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Office of the Attorney General of the State of Delaware

Attorney General Opinion No. 26-IB38

July 2, 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 did not violate FOIA by failing to provide responsive records to your request for contractual records.

Background

On April 30, 2026, you submitted a FOIA request to the Capital School District for records related to a particular vendor, seeking "[a]ll records sufficient to show the current status of any contractual or business relationship between the District and Vendor, including but not limited to any contracts, agreements, memoranda of understanding, amendments, renewals, extensions, terminations, suspensions, or notices of cancellation."¹ In addition, you sought "emails, internal communications, notices, and correspondence referencing the status of the District's relationship with Vendor."² On May 14, 2026, the District stated that it "piggy-backed on another district's contract with this vendor" and produced a copy. The District also asked you to advise if you are

¹ Petition.

² *Id.*

seeking other records but noted that the request could not be further fulfilled as presented, as it does not adequately describe the records you seek in sufficient detail. The District noted that it would not search the emails or paper or electronic files of thousands of custodians for keywords because it would create a new dataset, which is not required under FOIA. This Petition followed.

The Petition alleges that the response was improper. You argue that the District failed to produce responsive records because the 2023 contract the District produced is between another school district and the vendor. Also, you state that you promptly notified the District of the deficiencies in its response, but the District did not respond to your objections, which constitutes a denial of access to public records. Additionally, you argue that the District's explanation in the request raises factual inconsistencies with other public records; you believe that records showing the District's payments made prior to this Red Clay contract contradict the District's representation that it "piggybacked" off this contract.

On June 10, 2026, the District, through its legal counsel, responded to this Petition ("Response"). The District included the affidavit of its Chief Financial Officer ("CFO"), who serves as the FOIA coordinator. The CFO attests to being familiar with the Finance department, its operations, and its recordkeeping and to having personal knowledge of the sworn facts in this affidavit. The CFO states under oath that this vendor is a District vendor who supplies staff to fill vacancies as needed, and the "District does not and has not contracted directly with" this vendor, but instead, "piggybacks off the contract between [the vendor] and Red Clay Consolidated School District."³ In its Response, the District affirms it does not contract directly with this vendor and cannot produce a contract that does not exist. The District also points out that your request seeks the records showing the current contractual status, so the fact that a District payment record predates the 2023 Red Clay Consolidated School District contract does not constitute evidence that the District is withholding a responsive record; Red Clay may have had a prior contract with this vendor.

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."⁴ FOIA requires that citizens be provided reasonable access to and reasonable facilities for the copying of public records.⁵ The

³ Response, Ex. A.

⁴ *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996, 1004 (Del. 2021).

⁵ 29 Del. C. § 10003(a).

public body has the burden of proof to justify its denial of access to records.⁶ In certain circumstances, a sworn affidavit may be required to meet that burden.⁷

In this case, the Petition alleges that the District failed to produce the contract responsive to this request. The District provided the CFO's sworn statement that he is familiar with this matter, including the District's Finance Department and its recordkeeping and that the District has no direct contractual relationship with this vendor. Based on the CFO's sworn statements, we find that the District did not violate FOIA by failing to produce the requested contract. However, we caution the District, whenever it has no responsive records to produce, to state this clearly in its initial response to the requesting party.

Conclusion

For the reasons set forth above, we conclude that the District did not violate FOIA by failing to provide responsive records to your request for these contractual records.

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

⁶ 29 Del. C. § 10005(c).

⁷ See *Judicial Watch, Inc.*, 267 A.3d at 1008-1012.