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Office of the Attorney General of the State of Delaware

Attorney General Opinion No. 26-IB31

June 15, 2026

Via Email

Julie Morris
juliekmorris@live.com

RE: FOIA Petition Regarding the City of Milford

Dear Ms. Morris:

We write in response to your correspondence alleging that the City of Milford 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 allow you to give public comment at the May 12, 2026 budget meeting.

Background

The City Council held several public meetings to discuss the budget. The May 12, 2026 meeting agenda indicated that the meeting had both a virtual component and anchor location, and the agenda stated that virtual attendees may submit public comment by using the "Raise Your Hand" function during the meeting.¹ The Petition alleges that the City Council failed to recognize your virtual "raised hand" during the public comment period of the meeting at the City's May 12, 2026 meeting.² You sent an email to several City staff members to try to be recognized to speak,

¹ Petition.

² The Petition alleges the violation occurred at the May 12, 2026 budget meeting, but the accompanying emails in the Petition indicate the relevant meeting occurred on May 13, 2026. The next budget meeting, in which you attempted to give additional comment, would have been May

but those efforts were not successful. The meeting began at 6:00p.m., with the public comment period as the first item. At 6:03pm, you emailed a City staff member stating your hand had been raised. You then emailed the City Manager at 6:04pm and another Finance department employee at 6:06p.m. The City Manager responded about an hour later, stating that the employee who typically runs the virtual portion was not present and no one saw your hand raised. The Manager also states that the Mayor was informed. At 8:08p.m., you emailed the City Manager and Mayor stating your hand remains raised. The next day, you appeared at the budget meeting and attempted to speak beyond the time permitted for each speaker, but you were not permitted to do so.

The City, through its legal counsel, replied to the Petition, including an affidavit from the FOIA coordinator attesting that the statements in the Response are true and correct to the best of the FOIA coordinator's knowledge ("Response"). The Response states that the FOIA coordinator investigated the claims; the City determined that missing your raised hand during the public comment period was unintentional. The City explains that the employee you initially emailed typically runs the virtual portion of the meetings, but was not present that night and did not answer the email. The City asserts that the Finance department employee who handled the virtual portion that night indicated he did not see your email until after the meeting, and he did not see anyone with their hand raised when public comment was solicited. The City states that this "obviously was a technical glitch and not an attempt to prevent [you from making] a public comment."³ At the budget meeting on the following day, the City acknowledges that you spoke for your allotted time but additional time beyond your allotment was not officially permitted; however, the City states you continued to speak, which resulted in you speaking longer than the permitted time.

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 The public body has the burden of proof to demonstrate compliance with FOIA.⁵ In certain circumstances, a sworn affidavit may be required to meet that burden.⁶

The public meetings in this case were noticed in accordance with Section 10006A, which permits public bodies to hold hybrid virtual meetings with an anchor location. When planning to

14, 2026. This Opinion uses the dates cited in the Petition and Response but notes that these dates appear to be a day off.

³ Response.

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

⁵ 29 Del. C. § 10005(c).

⁶ *Judicial Watch*, 267 A.3d at 1008-1012.

hold a hybrid virtual meeting, the public body must state in its agenda how individuals can monitor and participate in the meeting, which the City did here.⁷ The City then must accept public comment through the designated virtual means.⁸

In this case, you allege that your hand was raised at the time of public comment and offer supporting emails to show that you raised your hand; the City does not appear to dispute that your hand was raised, but states failing to recognize you was unintentional and likely the result of a technical glitch. As such, we find that the factual record supports a finding that your hand was raised at time of public comment; however, you were unable to make public comment virtually, as FOIA requires in these circumstances. Thus, we find that the City violated FOIA, and as remediation, we recommend that the City review and verify its capabilities and process for accepting virtual public comment and ensure any relevant staff are appropriately trained in that process.

Conclusion

For the reasons set forth above, we conclude that the City violated FOIA by failing to allow you to give public comment at the May 12, 2026 budget meeting.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: Gregory A. Morris, City Solicitor

⁷ 29 Del. C. § 10006A(c)(1).

⁸ 29 Del. C. § 10006A(c)(6); 29 Del. C. § 10004(a)(2).