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Office of the Attorney General of the State of Delaware

Attorney General Opinion No. 26-IB64

October 19, 2026

Via Email

Julia Merola
jmerola@spotlightdelaware.org

RE: FOIA Petition Regarding the Seaford School District

Dear Julia Merola:

We write in response to your correspondence alleging that the Seaford School District 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 District violated FOIA by including fees for legal review in its cost estimate for this request.

Background

On July 2, 2026, you submitted a FOIA request to the District seeking emails involving specified District staff containing key words related to immigration enforcement. On July 8, 2026, the District responded, noting additional time would be needed, as the Delaware Department of Technology and Information ("DTI") is assisting with the collection of emails, and legal review by counsel would likely be needed. The DTI fees were $38.00 for this work, and you paid this amount. On August 28, 2026, the District advised it had received the emails and provided a cost estimate with a total amount of $556.36, which included one free hour of services. The estimate

was comprised of 8 hours of labor by the Assistant Superintendent at $79.48 per hour to "complete the review and redaction."[1] This Petition followed.[2]

In the Petition, you argue that the cost estimate is not proper due to the inclusion of charges for review and redaction. You contend that as the District now has the records, the District can either turn over the responsive records or review and redact the records, but the District cannot charge for the review and redactions. You state that the District has conveyed it is not performing legal review but instead knows what needs to be redacted and is merely performing the ministerial act of redacting the information. You argue that reviewing records for potential redactions should not be considered a ministerial act, as it would create a loophole limiting the public's access to records.

On September 11, 2026, the District through its legal counsel, replied to the Petition ("Response"). The District argues that it is not charging for legal review, as the statute prohibits. Instead, the District states that reviewing records pre-production is part of the processing of a FOIA request and permissible under the statute. The District points out that legal precedent has created a distinction between impermissibly charging for time spent determining whether a FOIA exemption or privilege applies and time spent removing or redacting information known to be exempt. In this case, the District contends that the redactions will be appropriate. The District's counsel has given legal advice germane to the subjects of the underlying requests. The District advised that the Assistant Superintendent has been alerted to look for certain key words in the emails, such as "attorney," and the last names of the District's counsel. The District states that the Assistant Superintendent would then redact the legal advice. In an affidavit enclosed with the Response, the Assistant Superintendent, who also serves as the FOIA coordinator, attests to having personal knowledge of the factual assertions in the Response and swears that these assertions are correct. The Assistant Superintendent specifically attests that the District received legal advice for the underlying subject matter of the request, and the Assistant Superintendent knows what is privileged and needs redaction. The Assistant Superintendent also states under oath that any time for questions sent to counsel will not be charged, and any time inquiring and receiving information from counsel regarding asserting exemptions will not be passed on to you.

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."[3] FOIA requires that citizens be

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1 Petition.

2 Only the citizen denied access to records has standing to submit this petition. *Del. Op. Att'y Gen.* 19-IB59, 2019 WL 6047162, at *2 (Oct. 19, 2019). The FOIA request was made by you and did not indicate the request was made on behalf of the Spotlight Delaware organization. As such, Spotlight Delaware and Jacob Owens are respectfully declined as parties to the petition.

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

provided reasonable access to and reasonable facilities for the copying of public records.[4] The public body has the burden of proof to demonstrate compliance with the FOIA statute.[5] When presenting the facts essential to supporting its legal position, the District must submit those factual representations under oath.[6]

FOIA permits a public body to charge citizens certain fees for processing FOIA requests. "Prior to fulfilling any request that would require a requesting party to incur administrative fees, the public body shall provide an itemized written cost estimate of such fees to the requesting party, listing all charges expected to be incurred in retrieving such records."[7] In determining fees, the statute provides that "[c]harges for administrative fees may include staff time associated with processing FOIA requests, including, without limitation: identifying records; monitoring file reviews; and generating computer records (electronic or print-outs)."[8] However, administrative fees may not include any cost associated with the public body's legal review of whether any portion of the requested records is exempt from FOIA.[9]

The Petition asserts that the District has improperly charged for the Assistant Superintendent's review and redactions. This Office previously found, in substantially similar circumstances involving another school district, that this type of review constituted assessing the applicability of a FOIA exemption, and the school district's fees to review and redact privileged legal advice from emails were an impermissible charge for legal review.[10] Thus, we adopt the same analysis and conclusion here and recommend that the District, in accordance with the timeframes under Section 10003, review and revise its cost estimate consistent with this Opinion.[11]

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4 29 *Del. C.* § 10003(a).

5 29 *Del. C.* § 10005(c).

6 *Judicial Watch, Inc.*, 267 A.3d at 1010-11 ("Thus, the University is asking this Court to determine that it has met its burden of proof, fully resolving the dispute, based solely on these factual representations. But the resolution of a legal action must rest on competent, reliable evidence. And the Court has held that when an attorney seeks to establish facts based on personal knowledge, those facts must be asserted under oath. A statement made under oath, like a sworn affidavit, will ensure that the court's determination regarding the public body's satisfaction of the burden of proof is based on competent evidence.").

7 29 *Del. C.* § 10003(m).

8 *Id.*

9 *Id.*

10 *Del. Op. Att'y Gen*. 26-IB63 (Oct. 19, 2026).

11 The Petition does not raise the issue of the lowest paid employee capable of performing the services, so that matter is not addressed here.

Conclusion

For the foregoing reasons, we conclude that the District violated FOIA by including fees for legal review in its cost estimate for this request.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: James H. McMackin, III, Counsel for the Seaford School District