**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**
**FOR NEW CASTLE COUNTY**

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| AMERICAN CIVIL LIBERTIES UNION OF DELAWARE<br>*Plaintiff*<br>v.<br>LOUANN HUDSON et. al<br>*Defendants.* | Civil Action No. N25C-12-567 SPL |

# PLAINTIFF'S ANSWERING BRIEF IN RESPONSE TO DEFENDANTS' MOTION TO DISMISS


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## TABLE OF CONTENTS

**I. NATURE OF CASE AND STAGE OF PROCEEDINGS ..... 1**

**II. SUMMARY OF ARGUMENT ..... 1**

**III. STATEMENT OF FACTS ..... 1**

**IV. ARGUMENT ..... 2**

A. DEFENDANTS' READING OF FOIA IS FACIALLY INCORRECT. ..... 2

B. THE EXHAUSTION OF ADMINISTRATIVE REMEDIES DOCTRINE IS NOT APPLICABLE IN THIS INSTANCE ..... 4

**V. CONCLUSION ..... 6**

## TABLE OF AUTHORITIES

**Cases**

*Beck v. Claymont Sch. Dist.*, 407 A.2d 226 (Del. Super. Ct. 1979)..... 3

*Harvey v. Garrett*, 2025 WL 711134 (Del. Super. Mar. 5, 2025), aff'd; 2025 WL 2887020 (Del. Oct. 9, 2025)..... 5

*Levinson v. Delaware Comp. Rating Bureau, Inc.*, 616 A.2d 1182 (Del. 1992)..... 5

*Newman v. Delaware Div. Of Pub. Health*, 2022 WL 1063857, (D. Del. Apr. 8, 2022)..... 6

*Salzberg v. Sciabacucchi*, 227 A.3d 102 (Del. 2020)..... 4

*Scarborough v. Mayor & Council of Town of Cheswold*, 303 A.2d 701 (Del. Ch. 1973)..... 5

**Statutes**

29 *Del .C.* § 7904..... 6

29 *Del. C.* § 10001-10008..... 1

29 *Del. C.* § 10005 (b)..... 2, 3, 5

29 *Del. C.* § 2504(3)..... 3

## I. NATURE OF CASE AND STAGE OF PROCEEDINGS

This case concerns the imposition of prohibitive fees by Delaware school districts in response to Delaware Freedom of Information Act ("FOIA") requests.[1]

On December 22, 2025, ACLU of Delaware ("ACLU") filed a Verified Complaint, challenging the fees charged by Christina, Woodbridge, and Cape Henlopen School Districts in response to FOIA requests sent to them by ACLU. In response, Defendants filed a Rule 12(b)(6) Motion to Dismiss on February 2, 2026. This is Plaintiff's response to Defendants' Motion to Dismiss.

## II. SUMMARY OF ARGUMENT

Defendants' Motion to Dismiss relies on two related points: (1) that the FOIA statute mandates that all challenges are initially directed to the Attorney General ("AG"), and (2) the Court should use its discretion under the exhaustion of administrative remedies doctrine to dismiss the suit based on (1). Because (1) misreads the FOIA statute, and (2) is inapplicable under the correct reading, this Court should deny the Defendants' motion.

## III. STATEMENT OF FACTS

The facts are set forth in detail in the Verified Complaint. (¶¶ 10-54). The essential facts are that ACLU issued FOIA requests to all 19 Delaware school districts, including Defendants, in early October 2025. (¶¶ 16-17). ACLU alleges

[1] 29 *Del. C.* § 10001-10008.

that Defendants, in imposing thousands of dollars in administrative fees to fulfill requests that other school districts fulfilled for an average of about $400, sought unreasonable fees in violation of 29 *Del. C.* § 10003(m)(2). (¶¶ 24-26).

## IV. ARGUMENT

This suit was properly filed under FOIA. Defendants misinterpret the meaning of section (e) of 29 *Del. C.* § 10005 and incorrectly conclude that the AG is the exclusive initial adjudicator of FOIA disputes. If the public body is not represented by the AG pursuant to § 2504, a plaintiff may bring suit and eschew a FOIA petition to the AG. Additionally, Defendants' argument for applying the doctrine of exhaustion of administrative remedies fails, because the doctrine applies only where an administrative agency has exclusive jurisdiction. Since the AG lacks exclusive jurisdiction, the doctrine does not apply.

### A. Defendants' reading of FOIA is facially incorrect.

FOIA establishes that any citizen denied access to public records may bring suit within 60 days of the denial. 29 *Del. C.* § 10005 (b).

> ***Any*** *citizen denied access to public records as provided in this chapter may* ***bring suit within 60 days of such denial****.* Venue in such cases where access to public records is denied shall be placed in a court of competent jurisdiction for the county or city in which the public body ordinarily meets or in which the plaintiff resides. *Notwithstanding the foregoing, a person denied access to public records by an administrative office or officer, a department head, commission, or instrumentality of state government which the Attorney General is obliged to represent pursuant to § 2504 of this title must within 60 days of denial, present a petition and all supporting*

*documentation to the Chief Deputy as described in subsection (e) of this section.*

*Id.* (emphasis added).

The only exception to this default rule is a requirement to appeal a record request denial to the AG if the public entity is one the AG is required to represent pursuant to 29 *Del. C.* § 2504. *Id.* These entities are limited to "officers, agencies, departments, boards, commissions and instrumentalities of state government." 29 *Del. C.* § 2504(3). Therefore, appeal to the AG is required, and a lawsuit foreclosed, only if the public entity is enumerated in 29 *Del. C.* § 2504(3).

Defendants are school districts, which means they are "autonomous political subdivisions" with legal status "separate from the state."[2] School districts accordingly fall under the default rule and can be sued under FOIA lawsuit in Superior Court as soon as they issue a denial. 29 *Del. C.* § 10005(b).

Defendants' interpretation of the clause would render parts of the statute superfluous. It is presumed that "the General Assembly purposefully chose particular language and [Delaware courts] therefore construe statutes to avoid

[2] "The legislative history of local school district autonomy reflects a mixed pattern. But, the foregoing analysis of the relationship between the local school district and its political parent, the State, leads to the conclusion that local school districts, in many aspects of their operation, are autonomous political subdivisions particularly with respect to the ownership and management of school property. This control, engrafted upon their ability to sue and be sued, renders them responsible entities enjoying a legal status separate from the State." *Beck v. Claymont Sch. Dist.*, 407 A.2d 226, 231 (Del. Super. Ct. 1979)

surplusage if reasonably possible." *Salzberg v. Sciabacucchi*, 227 A.3d 102, 117–18 (Del. 2020). If 29 *Del. C.* § 10005(e)[3] requires FOIA challenges against all public entities to first be heard by the AG, the entire clause in § 10005(b) regarding state instrumentalities becomes unnecessary surplusage. This Court should favor an interpretation of 29 *Del. C.* § 10005 that avoids surplusage and wherein Section (b) establishes a default rule permitting suit in any court and modifying said rule as to state instrumentalities, whereas Section (e) merely provides detail for the AG petition process and its broad availability.

For this reason, Defendants' reading of the FOIA statute should be disregarded.

### B. The exhaustion of administrative remedies doctrine is not applicable in this instance.

The doctrine of exhaustion of administrative remedies does not apply because the claim was not brought before the AG and the AG lacks exclusive jurisdiction over challenges to FOIA denials. Thus, the suit is properly brought before this Court.

The doctrine of exhaustion of administrative remedies applies only "where a claim *must be initiated* before an administrative agency which has exclusive jurisdiction over the matter... ." *Levinson v. Delaware Comp. Rating Bureau, Inc.*,

[3] Section (e) describes the process by which a requestor may petition the Attorney General to determine whether a violation of this chapter has occurred or is about to occur. 29 *Del. C.* § 10005 (e).

616 A.2d 1182, 1187 (Del. 1992) (emphasis added); *see also Scarborough v. Mayor & Council of Town of Cheswold*, 303 A.2d 701, 704 (Del. Ch. 1973) (doctrine does not apply to administrative agency without exclusive jurisdiction). FOIA clearly grants "any citizen denied access to public records" the ability to "bring suit." 29 *Del. C.* § 10005 (b).

The Defendants cite two Superior Court cases for the proposition that the AG retains exclusive initial jurisdiction over FOIA denial challenges; both fail to support their position.

Defendants first cite *Harvey v. Garrett*. (MTD at ¶¶ 4.) In *Garrett*, the FOIA requestor challenged a denial of records by the Wilmington Housing Authority ("WHA"). *Harvey v. Garrett*, 2025 WL 711134 at *2 (Del. Super. Mar. 5, 2025), aff'd; 2025 WL 2887020 (Del. Oct. 9, 2025). A Delaware Superior Court Commissioner concluded the requestor was required to file a petition before the AG before suing in Superior Court. *Id.* The requestor exhausted their administrative remedies and appealed to the Commissioner again, and the Commissioner eventually approved WHA's denial of records on other grounds; the Superior Court then affirmed. *Id*. Because the requestor exhausted administrative remedies in compliance with the Commissioner's prior ruling, the Superior Court did not squarely address a requestor's obligation to exhaust administrative

remedies before suing in Superior Court in a case in which no petition process is required.

Defendants also cite *Newman v. Delaware Div. of Pub. Health* (MTD at ¶¶ 4), which concerns a requestor's challenge to a denial of records by the Delaware Division of Public Health. *Newman v. Delaware Div. Of Pub. Health*, 2022 WL 1063857, at *1 (D. Del. Apr. 8, 2022). The Division of Public Health is "a state agency," thus an entity included in the "instrumentality" clause of FOIA. 29 *Del. C.* § 7904. Unlike the Division of Public Health, Defendants are local entities separate from the state government, which renders *Newman* inapplicable to the present dispute.

Therefore, Defendants have failed to prove that Plaintiffs must file their initial challenge as a petition to the AG, rather than a lawsuit this Court, and the Court should deny their motion.

## V. CONCLUSION

For all the foregoing reasons, Defendants' Motion to Dismiss should be DENIED.

Dated: February 23, 2026

Respectfully submitted,

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