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Office of the Attorney General of the State of Delaware

Attorney General Opinion No. 26-IB57

September 22, 2026

Via Email

Dr. Amy Roe
amywroe@gmail.com

Re: FOIA Petition Regarding the Delaware Public Service Commission

Dear Dr. Roe:

We write in response to your correspondence alleging that the Delaware Public Service 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's August 19, 2026 public comment session was not a public meeting subject to FOIA, and thus, no violation of FOIA occurred.

Background

On August 19, 2026, the Public Service Commission held a public comment session concerning PSC Docket No. 25-1555 related to an application by Delmarva Power & Light Company to increase base electric rates. The public comment session had a physical location and a virtual access option. When you tried to access the meeting, the virtual meeting link did not work for you. You contacted the Commission during the meeting and received an alternative link, which also did not work. You allege that another member of the public posted a functional link to the meeting, and with that link, you eventually joined the meeting. This Petition followed.

In the Petition, you contend that the Commission violated FOIA because both the link in the posting and the alternative link provided did not work. You argue that although you eventually joined the meeting, you did not monitor the full meeting due to these errors, and the Commission's

failure to provide the correct links violates FOIA; another individual's posting of a working link for the meeting does not constitute compliance for the Commission.

The Commission, through its legal counsel, replied to the Petition ("Response"). The Response included an affidavit from the Executive Director of the Commission. The Executive Director attests that the commissioners are not required to attend the public comment sessions, and these sessions are not a meeting of the Commission; at the August 19, 2026 session, two Commissioners attended, which does not constitute a quorum of the five-member Commission. The affidavit further asserts that there was "no discussion, deliberation or voting on any public business by the [Commission] at the Public Comment Session."¹ With respect to the virtual access links, the Director attests that based on subsequent research, the Director believes that the issues with the virtual access stemmed from two issues: (1) some individuals' accessing the meeting through a personal or another organization's Zoom account, rather than the link provided; and (2) size limitations on the type of Zoom platform the Commission used. The Commission asserts that it plans to use a different platform for upcoming sessions that can accommodate more participants and enhance host controls. The Commission also notes that the entire public comment session can be viewed online and there are other opportunities for you to submit comments regarding this matter.

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."² The public body has the burden of proof to demonstrate compliance with the FOIA statute.³ In some circumstances, a sworn affidavit may be required to meet that burden.⁴

FOIA mandates that public bodies meet specific requirements when holding public meetings, including posting advance notice and agendas, giving an opportunity for public comment, and maintaining meeting minutes, in addition to certain requirements for virtual access.⁵ A meeting under FOIA is defined as "the formal or informal gathering of a quorum of the members of any public body for the purpose of discussing or taking action on public business."⁶ As the Commission provided the Executive Director's sworn statement that a quorum of the Commission

¹ Response.

² *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996, 1004 (Del. 2021).

³ 29 Del. C. § 10005(c).

⁴ *Judicial Watch, Inc.*, 267 A.3d at 1012.

⁵ 29 Del. C. § 10004.

⁶ 29 Del. C. § 10002(j).

was not present, this public comment session is not a “meeting” under FOIA that must comply with open meeting requirements. As such, we find that alleged claims are not violations of FOIA.

Conclusion

For the foregoing reasons, we conclude that the Commission did not violate FOIA at its August 19, 2026 public comment session, as alleged in the Petition.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Logan', written over a horizontal line.

Daniel Logan
Chief Deputy Attorney General

cc: Stephen M. Ferguson, Deputy Attorney General
Dorey L. Cole, Deputy Attorney General