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Office of the Attorney General of the State of Delaware

Attorney General Opinion No. 26-IB25

May 20, 2026

Via Email

Micaiah Lloyd
lloyd.activism@gmail.com

RE: FOIA Petition Regarding the Capital School District

Dear Mr. Lloyd:

We write in response to your correspondence, alleging that the Capital School District 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 District violated FOIA by failing to provide you with the requested contracts and by failing to meet its burden to demonstrate it appropriately searched and produced responsive records. The remaining claims do not constitute allegations of FOIA violations.

Background

On March 9, 2026, you submitted a FOIA request to the District, seeking eight categories of records related to the District's use of a vendor, Ultimate Scholastic Staffing Solutions ("USSS") from November 1, 2021 to present:

1. All contracts, agreements, memoranda of understanding, amendments, renewals, extensions, or related documents between the District and the Vendor.
2. All invoices, payment records, and disbursement documentation relating to services performed by the Vendor.
3. Any internal audits, financial reviews, or oversight reports referencing payments made to the Vendor.

4. Records reflecting contract suspension, modification, termination, or non-renewal decisions, including documents sufficient to show the basis for such actions.
5. Any performance evaluations, compliance reviews, corrective actions, incident reports, investigative summaries, or risk management records concerning the Vendor or personnel supplied by the Vendor.
6. All complaints, reports, or communications received by the District concerning vendor performance, payroll concerns, or conduct involving personnel supplied by the Vendor, including records reflecting the District's response.
7. All emails, letters, or recorded communications between the District and the Vendor, the Delaware Division of Revenue, or any tax authority pertaining to verification of payroll tax compliance, withholding status, or business license status.
8. All notices, warning[s], inquiries, or communications received by the district from the IRS, Delaware Division of Revenue, or state labor department referencing the Vendor, including tax delinquencies or compliance concerns.¹

The District alleges that you submitted a nearly identical request a few days later, on March 13, 2026. On April 6, 2026, as you had not received a response, you followed up, stating that you believed the District failed to comply with the time limitations of FOIA and offering a courtesy extension until April 8, 2026. The email also identified the priority items for some categories, and you stated that if the priority items were provided by April 8, 2026, the original request was void.² The District's Chief Financial Officer responded to the request on April 13, 2026, stating that the District piggybacked off other school districts when using this vendor and the CFO assumed you had already obtained these agreements from other school districts, but if not, to let the CFO know. The CFO noted that the District does not receive payroll concerns about any vendors because the District is not responsible for the vendor's payroll, operation or taxes; the CFO also offered to provide invoices, noting they were voluminous and would require several emails to send. The CFO also provided a link to this vendor's spending summary and stated that if you still required the invoices, the CFO would send them. That same day, you responded to the District's response, alleging it was inadequate. The District produced invoices in several emails. You wrote again to object that the response was still incomplete. This Petition followed.

In the initial Petition submission, you argue the District's response is improper. You first allege that the District failed to issue a timely response and ignored repeated communications for

¹ Petition.

² Although the Response mentions the priority items in categories 2 to 4, they are not separately addressed herein, as the District has fifteen business days to respond as provided in Section 10003. As that time had not yet expired when the Petition was filed, those items were not ripe for review at the time of filing. If permitted by the applicable rules and FOIA statute, any compliance issues regarding those items may be addressed through a separate petition.

over a month. You contend that the District’s response to the first item seeking the contract was improper, as rather than providing the requested document, the District assumed that you already received the document from other sources. You also assert that the District falsely claimed it did not possess certain records, including formal complaints filed by USSS contractors; as you have documentation currently in your possession, you allege complaint records do exist. In addition, you argue that the District’s production of records was incomplete because entire periods of vendor activity were absent; no exemption log or justification was provided for withheld records; and the District failed to produce all records sought in the March 9, 2026 request and April 6, 2026 priority request. Finally, you argue that the District has engaged in a pattern of noncompliance, including delayed, nonexistent, and boilerplate responses. You allege that the District’s response duplicated correspondence the District sent to a separate requesting party and that the District failed to “utilize basic and widely accepted document production methods – such as organized digital delivery via secure drives or download links.”³ After the initial petition was filed, you supplemented it with two additional claims. You allege that the District sent you a copy of a contract for a different vendor, not USSS, which is not responsive to your request, and this different vendor’s contract had signatures impermissibly redacted.

The District, through its legal counsel, replied to the Petition and enclosed the affidavit of the District’s CFO involved in this request. The District argues that the response was timely, as you submitted a nearly identical request on March 13, 2026, making March 13, 2026 the starting date for the fifteen-business day response time. The District also points out that the District was closed for Good Friday and the buildings were closed during spring break, meaning the actual due date was April 13, 2026, the date the District responded. The District asserts it provided the invoices on April 14, 2026, but this one-day delay is immaterial. The District argues that it did not withhold any records responsive to the first item seeking contractual records because multiple districts had joined this contract and the CFO was aware of your engagement with the press, Department of Education, and other districts, the CFO assumed you had the contracts. The District states it offered the contracts to you, but you did not respond to this offer.

Regarding the Petition’s claim that the District falsely claimed to not possess certain records, the District points out that you do not identify the documents and public officials have a presumption of acting in good faith. Regarding the missing invoices, the District states that those records are not identified, so it is unknown what you believe to be missing.

The District’s counsel alleges in unsworn statements that it completed a thorough and diligent search; the CFO heads the department typically dealing with all contractors; and thus, the CFO knows what documents the District would and would not have and where they would be retained. The CFO’s affidavit attests that he is fully immersed and familiar with the department’s operations and recordkeeping. The CFO states under oath that no responsive documents were withheld, other than records related to law enforcement authorities’ investigations. The CFO attests that he is aware when the District “conducts an internal audit, and anytime that there are concerns, inquiries, or reports in the vein of those sought in the request.”⁴ The CFO also states

³ Petition.

⁴ Response, Ex. 1.

that he knows what documents exist based on logic, such as no termination notice exists for a current vendor. Finally, the CFO states that he still personally searched for records, even when knowing certain records did not exist; this search involved in-person interviews with the staff he oversees; a review of the collective filing cabinets and the centrally accessible database where documents would have been located if they existed.

Finally, the District asserts no evidence of a pattern of noncompliance is presented and the remaining allegations – that a response mirrored another or a secured drive or download link is required – are not allegations of FOIA violations. Regarding the supplemental submission to the Petition, the District says producing a nonresponsive document is not a violation of FOIA, so neither the production nor the redactions are further addressed.

Discussion

Delaware’s FOIA law “was enacted to ensure governmental accountability by providing Delaware’s citizens access to open meetings and meeting records of governmental or public bodies, as well as access to the public records of those entities.”⁵ FOIA requires that public records be open to inspection and copying by the custodian of the records for the appropriate public body and citizens be provided reasonable access to and reasonable facilities for the copying of public records.⁶ The public body carries the burden of proof to justify its denial of access to its records.⁷ In certain circumstances, a sworn affidavit may be required to meet that burden.⁸ As a preliminary matter, the first claim regarding the District’s untimely response is moot, as the District provided a response to the request.⁹

You next claim that the District violated FOIA by assuming you possessed the USSS contracts and withholding them from the District’s response. You requested the contracts through the District’s FOIA process. The District acknowledges it has them, and the assumption you may have the contracts from other sources is not a statutorily acceptable reason for continuing to

⁵ *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996, 1004 (Del. 2021).

⁶ 29 Del. C. § 10003(a).

⁷ 29 Del. C. § 10005(c).

⁸ *Judicial Watch, Inc.*, 267 A.3d 996 at 1008-12.

⁹ See, e.g., *Flowers v. Office of the Governor*, 167 A.3d 530, 546 (Del. Super. 2017); *Chem. Indus. Council of Del., Inc. v. State Coastal Zone Indus. Control Bd.*, 1994 WL 274295, at *13 (Del. Ch. May 19, 1994); *Del. Op. Att’y Gen.* 18-IB30, 2018 WL 3118433, at *2 (Jun. 7, 2018); *Del. Op. Att’y Gen.* 17-IB35, 2017 WL 3426275, n. 3 (July 31, 2017) (citing *The Library, Inc. v. AFG Enter., Inc.*, 1998 WL 474159, at *2 (Del. Ch. July 27, 1998)).

withhold them. As such, we find a violation in this regard and recommend that the District provide copies within fifteen business days of this Opinion.

The Petition's next two claims concern a single issue - whether the District's production of responsive records is complete. *Judicial Watch, Inc. v. University of Delaware* provides that Section 10005(c) "requires a public body to establish facts on the record that justify its denial of a FOIA request."¹⁰ "[U]nless it is clear on the face of the request that the demanded records are not subject to FOIA, to meet the burden of proof under Section 10005(c), a public body must state, under oath, the efforts taken to determine whether there are responsive records and the results of those efforts."¹¹ Generalized assertions in the affidavit will not meet the burden.¹² For example, the Superior Court of Delaware determined that an affidavit outlining that legal counsel inquired about several issues, without indicating who was consulted, when the inquiries were made, and what, if any documents, were reviewed, was too generalized to meet this standard.¹³ In addition to these standards, when records are withheld, the reasons for withholding the records must be stated in the response to the requesting party.¹⁴ Depending on the asserted exemptions, an affidavit may be required to support the assertion of the exemptions when filing a response to a challenge under Section 10005.¹⁵

In this case, the affidavit is provided by the CFO who also acts as the FOIA coordinator. The CFO states under oath that he, as department head, personally conducted a search for each document category, including staff interviews, file cabinet searches, and database searches. This portion of the affidavit – that he personally searched each document category within his department – is satisfactory for demonstrating a search for responsive records maintained in the Finance department.

What is not fully addressed by the District's submission is whether the records are all likely to be located within the Finance department. To support its assertion of an adequate search and production, FOIA coordinators must search where responsive records are likely to be located. The CFO serves as FOIA coordinator, and the Finance department is alleged to be the appropriate

¹⁰ *Judicial Watch, Inc.*, 267 A.3d at 1010.

¹¹ *Id.* at 1012.

¹² *Judicial Watch, Inc. v. Univ. of Del.*, 2022 WL 2037923, at *3 (Del. Super. Jun. 7, 2022) ("The Court finds that the generalized statements in the Affidavit do not meet 'the burden to create a record from which the Superior Court can determine whether the University performed an adequate search for responsive documents.'").

¹³ *Id.*

¹⁴ 29 Del. C. § 10003(h)(2).

¹⁵ See *Flowers v. Office of the Governor*, 167 A.3d 530, 549 (Del. Super. 2017); see also *Judicial Watch, Inc.*, 267 A.3d at 1010-11.

location for potentially responsive records, but we are unable to rely upon counsel's unsworn statements regarding the scope of the CFO's knowledge and the Finance department's responsibility. Rather, the CFO solely attests to being aware of internal audits, and anytime there are "concerns, inquiries, or reports in the vein of those sought in the [r]equest." The request seeks items that might not be encompassed within "internal audits" or "concerns, inquiries, or reports," such as the requests for risk management records, communications regarding withholding status, and performance evaluations.¹⁶ We therefore find the affidavit insufficient on this basis.

The Response also states, for the first time, that some records were withheld pursuant to the investigatory files exemption. This rationale for withholding records was not stated in the District's response to this request. The affidavit also fails to provide a sufficient basis to determine if the withheld documents were appropriately denied pursuant to the investigatory files exemption. The affidavit simply states that documents were not withheld, other than "documents regarding law enforcement authorities' investigations."¹⁷ Without more, we must find that this constitutes an additional defect. As we have determined that the District's sworn statements do not adequately meet its burden to demonstrate an adequate search and production, we must find the District in violation and recommend that in compliance with the timeframes set forth in Section 10003, the District review its records and supplement its response with any additional records, responses, affidavits, or information, if appropriate under FOIA.

Additionally, the Petition asserts that the District has engaged in a pattern of noncompliance, noting that the response you received contained the same language used in the District's response to another requesting party. FOIA does not preclude a public body from using templates or repeating language in its responses; in fact, a public body would likely use similar response language for similar requests. Also, FOIA does not oblige public bodies to use secure drives or download links to supply records to requesting parties. The Petition alleges that the production failed to include an exemption log for withheld records. FOIA expressly does not require a log or other compilation of withheld records.¹⁸

Regarding the supplemental claims in the Petition, you allege that the District provided you with a contract you did not request with improper redactions. The provision of a nonresponsive record does not constitute a violation of the FOIA statute, and as this production is not part of this FOIA request that is the subject of this Petition, it is not appropriate to consider the propriety of redactions for a nonresponsive record.

¹⁶ As another example, the District's counsel suggests in the Response that the complaints about USSS staff may be located outside of the Finance department with multiple custodians, because counsel asserts searching for complaints from or about vendor staff would not be possible to complete without knowing the vendor staff's names and even with the names, the search could not be completed with fidelity, as the search would have to be applied across thousands of custodian accounts.

¹⁷ Response, Ex. 1.

¹⁸ 29 *Del. C.* § 10003(h)(2).

Conclusion

For the reasons set forth above, we conclude that the District violated FOIA by failing to provide you with the requested contracts and by failing to meet its burden to demonstrate it appropriately searched and produced responsive records. The remaining claims do not constitute allegations of FOIA violations.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: James H. McMackin, III, Attorney for the Capital School District