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Office of the Attorney General of the State of Delaware

Attorney General Opinion No. 26-IB55

September 21, 2026

Via Email

Michael Frazer
mfrazer145@yahoo.com

Re: FOIA Petition Regarding the State Fire Prevention Commission

Dear Mr. Frazer:

We write in response to your correspondence alleging that the State Fire Prevention Commission 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 Commission did not violate FOIA by denying access to the requested records.

Background

On July 24, 2026, you submitted a FOIA request to the Commission seeking the following records regarding the Commission's 2026 selection of the Director of the State Fire School:

1. The final anonymized candidate ranking matrices, grading rubrics, interview score sheets, and evaluation notes utilized by the selection panel or Commission members to score applicants.
2. The official DHR-approved Minimum Qualification (MQ) verification sheets, evaluation logs, or credentialing audits used to verify the baseline qualifications of the final advanced candidates.
3. Any formal, written structural equivalency determinations, waivers, or approvals authorized by the Department of Human Resources or

the Commission regarding the minimum educational, technical, or administrative requirements for the appointed individual.¹

On August 7, 2026, the Commission responded to this request. For the first item, the Commission attached the interview questions and stated further responsive documents did not exist. For the second item, the Commission stated no records exist. For the third item, the Commission provided the job posting and again stated no other responsive documents exist. You followed up with the Commission, questioning how the requested records, such as interview panelists' notes and candidate rankings, could not exist. This Petition followed.

In the Petition, you contend that the Commission's response raises transparency concerns. Due to the complete absence of evaluative records, you argue that the Commission's response requires review. You contend that the response does not explain the search conducted, including what files, accounts, or storage locations were searched. You argue that the Commission's provision of duplicate attachments raises concerns about the Commission's thoroughness in replying to this request. You state that the job posting indicates that the job had minimum requirements, but the Commission did not provide a record showing how these qualifications were applied or verified. You argue that even for non-merit positions, public bodies typically maintain basic records about how the candidates were evaluated and selected, and the absence indicates an incomplete search or failure to preserve required records.

The Commission, through its legal counsel, replied to the Petition ("Response"). The Commission included an affidavit from the Executive Director of the Commission in support of its Response. The Commission states that the Fire School Director is appointed by the Commission pursuant to 16 *Del. C.* § 6604(4) and because of this, the Commission is not required to follow the hiring procedures utilized by the Delaware Department of Human Resources for merit positions. The Commission states while it did post the job and conduct interviews, it did not have to do so; the Commission has the authority to simply make the appointment. Creating the type of records sought, the Commission argues, is not a requirement for the Commission's appointment process. In addition, the Commission notes that it was not required to answer your questions posed after the response was sent, as FOIA does not require public bodies to answer questions. The Executive Director attests that she "handled all administrative responsibilities related to this hiring process" and is "in the best position to have knowledge of all documents related to the hiring process."² The Executive Director further attests the documents you sought "were not utilized during this hiring process, and therefore, do not exist."³ In addition, the Executive Director states under oath that she contacted the commissioners to ask for interview notes but none of the commissioners had any. A July 13, 2026 email to the Commissioners was also attached to this affidavit, in which the Executive Director asked the commissioners to provide any emails between the commissioners related to the applications for this Fire School Director position.

¹ Petition.

² Response.

³ *Id.*

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 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

The Petition alleges that the Commission's response to your request is insufficient, as it did not demonstrate that an adequate search for records occurred. The Commission is not required to meet its burden of proof in its response to the request by providing an affidavit or other evidence.⁸ Thus, we find no violation in this regard.

Regarding the remaining claims, you believe that the Commission's search was not thorough and the Commission must have the records you have requested. In order for the Commission to satisfy its burden of demonstrating its search for records was complete, the applicable standard was established in *Judicial Watch, Inc. v. University of Delaware*; in this case, the Supreme Court of Delaware determined that Section 10005(c) "requires a public body to establish facts on the record that justify its denial of a FOIA request."⁹ "[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."¹⁰

In this case, the Commission explains that this was an appointed position, and the Commission was not required to use the hiring procedures of the Delaware Department of Human Resources for merit positions. The Commission's Executive Director attests to being the individual in the organization most familiar with the documents related to this hiring process. The

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

⁵ 29 Del. C. § 10003(a).

⁶ 29 Del. C. § 10005(c).

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

⁸ See, e.g., *Del. Op. Att'y Gen.* 25-IB06, 2025 WL 503941, at *2 (Jan. 21, 2025) ("As a public body does not have an obligation to meet its burden by providing an affidavit with its response to a FOIA request, we find that the public body did not violate FOIA.").

⁹ *Judicial Watch, Inc.*, 267 A.3d at 1010.

¹⁰ *Id.* at 1012.

Director states under oath that she handled all administrative responsibilities for this hiring process, and the documents you seek do not exist; these records were not utilized during this hiring process. As such, we find that the Commission has demonstrated it performed an adequate search for records.

Conclusion

For the foregoing reasons, we conclude that the Commission did not violate FOIA by denying access to the requested records.

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: Nicole S. Hartman, Deputy Attorney General
Dorey L. Cole, Deputy Attorney General