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**OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE**

**Attorney General Opinion No. 16-IB27**

**December 22, 2016**

**VIA U.S. MAIL AND EMAIL**

Frank "Dan" Cannon  
411 Nylon Blvd.  
Seaford, DE 19973  
seafordski@hotmail.com

**Re: FOIA Petitions Concerning the City of Seaford Dated May 25, 2016, June 6, 2016, July 7, 2016, and November 27, 2016**

Dear Mr. Cannon:

Within the last several months, the Delaware Department of Justice ("DOJ") has received four petitions from you requesting our determination, pursuant to the Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 ("FOIA"), of whether the Council of the City of Seaford ("Council") violated FOIA. We address all four petitions in today's letter. Pursuant to our routine process in responding to petitions for determination under FOIA, we invited the Council to submit a written response to each of your petitions. We received the Council's timely responses and have reviewed them along with your correspondence.

We received your first petition on May 25, 2016 ("May Petition"). The May Petition requested a determination of whether the Council violated FOIA's open meetings provisions by failing to provide timely public notice of a meeting of Seaford's Mayor and the Council, which took place on April 4, 2016. As set forth more fully below, because the Council failed to timely post notice of its April 4, 2016 meeting, it is our determination that the Council violated FOIA as alleged in the May Petition.

We received your second petition on June 6, 2016 ("June Petition"). The June Petition requested a determination of whether the Council violated FOIA's open meetings provisions by failing to provide public notice of meetings of the Electric Committee ("EC") and the Economic Development Committee ("EDC") of the Council. As set forth more fully below, because the EC and the EDC are "public bodies" as defined in FOIA, it is our determination that the Council

violated FOIA by failing to post notice, agendas or minutes of meetings of the EC and EDC as alleged in the June Petition.

We received your third petition on July 7, 2016 (“July Petition”). The July Petition requested a determination of whether the Council violated FOIA’s open meetings provisions by holding meetings closed to the public between May 17, 2016 and June 14, 2016 in order to finalize and balance the fiscal year 2017 (“FY2017”) Budget for the City of Seaford. The Council denies that any such meeting occurred. Because of the lack of substantive evidence that the Council held any non-public meetings during this timeframe, it is our determination that the Council has not violated FOIA as alleged in the July Petition.

We received your fourth petition on November 27, 2016 (“November Petition”). The November Petition contained two allegations: that the EC, as a public body, failed to publicly post or publish the minutes of its August 3, 2016 meeting; and that sometime in the Summer 2016 the Council held meetings closed to the public or, in your words, that the Council conducted “secret decision making” regarding the financing for a large electrical upgrade project. As to your first allegation, neither the Council nor the EC is required to “publically post” its minutes. Rather, minutes must only be made available to the public for review. By August 6, 2016, minutes of the EC’s August 3, 2016 meeting were available for public review at the City of Seaford’s office. As to your second allegation, the Council denies that any non-public meeting occurred regarding the electrical upgrade project and you have provided no substantive evidence otherwise. Therefore, it is our determination that the Council has not violated FOIA as alleged in the November Petition.

## **I. BACKGROUND**

### **a. FY2017 Budget**

The Council scheduled four meetings to review and discuss the FY2017 Budget for the City of Seaford. The meetings were scheduled for April 4, 2016 (“April 4th Meeting”), April 9, 2016 (“April 9th Meeting”), May 2, 2016 (“May 2nd Meeting”) and May 17, 2016 (“May 17th Meeting”). The Council referred to the series of meetings collectively as the “FY2017 Budget Workshops.”

The Council posted the notice and the agenda for the April 4th Meeting on March 30, 2016, five days in advance of the meeting. The April 4th Meeting was scheduled to take place in the Seaford City Hall. The Council posted the notice and the agenda at the front and rear entrances to the Seaford City Hall and on the City of Seaford’s website under Government-Minutes and Agendas.<sup>1</sup> During the April 4th Meeting, the Director of Finance and Human Resources, June Merritt (“Merritt”), reviewed projected FY2017 Budget expenditures.<sup>2</sup> The discussion included a

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<sup>1</sup> There is a factual disagreement between the Council and you regarding when the agenda was posted to the website. The Council contends notice of the meeting was posted to the website on March 30, 2016, whereas you contend that notice of the meeting was not posted to the website until April 5, 2016, one day after the meeting.

<sup>2</sup> Revenues were not available at the time.

comparison of budget amounts requested by the various City departments in fiscal year 2016 with those requested in 2017.

The Council cancelled the April 9th Meeting. During the May 2nd Meeting,<sup>3</sup> Merritt's presentation covered budget information on all the departments and funds. Merritt presented a completed budget for FY2017 with all department budgets balanced except the General Fund, which had a deficit of approximately \$500,000. Merritt also presented her recommendation for how to balance the General Fund budget. The Council decided that the Council and the Mayor would continue to review the budget materials for other ways to balance the General Fund budget.

During the May 17th Meeting, Merritt reviewed three additional options for balancing the General Fund budget. The Council considered and discussed all three options. During the discussion, Councilman Henderson suggested that City of Seaford police department salaries could be reviewed for savings. At the conclusion of the May 17th Meeting, the Council scheduled an additional budget workshop meeting for June 6, 2016 ("June 6<sup>th</sup> meeting"). Subsequently, the Council cancelled the June 6<sup>th</sup> meeting.

The Council held a regularly scheduled public council meeting on June 14, 2016 ("June 14<sup>th</sup> meeting"). The agenda for the June 14<sup>th</sup> meeting included the following item: "June Merritt, Director of Finance to present the FY17 Budget." During the meeting, Merritt presented a proposed FY2017 Budget to the Council and a copy of the proposed budget was attached to the minutes of the meeting. The proposed budget was balanced in large part by a reduction in police department salaries. The Council discussed the budget and voted to approve it.

#### **b. Electric and Economic Development Committees**

On May 24, 2016, Council held its regularly scheduled public Council meeting ("May 24th Meeting"). Among other things, the Agenda for the May 24th Meeting included the following two items:

- Recommendation from the EC for an Economic Development Rate.
- Recommendation from the EDC to swap 2.08+/- acres (M-1 Zone) in the Seaford Industrial Park with Joe Balsamo for 2.17 +/- acres (C-2 Zone) in the Ross Business Park.

The EDC, which is comprised of five total members, met on March 22, 2016 with all of its members present. The EC, which is comprised of ten total members, met on May 16, 2016 with nine members present. Neither the EDC nor the EC created or disseminated public notice, agenda or minutes for either of the above meetings.

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<sup>3</sup> We do not address herein whether notice of any public meetings of the Council or its committees not specifically alleged by you to be untimely, were, in fact, untimely according to 29 *Del. C.* § 10004(e)(2).

On August 3, 2016, the EC properly noticed and held a public meeting. The EC created minutes for that meeting and they are available for public review. During the meeting, the EC listened to a presentation on preliminary design for electrical upgrades in the City of Seaford; reviewed the preliminary budget for the project and financing options; and voted to approve the preliminary design and financing as presented. Prior to the August 3, 2016 EC meeting, the Council held two public hearings on the proposed electrical upgrades. Those hearings were held on July 14, 2016 and July 28, 2016.

## **II. SUMMARY OF ARGUMENTS**

In each of your petitions, you allege that the Council violated FOIA by failing to provide proper notice of public meetings held by the Council and its committees. The May Petition alleges that notice for the April 4th Meeting of the Council was not posted seven days or more prior to the meeting as required by FOIA and because of the delay in notice, you were unable to attend this meeting and raise objections. The June Petition alleges that notice was not published for meetings of the EDC and the EC. The July Petition alleges that the Council held one or more meetings “in secret” sometime between May 17, 2016 and June 14, 2016 in order to discuss and balance the budget. Finally, the November Petition alleges both that the City failed to create or make available for review minutes of a public meeting and also that the Council or the EC or both held one or more meetings “in secret” to discuss the proposed electrical upgrades to the City of Seaford.

In response to the May Petition, the Council admits that the April 4th Meeting should have been publicly noticed on March 28, 2016, and states that notice was not provided until March 30, 2016 due to an “oversight.” The Council acknowledges that it failed to comply with FOIA’s notice requirements, but notes that “no votes or actions were taken by the Council at the April 4th Meeting.”

In response to the June Petition<sup>4</sup>, the Council states that the March 22, 2016 EDC meeting was attended by a quorum of its members, including the Mayor and one Councilperson, and that the May 16, 2016 EC meeting was attended by a quorum of its members, including two Councilpersons. The Council acknowledges that neither meeting was noticed as required by FOIA and states that, to the extent that meetings of the EDC and EC are considered meetings of a “public body,” such meetings will be treated as such and they will hereafter comply with FOIA.

In response to the July Petition, the Council states that no “undisclosed” meetings among the Mayor and the Council occurred in the time period between May 17, 2016 and June 3, 2016. As a result of the FY2017 Budget Workshops, the City Manager, Merritt and their staff reviewed all of the budget balancing options and arrived at the proposed final budget that was presented, discussed and approved at the June 14<sup>th</sup> meeting.

In response to the November Petition, the Council states, as to your first allegation, that FOIA does not require the Council or the EC to post minutes of its public meetings on its website.

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<sup>4</sup> In addition to its initial response, Council responded to two follow-up letters requesting additional information on this subject.

Minutes of the August 3, 2016 meeting were available for public review at the City's office by August 6, 2016. And, in November 2016, the Council adopted guidelines providing that all agendas and minutes of the meetings of City related "public bodies" would be posted on the City of Seaford's website. As to your second allegation from the November Petition, the Council states that it approved the financing for the electrical upgrades to the City of Seaford at a properly noticed public meeting and that no decisions were made in secret.

### **III. APPLICABLE LAW**

Delaware's FOIA requires that "every meeting of all public bodies shall be open to the public,"<sup>5</sup> except those closed pursuant to delineated provisions of the statute.<sup>6</sup> A "public body" includes any "committee, ad hoc committee, special committee, temporary committee, advisory board and committee, subcommittee, legislative committee... appointed by any body or public official of the State or otherwise empowered by any state governmental entity... which is impliedly or specifically charged by any other public official, body, or agency to advise or to make reports, investigations or recommendations."<sup>7</sup> A "meeting" 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 either in person or by video-conferencing."<sup>8</sup>

FOIA requires public bodies to "give public notice of their regular meetings . . . at least 7 days in advance thereof."<sup>9</sup> Such notice "shall include, but not be limited to conspicuous posting of said notice at the principal office of the public body holding the meeting, or if no such office exists at the place where meetings of the public body are regularly held, and making a reasonable number of such notices available."<sup>10</sup> Under certain circumstances, a public body may hold a meeting without providing seven days' notice, but such notice (i) must be provided at least 24 hours before the meeting, and (ii) must "include an explanation as to why the notice required by [29 Del. C. §10004(e)(2)] could not be given."<sup>11</sup> Public bodies must maintain minutes of their meetings; and the minutes shall be made available to the public for inspection and copying.<sup>12</sup>

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<sup>5</sup> 29 Del. C. § 10004(a).

<sup>6</sup> See 29 Del. C. §§ 10004(b)-(d), (h).

<sup>7</sup> 29 Del. C. § 10002(h).

<sup>8</sup> 29 Del. C. § 10002(g).

<sup>9</sup> 29 Del. C. § 10004(e)(2).

<sup>10</sup> 29 Del. C. § 10004(e)(4).

<sup>11</sup> 29 Del. C. § 10004(e)(3).

<sup>12</sup> 29 Del. C. § 10004(f).

#### **IV. DISCUSSION**

##### **a. May Petition**

The May Petition alleges that the Council violated FOIA by posting notice of its April 4th Meeting on March 30, 2016, only five days in advance of the meeting, without any explanation as to why the notice had not been timely provided. Pursuant to 29 *Del. C.* §10004(e)(2), the Council was required to post notice of its April 4th Meeting at least seven days in advance of the meeting. The Council admits that it failed to provide timely notice of its April 4<sup>th</sup> meeting to the public and that doing so was a violation of FOIA.

Notwithstanding the Council's failure to post timely notice of its April 4th Meeting, we determine that no remediation is warranted as not every technical failure to comply with FOIA's strict mandates warrants remediation.<sup>13</sup> Here, the Council's two-day delay in posting notice of its April 4th Meeting constituted a technical violation of FOIA that did not negatively affect substantial public rights.<sup>14</sup> We reach this determination because, although a City's budget is of significant public concern, the April 4th Meeting was simply the first in a series of informational meetings on the budget, with no vote having been taken, and the public had sufficient additional opportunities to observe and monitor the Council in its review and approval of the FY2017 Budget at the three subsequent budget workshop meetings and the June 2016 General Council meeting.

##### **b. June Petition**

The June Petition alleges that the Council violated FOIA by failing to provide public notice of the scheduled meetings of the EC and EDC. It is undisputed that the Council is a public body. The relevant inquiry, however, is whether the EC and the EDC, which are committees of the Council that made recommendations to the Council at its May 24, 2016 meeting, also fall within FOIA's definition of "public body." If so, those entities would be independently obligated to adhere to the open meeting requirements in FOIA.<sup>15</sup>

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<sup>13</sup> See *Ianni v. Department of Elections of New Castle County*, 1986 WL 9610, at \*6 (Aug. 29, 1986) ("Not every failure to comply with precision to the terms of [FOIA] will involve substantial public rights and thus not every technical violation will support either a declaratory judgment or, more importantly, injunctive relief.").

<sup>14</sup> See, e.g., *Del. Op. Att'y Gen.* 15-IB12 (Dec. 17, 2015) (concluding that no remediation required where Department of Education working group failed to post notice at least seven days in advance of its meetings because "the errors were technical violations that did not negatively affect substantial public rights").

<sup>15</sup> 29 *Del. C.* §10004(e)(2).

The definition of “public body” in FOIA is very broad,<sup>16</sup> and includes a committee established by a body that was created by the State’s General Assembly that is charged with making recommendations to any other public body. The EC and EDC were created to make recommendations to the Council. The Council is the legislative body for the City of Seaford and it was created by Delaware’s General Assembly.<sup>17</sup> As a result, both the EC and the EDC are public bodies.

In its response to the June Petition, the Council acknowledges that the EC held a meeting on May 16, 2016 and the EDC held a meeting on March 22, 2016.<sup>18</sup> The Council also acknowledges that the EC and the EDC failed to post notice and an agenda for their respective meetings. Because the EC and the EDC are public bodies, and because they failed to adhere to FOIA’s open meeting provisions,<sup>19</sup> it is our determination that both the EC and the EDC violated FOIA as alleged in the June Petition.

Having determined that the EC and the EDC violated FOIA by failing to adhere to FOIA’s open meeting provisions, we must determine what remediation, if any, is warranted. In the past, we have requested that public bodies prepare minutes for past meetings, a request that makes particular sense in instances in which the meetings were recorded and preserved.<sup>20</sup> However, under these circumstances, we doubt that such remediation “would shed significant light on the [EC and the EDC]’s activities.”<sup>21</sup> Indeed, as we noted in *Del. Op. Att’y Gen. 13-IB05*, “FOIA requires only that minutes include a record of those members present at each meeting and a record, by individual member, of each vote taken and action agreed upon.” Here, the Council has provided the minutes of the May 24 Meeting, which incorporate the recommendations of the EC and EDC.<sup>22</sup> As such, it

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<sup>16</sup> See *Del. Op. Att’y Gen. 13-IB05* (October 1, 2013) (finding that a working group convened by the Governor to make recommendations about charter schools was a public body despite its informal structure).

<sup>17</sup> 68 *Del. Laws. C.* 186.

<sup>18</sup> See 29 *Del. C.* § 10002(g) (defining “meeting” 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 either in person or by video-conferencing”).

<sup>19</sup> Based upon the record, we assume, without deciding, that the EC and the EDC also failed to maintain minutes of its meetings as required by 29 *Del. C.* §10004(f).

<sup>20</sup> See, e.g., *Del. Op. Att’y Gen. 97-IB13* (June 2, 1997) (requiring city to prepare minutes for meetings of city’s “Personnel Policy Review Committee” during the prior two years where said meetings were tape-recorded and preserved).

<sup>21</sup> See, e.g., *Del. Op. Att’y Gen. 13-IB05*.

<sup>22</sup> See *id.* (“As far as we can tell, the only ‘action’ the Working Group agreed upon was to make recommendations for changes to the State’s charter school law and practices, which recommendations are a matter of public record.”).

is our determination that no remediation is warranted for the violations asserted in the June Petition. However, minutes of any subsequent meetings of the EC and EDC should be made available to the public within twenty days of this determination, if that has not already been done. Finally, the EC and the EDC are hereby placed on notice of the legal obligation to comply with the open meeting requirements of FOIA in the future.<sup>23</sup>

**c. July Petition**

The July Petition alleges that the Council violated FOIA by holding meetings closed to the public in order to finalize the FY2017 Budget. You base this allegation on the incomplete status of the budget at the final Budget Workshop on May 17, 2016 compared with the complete status of the budget at the regularly scheduled meeting of the Council on June 14, 2016.<sup>24</sup> Your July Petition is unsupported by substantive proof and appears to be based upon a speculation.

We have previously determined that “FOIA does not place the burden on a public body to prove that a meeting did not in fact take place.”<sup>25</sup> Instead, “once the complaining party makes a *prima facie* showing that a meeting occurred, the burden shifts to the public body to prove that no FOIA violation occurred.”<sup>26</sup> In order to make a *prima facie* showing that a meeting has occurred, a petitioner “must show substantive proof of a secret meeting rather than mere speculation in order to shift the burden of going forward.”<sup>27</sup>

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<sup>23</sup> On October 14, 2016, we received an additional E-mail from you. You note that the EC held a meeting on August 3, 2016 and the EDC held a meeting on September 2, 2016; and that each meeting was properly noticed but minutes of the meetings have not yet been published on the website for the City of Seaford. We refer you back to footnote 12 for the premise that although neither the EC nor the EDC is required to post minutes its meetings electronically, we encourage the Council to maintain consistency to avoid any confusion and promote transparency.

<sup>24</sup> As set forth above, the final Budget Workshop was held on May 17, 2016. Another workshop was initially scheduled for June 6, 2016, but was cancelled by the Mayor on June 3, 2016.

<sup>25</sup> *Del. Op. Att’y Gen.* 06-IB03 (Jan. 23, 2006) (quoting *Del. Op. Att’y Gen.* 05-IB10 (Apr. 11, 2005)); see also *Del. Op. Att’y Gen.* 16-IB13 (June 8, 2016) (As we have previously noted, “we do not interpret FOIA to place the burden on the public body to prove that a meeting did not in fact take place.” (citing *Del. Op. Att’y Gen.* 05-IB10)).

<sup>26</sup> *Del. Op. Att’y Gen.* 16-IB13.

<sup>27</sup> *Del. Op. Att’y Gen.* 05-IB10 (quoting *Gavin v. City of Cascade*, 500 N.W.2d 729,732 (Iowa App. 1993)).



You have failed to provide substantive proof of a secret meeting of the Council.<sup>28</sup> Aside from a general allegation that “it appears that in [less than] twelve work days (5/17-6/3/16) behind closed doors, the [Mayor and the Council] decided the issues left unresolved on 5/17,” and a rundown of what unresolved decisions might have been made by the Council during this time frame, the July Petition lacks any substantive evidence to substantiate the allegation that the Council met in secret to discuss the FY2017 Budget after its May 17th Meeting.<sup>29</sup> Notably, you provide no times, places, manner of meeting, admission by the public body or other such evidence that would lend credence to your allegation that a FOIA violation occurred.<sup>30</sup> As a result, it is our determination that the Council did not violate FOIA as alleged in the July Petition.

#### **d. November Petition**

The November Petition contained two allegations. We will discuss each allegation separately.

First, you allege that the EC, as a public body, failed to “post/publish” the minutes of its August 3, 2016 meeting. As stated above, the EC is a public body under FOIA. As a public body, the EC is required to maintain minutes of its meetings.<sup>31</sup> However, because the EC is not a public body within the executive branch of government, FOIA does not require that it post its meeting

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<sup>28</sup> *Id.* (finding that petitioner who alleged that councilmembers met in secret but failed to provide the names of the councilmembers or the dates, times, places or manner in which they met, failed to make *prima facie* case that secret meetings occurred).

<sup>29</sup> *Del. Op. Att’y Gen.* 09-IB10 (Nov. 23, 2009) (finding that a public official’s email alluding to a “vote” was sufficient to raise the question of whether a private meeting of the public body was held).

<sup>30</sup> The Council acknowledges that the Mayor determined that the June 6th Meeting was not needed after “the City Manager, Director of Finance and staff reviewed and determined the proposed budget balancing options and arrived at the proposed final budget.” We have previously noted that a mayor’s actions are not required to take place at a public meeting. *See Del. Op. Att’y Gen.* 08-IB05 (Feb. 22, 2008) (“Because 29 *Del. C.* § 10004(h)(6) states that the open meeting requirements do not apply to public bodies of one, it is not necessary to decide whether the Mayor is a public body: either the Mayor is not a public body or he is a public body of one. In either case, the Mayor’s actions do not have to take place in an open meeting, and the Town has not violated FOIA’s open meeting provisions.”). Nor is the Mayor’s consultation with staff required to take place at a public meeting. *See, e.g., Del. Op. Att’y Gen.* 16-IB13 (“While the [Sussex] County Administrator acknowledged that he had conferred with the County’s Finance Director in connection with his decision to award [a] bonus, the County Administrator’s exemption from FOIA’s open meeting requirements as a ‘body of one’ is not lost if he consults with his staff to obtain the facts that would enable him to make an informed executive decision.” (citing *Del. Op. Att’y Gen.* 01-IB15 (Oct. 23, 2001))).

<sup>31</sup> 29 *Del. C.* § 10004(f).

minutes online.<sup>32</sup> Notably, you have not alleged that the EC has failed to maintain minutes, or that you have requested and were denied access to such minutes. In fact, the Council maintains that the minutes were available to the public as soon as August 6, 2016 at the City's office and no evidence in the record contradicts that assertion. Rather, you have specifically alleged that the EC has failed to post its minutes online, which FOIA does not require.<sup>33</sup> As such, it is our determination that the EC did not violate FOIA by failing to post the minutes of its August 3, 2016 meeting online.<sup>34</sup>

Next, you allege that the Council held meetings that were closed to the public to discuss the financing of a large electrical upgrade project within the City of Seaford. You base this allegation on the wording of the agenda for the August 3, 2016 meeting of the EC. The agenda contained the following agenda item: "Borrowing through DEMEC for the Pine Street Substation Upgrade and other Electrical improvements." Since the Council posted the agenda for the August 3, 2016 EC meeting prior to the last public hearing on the electrical upgrade project and its financing, you believe this agenda item to be proof that the EC had already decided, outside of the public's view, to approve financing the electrical upgrade project through the DEMEC. However, as we noted above, FOIA requires a complaining party provide substantive proof and "not mere speculation" that a secret meeting has occurred,<sup>35</sup> before the burden is shifted to the public body

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<sup>32</sup> See 29 Del. C. §10004(e)(4) ("In addition, for all noncounty and nonmunicipal public bodies, public notice required by this subsection shall include, but not be limited to, electronic posting on a designated State of Delaware website, approved by the Registrar of Regulations by May 1, 2013, which shall be accessible to the public. In addition, all public bodies in the executive branch of state government that are subject to the provisions of this chapter shall electronically post said notice to the designated State of Delaware website approved by the Secretary of State." (emphasis added)).

<sup>33</sup> While not required by FOIA, to the extent the Council maintains a website where it routinely posts public notice of meetings, agendas and minutes, we encourage the Council – and its subcommittees – to maintain consistency to avoid any confusion and promote transparency. See Del. Op. Att'y Gen. 16-IB10 (May 9, 2016) ("We note . . . that the Town maintains a website that implies that such minutes are made available online and therefore encourage the Town to resolve any confusion by either publishing the minutes online or changing its website to remove the implication that it does so."); see also Del. Op. Att'y Gen. 13-IB01 (Mar. 26, 2013) ("We caution, however, that a public body may not, intentionally or unintentionally, frustrate the public's right to monitor and observe a public meeting, which conceivably could happen if a public body abruptly ceases to provide notice in a particular place or manner that members of the public have grown accustomed to relying upon.").

<sup>34</sup> While not relevant to this analysis, we note that the minutes have been added to the City of Seaford's website as of the date of this determination.

<sup>35</sup> Del. Op. Att'y Gen. 05-IB10 (quoting *Gavin v. City of Cascade*, 500 N.W.2d 729,732 (Iowa App. 1993)).

to prove no FOIA violation occurred.<sup>36</sup> The wording of an agenda item alone is not substantive evidence and, in fact, is not even speculative given the EC's discussions at its August 3, 2016 EC meeting, which you attended. At that meeting, the EC discussed three different financing options available for the project and voted to recommend that the Council seek DEMEC financing for the project.

As a result, it is our determination that the Council did not violate FOIA as alleged in the November Petition.


### CONCLUSION

It is our determination that the Council violated FOIA by failing to provide timely notice of its April 4th Meeting, as alleged in the May Petition. Additionally, because the EC and EDC are public bodies, it is our determination that they violated FOIA by failing to adhere to FOIA's open meeting provisions, as alleged in the June Petition. However, for the reasons set forth above, it is our determination that no remediation is warranted for either violation.

Because you have failed to make a *prima facie* showing that the Council met privately between May 14, 2016 and June 17, 2016, we determine that the Council did not violate FOIA as alleged in the July Petition.

Finally, because FOIA does not require that the EC to post its meeting minutes online, and because you have failed to make a *prima facie* showing that the Council met privately in advance of the August 3, 2016 meeting, we determine that the Council did not violate FOIA as alleged in the November Petition.

Very truly yours,

  
Carla A.K. Jarosz  
Deputy Attorney General

Approved:



Aaron R. Goldstein, State Solicitor

cc: Danielle Gibbs, Chief Deputy Attorney General (via email)  
Jennifer R. Noel, Deputy Attorney General (via email)  
Michelle E. Whalen, Deputy Attorney General (via email)  
James Fuqua, Esq. (via email)

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<sup>36</sup> *Del. Op. Att'y Gen.* 16-IB13.