

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

**IN RE FREEDOM OF
INFORMATION ACT PETITION
CONCERNING THE CITY OF
REHOBOTH BEACH (THOMAS
GAYNOR, ET AL)**

RESPONSE

Respondent City of Rehoboth Beach (“City”), by and through its undersigned counsel, hereby responds to the Delaware Freedom of Information Act (“FOIA” or the “Act”) Petition from Mr. Thomas Gaynor, Esq.,¹ and Mr. Steven Linehan on behalf of Concerned Citizens of Rehoboth Beach (“Petition”). On June 3, 2024, the City received notice of the Petition and this correspondence constitutes the City’s response to the Petition. Pursuant to *Judicial Watch, Inc. v. Univ. of Del.*,² sworn affidavits of the Mayor,³ and FOIA Coordinator,⁴ respectfully, attesting to the accuracy of the statements in this Response are attached hereto as **EXHIBIT A, and EXHIBIT B.**

As discussed more fully herein, the City of Rehoboth Beach did not violate FOIA because the Petition does not allege an improper response to a records request, a properly noticed public meeting occurred in which it was clearly advertised that the Commissioners would consider appointing an individual to the position of City Manager, and at said meeting the Commissioners publicly voted to take action in accordance with the advertised agenda language. While the City Charter has not been violated, consideration of the City Charter is inappropriate

¹ There is no intention to imply that Mr. Gaynor is a legal representative of the Concerned Citizens of Rehoboth Beach. Rather, this is simply an attempt to address him by his correct title.

² 267 A.3d 996 (Del. 2021).

³ Mayor Stanley Mills was present during all events discussed in this Response.

⁴ See generally 29 Del. C. § 10002(g).

because the FOIA Petition process is clearly not the appropriate vehicle to determine whether any law other than FOIA has been violated.

For the foregoing reasons, the City did not violate FOIA as alleged in the Petition. Thank you for your time and consideration.

CITY OF REHOBOTH BEACH CHARTER

Allegations pertaining the City of Rehoboth Beach Charter are clearly outside the purview of the Department’s authority under the FOIA statute “and this petition process is not the proper route to seek answers to such questions.”⁵ “In the FOIA petition process, the General Assembly did not confer jurisdiction on [the Department] to determine whether any law other than FOIA has been violated.”⁶ To be clear, the City denies that any violation of the City Charter occurred. Moreover, the City preserves the right to make any arguments in the future. Due to the existence of robust support for the City’s position on this item, further discussion of this issue is unnecessary.

THE CITY COMPLIED WITH FOIA’S OPEN MEETING REQUIREMENTS

While the Petition does not plainly appear to allege a violation of the open meeting requirements under FOIA, to be clear, the selection of a new city manager was conducted properly under FOIA, the public had an ample opportunity to observe the decision-making process, and matters were appropriately discussed in

⁵ *Del. Op. Att’y Gen.* 22-IB11; *see also, e.g., Del. Op. Att’y Gen.* 18-IB50, 2018 WL 6015765, at *2 (Oct. 12, 2018) (finding that this Office has “no authority under FOIA to direct [the public body] with regard to this Office’s interpretation of any other Delaware statute”); *Del. Op. Att’y Gen.* 18-IB27, 2018 WL 2994705, *2 (May 31, 2018) (declining to determine whether certain records constituted an accurate portrayal of the school district’s revenue pursuant to separate statutory authority); *Del. Op. Atty. Gen.* 96-IB28, 1996 WL 517455, at *2 (Aug. 8, 1996) (“To the extent you allege that Sussex County has not complied with the requirements of 9 *Del. C.* Section 6921, that matter is beyond the jurisdiction of this office and is not addressed here.”)

⁶ *Del. Op. Att’y Gen.* 20-IB14.

executive session. An individual with an “intense interest”⁷ in the matter would have been able to participate, if they so chose. At multiple properly noticed meetings, the Commissioners met in executive session for the purpose of discussing the qualifications of individual candidates for employment as the Rehoboth Beach City Manager as permitted by 29 *Del. C.* § 10004(B)(1). Said meetings occurred on November 6, 2023; December 1, 2023; December 11, 2023; January 8, 2024; March 11, 2024; March 18, 2024; March 25, 2024.

On April 8, 2024, the Mayor and Commissioners held a properly noticed meeting.⁸ The first item of new business was: “Consideration of adoption of a resolution appointing an individual to the position of City Manager . . .” At the meeting, Commissioner Gossett made a motion, seconded by Commissioner Preston, to adopt a written resolution appointing Mr. Taylour Tedder to the position of City Manager and authorizing the Mayor to execute and deliver to Mr. Tedder an employment agreement to be executed as a condition of employment.⁹

The public had an opportunity to review and reasonably determine that the Mayor and Commissioners planned to appoint a new city manager. Public comment was solicited at every public meeting. It was articulated in plain English that the City was searching for, and interviewing a new city manager.

NO RECORDS HAVE BEEN REQUESTED NOR DENIED

The Petition does not allege an improper response to a records request. In fact, the Petitioner has not submitted any FOIA record request to the City in connection with this matter. As a result, necessarily no requested records have been withheld.

⁷ *Lechliter v. Delaware Dep’t of Env’tl. Control and Natural Res.*, 2017 WL 2687690, at *2 (Del. Ch. Jun. 22, 2017); *Del. Op. Att’y Gen.* 19-IB55 (Sep. 30, 2019); *Del. Op. Att’y Gen.* 21-IB0321 (Feb. 25, 2021).

⁸ The April 8, 2024, Meeting Agenda was initially posted on March 28, 2024, more than the necessary 7 days in advance under FOIA. *See* 29 *Del. C.* § 10004(e)(2). The agenda item in question was included at the time of the initial posting and its inclusion on the agenda was maintained.

⁹ *See* <https://cityofrehoboth.civicweb.net/document/242506/?splitscreen=true&media=true>

The City respectfully requests that the DOJ issue a determination advising that the City has not violated the Act and dismissing the Petition in full.

Respectfully submitted,



Alex C. Burns, Esquire
1413 Savannah Rd., Suite 1,
Lewes, DE 19958
Attorney for the City of Rehoboth Beach

Dated: June 11, 2024

cc:

Thomas Gaynor, Esq.
Mayor Stanley Mills, City of Rehoboth Beach
Taylour Tedder, City Manager, City of Rehoboth Beach
Ann Womack, FOIA Coordinator, City of Rehoboth Beach

EXHIBIT A

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

**IN RE FREEDOM OF INFORMATION
ACT PETITION CONCERNING THE
CITY OF REHOBOTH BEACH
(THOMAS GAYNOR, ET AL)**

**AFFIDAVIT OF THE HONORABLE STANLEY MILLS, MAYOR OF THE
CITY OF REHOBOTH BEACH, DELAWARE**

STATE OF DELAWARE)
 : SS.
COUNTY OF SUSSEX)

BE IT REMEMBERED, that on this 10th day of June 2024, personally appeared before me, the Subscriber, a Notary Public for the State and County aforesaid, Stanley Mills, the Mayor for the City of Rehoboth Beach, who, after being duly sworn according to law, did depose and say, as follows:

1. He makes this Affidavit upon personal knowledge of the facts and circumstances stated herein.
2. He is the Mayor for the City of Rehoboth Beach.
3. He certifies that on June 3, 2024, the City of Rehoboth Beach received notice of a Delaware Freedom of Information Act Petition from Mr. Thomas Gaynor, et al. (“Petition”).
4. Enclosed is a copy of the City of Rehoboth Beach’s response to the Petition (“Response”).
5. He certifies that he was present for, and witness to the public meetings and executive sessions detailed in the Response.

6. He certifies that the facts in the Response are accurate.


Stanley Mills

SWORN TO AND SUBSCRIBED before me the day, month and year aforesaid.


Notary Public

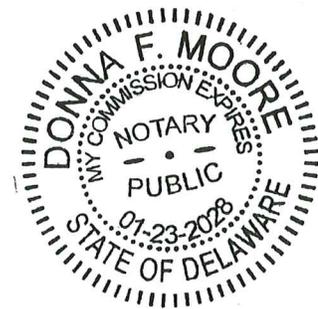


EXHIBIT B

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

**IN RE FREEDOM OF INFORMATION
ACT PETITION CONCERNING THE
CITY OF REHOBOTH BEACH
(THOMAS GAYNOR, ET AL)**

**AFFIDAVIT OF ANN WOMMACK, CITY SECRETARY OF THE CITY
OF REHOBOTH BEACH, DELAWARE**

STATE OF DELAWARE)
 : SS.
COUNTY OF SUSSEX)

BE IT REMEMBERED, that on this 10th day of June 2024, personally appeared before me, the Subscriber, a Notary Public for the State and County aforesaid, Ann Womack, the City Secretary of the City of Rehoboth Beach, who, after being duly sworn according to law, did depose and say, as follows:

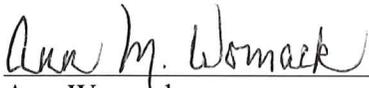
1. She makes this Affidavit upon personal knowledge of the facts and circumstances stated herein.
2. She is the City Secretary for the City of Rehoboth Beach.
3. She is the “FOIA Coordinator”¹ for the City of Rehoboth Beach.
4. She certifies that on June 3, 2024, the City of Rehoboth Beach received notice of a Delaware Freedom of Information Act Petition from Mr. Thomas Gaynor, et al. (“Petition”).

¹ “‘FOIA coordinator’ shall mean the person designated by the Cabinet Secretary, school district superintendent, local government head, Chair, or equivalent executive officer of the public body to receive and process [Freedom of Information Act] requests.” 29 Del. C. § 10002(g).

5. Enclosed is a copy of the City of Rehoboth Beach's response to the Petition ("Response").

6. She certifies that the Petitioner has not submitted any FOIA record request to the City in connection with this matter.

7. She certifies that the facts in the Response are accurate.


Ann Womack

SWORN TO AND SUBSCRIBED before me the day, month and year aforesaid.


Notary Public

