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Office of the Attorney General of the State of Delaware

Attorney General Opinion No. 26-IB43

August 3, 2026

Via Email

David Moskowitz
cfacpamba@gmail.com

Re: FOIA Petition Regarding the Town of Dewey Beach

Dear Mr. Moskowitz:

We write in response to your correspondence alleging that the Town of Dewey Beach 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 did not violate FOIA by withholding access to the Town committee members' personal email addresses.

Background

On June 11, 2026, you submitted a FOIA request seeking "a list of all committee members, organized by committee, along with their contact information."¹ In its Response, the Town stated that the committee member names were listed on the Town website but denied access to the personal email addresses. The Town acknowledged that personal email addresses may have been released in response to previous requests but upon further review, the Town had determined that the personal email addresses should be withheld from disclosure under 29 *Del. C.* § 10002(o)(1). The Town stated that volunteer committee members often provide personal email addresses for the purposes of facilitating communications, and disclosure of such email addresses would not further the public's understanding of governmental operations. Additionally, the Town stated that the "fact that similar information may have been disclosed in response to prior requests does not

¹ Petition.

waive the Town's ability to assert applicable exemptions under Delaware's Freedom of Information Act in response to subsequent requests."² This Petition followed.³

This Petition alleges that the Town previously published the committee members' email addresses on its website for approximately a decade and after the public postings ceased, you state that the Town produced the email addresses in response to several of your FOIA requests without objection. You argue that because these addresses were previously made public, the Town cannot now assert that they are protected, private records. You state that although the Town claims the prior disclosure did not constitute a waiver, you believe that the Town's prior disclosure is relevant to determining the reasonableness of the current privacy claim. Finally, you assert that the committee members serve in a public role and their contact information, which facilitates public participation in government, cannot be private.

On July 14, 2026, the Town, through its legal counsel, responded to this Petition ("Response"). The Response enclosed the affidavit of the Town's FOIA coordinator, who attests that the factual statements in the Response regarding the response to the request are true and correct to the best of her knowledge. The Town states that the various advisory committees and quasi-judicial boards are composed of volunteer citizen members, who serve without compensation and contribute their time and expertise to assist the Town in formulating public policy recommendations and adjudicating requests for relief. The Town asserts that under 29 *Del. C.* § 10002(o)(4), FOIA exempts records of a privileged and confidential nature.⁴ The Town also points to other Delaware statutes as examples, 11 *Del. C.* § 6596 (prohibiting posting of the personal information of correctional officers and their families) and 29 *Del. C.* § 9020C (prohibiting state agencies from disclosing website users' personal information without consent), to demonstrate legislative recognition that personal contact information merits confidential treatment. The Town notes that written communications can be submitted through other Town officials and public participation is available at the meetings. The Town also argues that this disclosure of personal email addresses would constitute an invasion of personal privacy. The Town points out that the disclosure would expose the members to unrestricted contact from the public; the addresses often reveal additional personal information such as a full name or birth date; disclosure risks identity theft and other digital security threats, and disclosure may affect the members' family who share the account. The Town contends that disclosing email addresses adds nothing to governmental transparency or accountability.

Additionally, the Town argues that requiring personal email addresses to be public would discourage qualified citizens from serving on committees, create inconsistency with other Delaware statutes that protect personal contact information, shift public communication away from

² *Id.*

³ The Petition also included several non-FOIA claims, which were previously dismissed. This Office's authority is limited to considering allegations of FOIA violations. 29 *Del. C.* § 10005(e).

⁴ The Response uses the citation of 29 *Del. C.* § 10002(l)(4), but the current citation in the statute is Section 10002(o)(4).

the official channels towards private correspondence, and expose members to harassment, intimidation, and security risks, without serving a legitimate public interest. The Town asserts that it is not bound by past practice, noting that a public body may voluntarily release information that is exempt under FOIA. For these reasons, the Town argues that the balancing of the members' privacy interests against the public's rights in these circumstances strongly favors a denial of your request for personal email addresses.

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 citizens be provided reasonable access to and reasonable facilities for the copying of public records.⁶ The public body has the burden of proof to justify its denial of access to records.⁷ In certain circumstances, a sworn affidavit may be required to meet that burden.⁸

FOIA excludes from the definition of "public record" any records that are "specifically exempted from public disclosure by statute or common law."⁹ Delaware recognizes a common law right of privacy, *i.e.* "the right to be let alone."¹⁰ "[I]n the context of FOIA, we have determined that legitimate privacy claims under Delaware common law must be balanced against the competing need for access to information to further the accountability of government."¹¹ "In certain situations, the balance between a private right of informational privacy may be outweighed by the public interest in disclosure, but only if disclosure will contribute significantly to public understanding of the operations or activities of government . . ."¹² The past release of this type of information does not impede the public body's ability to assert this rationale now. FOIA does not bar disclosure of exempt records; in appropriate circumstances, public bodies may voluntarily

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

⁹ 29 Del. C. § 10002(o)(6).

¹⁰ *Barbieri v. News-Journal Co.*, 189 A.2d 773, 774 (Del. 1963) (recognizing a common law right of privacy and creating standards for the tort of invasion of privacy); *Reardon v. News-Journal Co.*, 164 A.2d 263, 266 (Del. 1960).

¹¹ *Del. Op. Atty. Gen.* 13-IB03, 2013 WL 4239232, at *3 (July 12, 2013) (citation omitted).

¹² *Del. Op. Atty. Gen.* 96-IB33, 1996 WL 751553, at *1 (Dec. 11, 1996).

release exempt records.¹³ This is not a waiver of a public body's ability to withhold similar categories of exempt records; certainly, public bodies are able to alter or evolve in their views and interpretations of applicable policy and law in response to new governmental leadership or as otherwise appropriate.

In this case, the Town properly withheld the personal email addresses. This Office has previously recognized that an individual has a privacy interest in their personal contact information, including email addresses.¹⁴ The public interest asserted in these email addresses is based on an assumption that citizens must be permitted to directly contact the volunteer committee members via email, rather than by making public comments at meetings or other government channels, but this is not a right established or recognized in the FOIA statute, nor has the Petition cited another basis for this. We do not believe that releasing these personal email addresses would contribute significantly to the public's understanding of the operations or activities of the committees themselves and further find the balancing of the members' privacy interest against this interest in directly emailing committee members weighs in favor of nondisclosure. As such, we find no violation regarding the Town's denial of access to the members' personal email addresses.¹⁵

Conclusion

For the reasons set forth above, we conclude that the Town did not violate FOIA by withholding access to the Town committee members' personal email addresses.

¹³ *Reeder v. Del. Dep't of Ins.*, 2006 WL 510067, at *11 (Del. Ch. Feb. 24, 2006) ("Although the exemptions limit public access in certain circumstances, they do not purport to create an affirmative right of non-disclosure.").

¹⁴ *See, e.g., Del. Op. Att'y Gen.* 17-IB13, 2017 WL 3426251, at *3 (July 6, 2017) ("[E]mail addresses of Delaware's registered professional engineers are protected by the common law right of privacy, as the individuals' privacy interest in that information is not outweighed by any competing public interest."); *Del. Op. Att'y Gen.* 06-IB17, 2006 WL 2630107, at *7 (Aug. 21, 2006) (in considering redaction of public officials' financial disclosures, noting that "[w]e agree that disclosure of personal identifiers like home address and telephone number, e-mail address, user ID number, or password would invade personal privacy and is not essential for government accountability").

¹⁵ As the response to the request and this Response cited to a different exemption, we caution the Town to give careful consideration to the rationales presented in its responses. *See, e.g., Del. Op. Att'y Gen.* 22-IB16, 2022 WL 1547876, at *3 (Apr. 29, 2022); *Del. Op. Att'y Gen.* 19-IB44, 2019 WL 4538330, n. 19 (Aug. 12, 2019); *Del. Op. Att'y Gen.* 17-IB05, 2017 WL 1317847, n. 37 (Mar. 10, 2017) ("While, in this instance, we have determined that DNREC's denial of your request was indeed authorized by FOIA, we nevertheless caution DNREC to give careful consideration to the reason(s) provided, pursuant to 29 *Del. C.* § 10003(h)(2), for any FOIA denial.").

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: Fred A. Townsend, III, Town Solicitor