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Office of the Attorney General of the State of Delaware

Attorney General Opinion No. 26-IB50

August 24, 2026

Via Email

Dr. Amy Roe
amywroe@gmail.com

Re: FOIA Petition Regarding the Birth to Three Interagency Coordinating Council

Dear Dr. Roe:

We write in response to your correspondence alleging that the Birth to Three Interagency Coordinating Council (“ICC”) violated Delaware’s Freedom of Information Act, 29 *Del. C.* §§ 10001-10008 (“FOIA”). We treat your 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. For the reasons set forth below, we determine that the ICC violated FOIA by failing to: (1) timely post its agenda for its July 28, 2026 meeting with an anchor location on the State meeting website; and (2) post its draft minutes for the April meeting online within the required timeframe.

Background

This Petition alleges that the ICC violated FOIA by failing to post an agenda with an anchor location for its July 28, 2026 quarterly meeting within the requisite seven days in advance of the meeting. In addition, you assert that the ICC failed to electronically publish the draft minutes for its April 2026 meeting, as required of public bodies in the executive branch that hold meetings less than four times a year.

On August 5, 2026, the ICC, through its legal counsel, replied to the Petition (“Response”). The ICC included an affidavit from the Bureau Chief of the Division of Public Health, who attests that the ICC’s failure to timely post the agenda, anchor location, and draft meeting minutes was the result of administrative oversight. As remediation, the ICC proposes to reconvene the July 28, 2026 meeting and revote on the items discussed at that meeting at its September 8, 2026 meeting,

which will have a physical anchor location. The ICC also states that April 28, 2026 meeting minutes have been posted.

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."¹ The public body has the burden of proof to demonstrate compliance with FOIA.² In certain circumstances, a sworn affidavit may be required to meet that burden.³

FOIA requires a public body in the State's executive branch to post its meeting notice and agenda seven days in advance of a public meeting on the State public meeting website.⁴ Virtual meetings also require a physical anchor location when the emergency directives described in the statute are not in place.⁵ FOIA has specific requirements for public bodies in the executive branch who meet four or fewer times a year, including electronically posting "draft minutes of open public meetings, identified as 'draft minutes,' to the designated State website approved by the Secretary of State within 20 working days after the conclusion of the meeting."⁶

Consistent with the ICC's acknowledgements, we determine that the ICC violated FOIA in these respects and recommend that the ICC remediate these violations by revisiting the topics discussed and ratifying any votes that occurred at its July 28, 2026 meeting during its September meeting, in addition to posting the minutes for the April meeting, as required.

Conclusion

For the foregoing reasons, we conclude that the ICC violated FOIA by failing to: (1) timely post its agenda for its July 28, 2026 meeting with an anchor location on the State meeting website; and (2) post its draft minutes for the April meeting online within the required timeframe.

¹ *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996, 1004 (Del. 2021).

² 29 Del. C. § 10005(c).

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

⁴ 29 Del. C. § 10004(e)(5).

⁵ 29 Del. C. § 10006A.

⁶ 29 Del. C. § 10004(f).

Very truly yours,

A handwritten signature in black ink, appearing to read 'DL', is positioned above a horizontal line.

Daniel Logan
Chief Deputy Attorney General

cc: Patrick J. Smith, Deputy Attorney General
Dorey L. Cole, Deputy Attorney General