20, 1997 WL 800814, at *2 (Oct. 20, 1997). However, a public body may not simply amend its agenda during the meeting to add a new item for discussion or action. Allowing any item to be added to the agenda during the meeting would cause this narrow exception to swallow FOIA's rules for the advance notice of agenda items, which enables interested citizens to attend the meeting. *Del. Op. Att'y Gen.* 19-IB48, 2019 WL 5208244, at *3 (Sept. 9, 2019). As the item here did not arise as a natural evolution from a publicly-noticed item, Section 10004(e)(3) is inapplicable.

⁹ *Del. Op. Att'y Gen.* 05-IB15, 2005 WL 2334344, at *4 (Jun. 20, 2005) (citing *Ianni v. Dep't of Elections of New Castle Cnty.*, 1986 WL 9610, at *6 (Del. Ch. Aug. 29, 1986)).

¹⁰ 29 *Del. C.* § 10005.

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

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: Michael R. Smith, Attorney for the Town of Blades