



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

October 2, 2019

*Via electronic mail*



*Via electronic mail*

Ms. Alexandra B. Ruggie  
Assistant City Attorney  
City of Evanston  
2100 Ridge Avenue  
Evanston, Illinois 60201  
aruggie@cityofevanston.org

RE: OMA Request for Review – 2019 PAC 58228

Dear [REDACTED] and Ms. Ruggie:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2018)). For the reasons explained below, the Public Access Bureau concludes that the City of Evanston (City) City Council (City Council) did not violate the requirements of OMA in connection with a May 20, 2019, community meeting concerning the Robert Crown Community Center (Community Center).

On May 21, 2019, [REDACTED] submitted a Request for Review alleging that the City Council cancelled its regularly scheduled meeting<sup>1</sup> to hold a special public meeting on May 20, 2019, to "respond to the residents' request for transparency and disclosure to know how the

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<sup>1</sup> [REDACTED]'s Request for Review does not include the date of the allegedly cancelled City Council meeting, and it appears from a review of the City Council's website that the City Council held its regularly scheduled meetings during the months of April and May. See <https://www.cityofevanston.org/government/agendas-minutes/city-council-agendas-and-minutes> (last visited September 12, 2019).

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City of Evanston plans to finance the [Community Center][.]<sup>2</sup> Request for Review alleged that a majority of a quorum of the members of the City Council attended this public meeting<sup>3</sup> and discussed public business without providing an agenda for the meeting. also asserted that at this meeting, the City manager prohibited members of the public from addressing the City Council because they had not submitted their written comments on index cards prior to the meeting, which she contended was not in accordance with the City Council's established and recorded public comment rules.

On May 31, 2019, this office sent a copy of the Request for Review to the City Council and asked it to provide a written response to the allegation that the City Council members' attendance and participation in the public meeting constituted a City Council meeting. On June 6, 2019, the City provided a written response along with a link to the City's YouTube channel that contained a video of the May 20, 2019, event.<sup>4</sup> On June 7, 2019, this office forwarded a copy of that response to On June 10, 2019, she submitted a reply that included links to what appear to be an individual's social media account that also contain portions of the meeting at issue.<sup>5</sup>

### DETERMINATION

The requirements of OMA apply to each "meeting" of a public body. 5 ILCS 120/1 (West 2018). Section 1.02 of OMA (5 ILCS 120/1.02 (West 2018)) defines "meeting" as:

[A]ny gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of

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<sup>2</sup>E-mail from to AG Public Access [O]ffice (May 21, 2019).

<sup>3</sup>Sneha Dey, *Expressing frustration, residents disrupt playing of video at Robert Crown community meeting*, THE DAILY NORTHWESTERN, (May 21, 2019), <https://dailynorthwestern.com/2019/05/21/city/expressing-frustration-residents-disrupt-playing-of-video-at-robert-crown-community-meeting>

<sup>4</sup>City of Evanston, *Robert Crown Center Community Meeting 5-20-2019*, YOUTUBE (May 21, 2019), <https://www.youtube.com/watch?v=wcE83bSyfOM&t=3558s>.

<sup>5</sup>Mary O'Rourke Rosinski, FACEBOOK, (May 20, 2019) <https://www.facebook.com/maryrosinski/videos/10157162245079076/>; <https://www.facebook.com/maryrosinski/videos/10157162212134076/>; <https://www.facebook.com/maryrosinski/videos/10157162364819076/>

a majority of a quorum of the members of a public body held for the purpose of discussing public business[.]

The Office of the Attorney General has stated that "whether a gathering falls within the definition of meeting as used in the Act, would depend upon the peculiar facts in each situation." 1974 Ill. Att'y Gen. Op. No. S-726, issued March 22, 1974, at 126. "In theory, there is no absolute prohibition against the members of a public body attending an 'informational meeting' without triggering the application of" OMA, as long as the members do not make "[d]eliberational statements" or engage in "unrecorded discussions" among themselves. Ill. Att'y Gen. Op. No. 95-004, issued July 14, 1995, at 10-11. In that opinion the Attorney General concluded that the "mere fact that a majority of a quorum of the members of a public body attend and participate in a bona fide presentation on new legislative developments in an area of public concern" did not make the presentation subject to OMA, but the extensive discussions of public business by members of two county boards during that particular presentation did trigger the requirements of OMA. (Emphasis in original.) Ill. Att'y Gen. Op. No. 95-004, at 10-11; *see also Nabhani v. Coglianesi*, 552 F. Supp. 657, 661 (N.D. Ill. 1982) (a gathering does not constitute a meeting for purposes of OMA when there is "no examining or weighing of reasons for or against a course of action, no exchange of facts preliminary to a decision, [and] no attempt to reach accord on a specific matter of public business.").

The City Council is comprised of a mayor and nine aldermen.<sup>6</sup> Here, it is undisputed that the City Council did not post an agenda or otherwise follow the requirements of OMA for the May 20, 2019, community meeting and that a majority of a quorum of aldermen, five, gathered at the event. Therefore, to determine whether this event constituted a meeting of the City Council that was held in violation of OMA the question is whether five members of the City Council engaged in deliberative discussion of public business during the May 20, 2019, community meeting.

According to the background information provided by the parties, the Community Center is a City project to build a new facility that includes a new ice rink and library branch. The City's response to this office indicated that the project was organized by the City Manager's office and was approved by the City Council on October 17, 2011.<sup>7</sup> According to several news reports, some members of the public began voicing concerns about the cost of the project, many of whom spoke during the public comment periods of City Council meetings to share their

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<sup>6</sup>City of Evanston, *City Council*, <https://www.cityofevanston.org/government/city-council>

<sup>7</sup>City of Evanston, *Crown Center Project*, <https://www.cityofevanston.org/residents/robert-crown-community-center-ice-complex-and-library>.

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thoughts on this subject matter.<sup>8</sup>

The City's response stated that the May 20, 2019, meeting at issue was the fifth community meeting of its type in which the City Manager, Mr. Wally Bobkiewicz, provided an update on the project, with the focus of this meeting being on the costs and financing of the Community Center. The City contended that the event did not constitute a City Council meeting because the aldermen in attendance were not there in their official capacity, but instead, attended as interested residents of the City. The response further asserted:

The City Council members did not address the members assembled, sit on a panel discussion, or take comments from the persons present. Rather, the aldermen sat in the audience to listen to speakers and watch the video presented by the City.<sup>9]</sup>

Moreover, the City asserted that the aldermen did not "deliberate on any issues or take any actions before the City Council or its committees."<sup>10</sup> The City's response also asserted that Mr. Bobkiewicz led the community meeting—not the City Council—and only when the prepared video experienced playback issues did one City Council member, Alderman Peter Braithwaite, assist Mr. Bobkiewicz with answering written audience questions.

In her reply to the City's response, ██████████ maintained that the May 20, 2019, event amounted to a City Council meeting because: "5 aldermen [were] in attendance and the 10+ city staff were all present to attend this meeting of City Business."<sup>11</sup> ██████████ reply also disputed the City's account that the aldermen did not engage in any discussion or deliberation

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<sup>8</sup>Sneha Dey, *High costs, 'privatized interests' of Northwestern in Robert Crown Center push Evanston residents to voice concerns* THE DAILY NORTHWESTERN, (February 14, 2019), <https://dailynorthwestern.com/2019/02/14/city/high-costs-privatized-interests-of-northwestern-in-robert-crown-center-push-evanston-residents-to-voice-concerns/>; Sneha Dey, *Residents concerned over increased cost of Robert Crown Community Center, even after construction has begun* (February 28, 2019), <https://dailynorthwestern.com/2019/02/28/city/residents-concerned-over-increased-cost-of-robert-crown-community-center-even-after-construction-has-begun/>.

<sup>9</sup>Letter from Alexandra B. Ruggie, Assistant City Attorney, City of Evanston to Shannon Barnaby, Assistant Attorney General, [Public Access Bureau], Office of the Illinois Attorney General (June 6, 2019), at 2.

<sup>10</sup>Letter from Alexandra B. Ruggie, Assistant City Attorney, City of Evanston to Shannon Barnaby, Assistant Attorney General, [Public Access Bureau], Office of the Illinois Attorney General (June 6, 2019), at 4.

<sup>11</sup>E-mail from ██████████ to Shannon Barnaby, Assistant Attorney General, Public Access Bureau (June 10, 2019).

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concerning the Community Center, stating: "[n]one of them just happened to be there in some peripheral way. The aldermen interacted with each other discussing the City business matter at hand."<sup>12</sup> ██████████ reply emphasized that members of the public were frustrated by the format of the meeting and by the public comment procedure that was different from the format used at City Council meetings. Specifically, ██████████ stated: "[t]here was much expressed anger and dialogues with the aldermen present around the lack of transparency and the feeling of complete disrespect of the residents who had come out that evening and who had concerns."<sup>13</sup>

This office has reviewed the video footage of the May 20, 2019, event provided by both the City and ██████████. The meeting consisted of opening remarks by the City Manager, the presentation of a video concerning the Community Center project, followed by a question and answer session. As mentioned by the City in its response to this office, the viewing of the video was temporarily interrupted by what appeared to be a malfunction in the audio of the video recording, at which point Alderman Braithwaite assisted Mr. Bobkiewicz with the reading of audience members' written questions. After the remainder of the video was presented, a second question and answer session occurred, following the same format. The submitted questions were answered by Mr. Bobkiewicz, Alderman Braithwaite, and other City staff members in attendance, such as the Deputy City Manager, the City Engineer, and the City's Library Director. However, the recordings do not reflect that any other City Council members spoke during the presentation or the question and answer sessions.

In her reply, ██████████ alleges that the video footage available on the City's YouTube channel has been edited and that it "misrepresents the entirety of the meeting and mostly shows the 90 minute choreographed and edited video."<sup>14</sup> Nonetheless, while the video footage provided by ██████████ does show that the individuals who were recorded appear to be extremely frustrated, it does not appear to show any other members of the City Council speaking, providing comments, or otherwise discussing public business.

Therefore, the available information does not include facts from which this office can conclude that May 20, 2019, community meeting was a meeting of the City Council subject to the requirements of OMA. The fact that the City Manager and more than ten City employees were present and discussing public business is not relevant to an analysis of whether this event

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<sup>12</sup>E-mail from ██████████ to Shannon Barnaby, Assistant Attorney General, Public Access Bureau (June 10, 2019).

<sup>13</sup>E-mail from ██████████ to Shannon Barnaby, Assistant Attorney General, Public Access Bureau (June 10, 2019).

<sup>14</sup>E-mail from ██████████ to Shannon Barnaby, Assistant Attorney General, Public Access Bureau (June 10, 2019).

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constituted a "meeting" of the City Council under OMA because they are not members of that public body. Likewise, the fact that a majority of a quorum of City Council members attended the community meeting did not transform that event into a City Council meeting. Only one member of the City Council publicly spoke at the event and there is no information indicating that at any time during this meeting five or more members of the City Council engaged in deliberation or discussion of public business. Accordingly, this office concludes that the City Council did not violate OMA in connection with the May 20, 2019, community meeting.

To the extent that [REDACTED] Request for Review alleged that the City Council violated the first amendment rights of attendees at the May 20, 2019, community meeting, those allegations are not subject to review by this office, as the Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2018)). *See* 15 ILCS 205/7(c)(3) (West 2018).

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, you may contact me at the Chicago address on the first page of this letter. This letter serves to close this file.

Very truly yours,

[REDACTED]  
SHANNON BARNABY  
Assistant Attorney General  
Public Access Bureau

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