



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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December 6, 2017

Via electronic mail

Ms. Kristen Schorsch
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Crain's Chicago Business
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Via electronic mail

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Illinois Department of Public Health
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RE: OMA Request for Review – 2015 PAC 37555

Dear Ms. Schorsch and Mr. Bryant:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (5 ILCS 120/3.5(e) (West 2016)). For the reasons stated below, the Public Access Bureau concludes that the Regional Trauma Advisory Committee (RTAC) of Region 11 (Region 11 TAC) is a public body subject to the requirements of OMA.¹

On September 17, 2015, Ms. Kristen Schorsch, a reporter for *Crain's Chicago Business*, submitted this Request for Review alleging that the Region 11 TAC had failed to adhere to the requirements of OMA. Ms. Schorsch contended that RTACs are subcommittees of the Illinois Department of Public Health (Department), and thus "public bodies" under OMA. Ms. Schorsch stated that after years of protests, plans to open a trauma center on the south side of Chicago were announced, but approval was first required from the Region 11 TAC. Because the

¹Although the Request for Review concerns Region 11 in particular, this determination applies to all RTACs that have been formed.

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Region 11 TAC "appear[red] to be the first major hurdle to opening a new trauma center in Chicago," Ms. Schorsch asserted that its meetings "should be open considering how important their decisions are to patient care."² Ms. Schorsch further contended:

These committees were formed by state statute and they're making decisions that impact patient care statewide, which in trauma cases is life or death. They can determine which hospitals are allowed to be in particular trauma regions, which means they determine where gunshot and stabbing victims get care. And yet the public has little insight into how their decisions are made.^[3]

In addition, Ms. Schorsch argued that "the hospitals within [the Region 11 TAC] can protect their own market share by selecting which players deliver trauma care services. These hospitals are non-profit and are heavily-supported with taxpayer money."⁴

On September 28, 2015, this office sent a copy of the Request for Review to the Department and asked it to provide a detailed written response to Ms. Schorsch's allegations, together with copies of any notices, agendas, or minutes from Region 11 TAC meetings, whether open or closed, within the previous 60 days.

On October 8, 2015, the Department provided a written response, asserting that the RTACs are neither subsidiary bodies of the Department nor public bodies under OMA. On November 16, 2015, Ms. Schorsch replied, in pertinent part:

[T]he Region 11 [TAC] is led by the directors of the six trauma centers in Chicago. By determining who can and can't provide trauma care, they can prevent more potential competitors who could take away patients from their facilities from entering the market. * * *

²E-mail from Kristen Schorsch, Health care reporter, Crain's Chicago Business, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (September 17, 2015).

³E-mail from Kristen Schorsch, Health care reporter, Crain's Chicago Business, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (September 17, 2015).

⁴E-mail from Kristen Schorsch, Health care reporter, Crain's Chicago Business, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (September 17, 2015).

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It's in the best interest of good governance and public access to have the RTAC meetings open to the public.⁵¹

On January 13, 2016, this office sent a second letter to the Department seeking additional information concerning the manner in which the RTACs conduct their business and their relation to the State Trauma Advisory Council, and again requesting copies of Region 11 TAC meeting records for our confidential review. On January 27, 2016, the Department provided the requested materials, explaining that because the RTACs function independently of the Department, it does not know all of the types of records that an RTAC might create or maintain during its meetings; however, because the Department's local representative at times informally attends Region 11 TAC meetings, the Department had 37 such responsive records in its possession and provided them for this office's confidential review.

On June 8, 2017, Ms. Schorsch reiterated her concern about the secrecy of the Region 11 TAC's meetings to this office, noting that the University of Chicago had announced in a news release the day before that the Region 11 TAC had unanimously approved the University's plans to be designated as a Level I adult trauma center.

DETERMINATION

"In order that the people shall be informed, the General Assembly finds and declares that it is the intent of [OMA] to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (2014).

It is undisputed that the RTACs have not adhered to the requirements of OMA. Therefore, this determination analyzes whether the RTACs are public bodies subject to the requirements of OMA. Section 1.02 of OMA (5 ILCS 120/1.02 (West 2014)) defines a "public body" as:

[A]ll legislative, executive, administrative or advisory bodies of the State, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, and any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue, except the General Assembly and committees or commissions thereof.

⁵¹E-mail from Kristen Schorsch, Health care reporter, Crain's Chicago Business, to [Christopher] Boggs (November 16, 2015).

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Section 3.25(e) of the Emergency Medical Services (EMS) Systems Act (EMS Systems Act) (210 ILCS 50/3.25(e) (West 2014)) provides that an RTAC is:

a committee formed within an Emergency Medical Services (EMS) Region, to advise the Region's Trauma Center Medical Directors Committee, consisting of at least the Trauma Center Medical Directors and Trauma Coordinators from each Trauma Center within the Region, one EMS Medical Director from a resource hospital within the Region, one EMS System Coordinator from another resource hospital within the Region, one representative each from a public and private vehicle service provider which transports trauma patients within the Region, an administrative representative from each trauma center within the Region, one EMR, EMD, EMT, EMT-I, A-EMT, Paramedic, ECRN, or PHRN representing the highest level of EMS personnel practicing within the Region, one emergency physician and one Trauma Nurse Specialist (TNS) currently practicing in a trauma center. The Department's Regional EMS Coordinator for each Region shall serve as a non-voting member of that Region's Trauma Advisory Committee.

Every 2 years, the members of the Trauma Center Medical Directors Committee shall rotate serving as Committee Chair, and select the vehicle service providers, EMS personnel, emergency physician, EMS System Coordinator and TNS who shall serve on the [RTAC].

Every EMS Region must develop an EMS Region Plan (Plan) for the Department's approval. 210 ILCS 50/3.25(a) (West 2014). Each plan is developed by the Region's EMS Medical Directors Committee with advice from the Regional EMS Advisory Committee, but the portions concerning trauma are to be "developed jointly with the Region's Trauma Center Medical Directors or Trauma Center Medical Directors Committee, whichever is applicable, with advice from the [RTAC], if such [an RTAC] has been established in the Region." 210 ILCS 50/3.25(a) (West 2014). Additionally, as Ms. Schorsch noted, RTACs play a statutory role in the designation of new trauma centers. The Department has the authority and responsibility to designate hospitals as Level I or Level II Trauma Centers, but "shall designate a new trauma center only when a local or regional need for such trauma center has been identified." 210 ILCS 50/3.90(b)(4) (West 2014). To make that judgment, the Department must "request an assessment of local or regional need from the applicable EMS Region's Trauma

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Center Medical Directors Committee, with advice from the [RTAC]." 210 ILCS 50/3.90(b)(4) (West 2014).

In its first response to this office, the Department described the RTACs as private, not-for-profit organizations that act as "forum[s] for trauma center employees and a few other statutorily-named individuals to openly discuss regional health care needs."⁶ The Department analogized the RTACs to other entities that, while required to comply with various government regulations, are not considered government subsidiaries subject to the requirements of OMA, citing *Rockford Newspapers, Inc. v. Northern Illinois Council on Alcoholism & Drug Dependence*, 64 Ill. App. 3d 94, 96 (1978). In that case, the Illinois Appellate Court held that a not-for-profit corporation that administered drug and alcohol treatment programs was not subject to the provisions of OMA, despite the fact that it was primarily government-funded and its activities were regulated and monitored by various levels of government. *See Rockford*, 64 Ill. App. 3d at 96 ("The amount or percentage of governmental funding of a private entity should have no bearing on whether that entity is characterized as a subsidiary for purposes of the Open Meetings Act. Although the Act itself provides that a particular entity need not be publically funded in order to be required to hold open meetings, it does not state that public funding alone will make a particular entity subject to the Act.").

The Department's reliance on the court's holding in *Rockford* is misplaced. Ms. Schorsch's Request for Review emphasized RTACs' role in developing plans to assist regional trauma centers in coordinating patient care, which sharply contrasts with the administrative nature of the drug treatment council at issue in *Rockford*. Once formed, RTAC approval is the first major step in opening new trauma centers in their respective regions; their recommendations guide the course of whether a new trauma center is even created at all. Conversely, the drug treatment council in *Rockford* was merely a private party that contracted with the state to perform a social service, and it lacked any independent authority to develop or recommend the need for such treatment under the law. Thus, regardless of the level of public funding received by the hospitals that comprise RTACs, the significant role that RTACs are authorized to play in the formulation of governmental actions and policies distinguishes them from non-profit entities that have no such statutory role.

The remainder of the Department's arguments relied on *University Professionals of Illinois, Local 4100 of the Illinois Federation of Teachers v. Stukel*, 344 Ill. App. 3d 856, 865 (1st Dist. 2003). In that case, the plaintiff alleged that a group of presidents and chancellors of public universities (the Council), which made recommendations to the Illinois Board of Higher Education (IBHE), violated OMA by meeting privately before IBHE meetings to discuss issues

⁶Letter from William Bryant, Acting Freedom of Information Officer, to Christopher R. Boggs, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (October 8, 2015), at 1.

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related to funding for public education. *Stukel*, 344 Ill. App. 3d at 858. The court considered the following factors to be relevant to the determination of whether an entity is an advisory body for purposes of OMA:

[1] who appoints the members of the entity, the formality of their appointment, and whether they are paid for their tenure; [2] the entity's assigned duties, including duties reflected in the entity's bylaws or authorizing statute; [3] whether its role is solely advisory or whether it also has a deliberative or investigative function; [4] whether the entity is subject to government control or otherwise accountable to any public body; [5] whether the group has a budget; [6] its place within the larger organization or institution of which it is a part; and [7] the impact of decisions or recommendations that the group makes. *Stukel*, 344 Ill. App. 3d at 858.

The court held that the group was not an advisory body of IBHE in part because it was not incorporated into the formal organizational structure of IBHE, a factor that the court identified as a "**primary consideration** in determining whether an organization is a public body under the Meetings Act." (Emphasis added.) *Stukel*, 344 Ill. App. 3d at 865. The court explained that "the Council was formed by the presidents and chancellors of the various state universities to express its views to the IBHE. Granted, its role is advisory but that role is one that the Council [and not IBHE] created." *Stukel*, 344 Ill. App. 3d at 866. The court also noted that the plaintiff had not alleged that the group had a "deliberative or investigative function in relation to the IBHE or that the Council is subject to government control. It does not appear that the Council is otherwise accountable to any public body. It does not appear to have a budget[,] and no member of the Council is a member of the IBHE." *Stukel*, 344 Ill. App. 3d at 866.

The Department asserted that under the factors set forth in *Stukel*, the RTACs should not be considered public bodies subject to the requirements of OMA. Under the first factor, the Department noted that no RTAC members are appointed by the Governor or the Department's Director; rather, membership is determined by one's employer and job title, and members are not paid for their tenure. However, the Department acknowledged that the composition of each RTAC is mandated by statute, including the requirement that a Department employee – the Regional EMS Coordinator – shall serve as a non-voting member. See 210 ILCS 50/3.25(e) (West 2014). The fact that each Trauma Center Medical Directors Committee has the sole authority to appoint members to its region's RTAC signifies the formality of those entities, in contrast with the self-initiated gatherings at issue in *Stukel*.

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Secondly, the Department stated that the RTACs are not tasked with advising the Department directly, but instead are authorized to advise committees that then report to the Department. As cited above, the EMS Systems Act delineates a significant role for RTACs in developing plans and recommendations for the Department's approval and action. RTACs have clearly-defined assigned duties.

Insisting that RTACs are purely advisory bodies lacking deliberative or investigative functions as outlined in *Stukel*, the Department next drew a contrast with the State Trauma Advisory Council, which is expressly designated as "an advisory body to the Department on matters related to trauma care and trauma centers." 210 ILCS 50/3.205(a) (West 2014). Without the benefit of Region 11 TAC meeting minutes to review, the nature of RTAC functions is difficult for this office to assess. The Department did verify, though, that unlike RTACs, the State Trauma Advisory Council plays no role in the formation of EMS Region Plans, which, again, must be submitted to the Department for approval. Moreover, under section 3.30 of the EMS Systems Act (210 ILCS 50/3.30 (West 2014)), EMS Region Plans are required to meet extensive criteria, indicating a substantial need for deliberation.

Under the fourth *Stukel* factor, the Department noted that the discretion to even create an RTAC for a specific region lies solely with the Region's Trauma Center Medical Director (*see* 210 ILCS 50/3.25(b) (West 2014)), further asserting that "if the Medical Director chooses to create an RTAC, the Department has no authority over the RTAC, does not schedule RTAC meetings, and does not set or control the agenda of RTAC meetings."⁷ However, the Department thus acknowledged that the very existence of RTACs is ultimately subject to governmental control. The Department designates EMS Regions (210 ILCS 50/3.15 (West 2014)), makes requirements for both EMS Medical Directors (210 ILCS 50/3.20 (West 2014)) and Trauma Center Medical Directors (77 Ill. Adm. Code §515.2030 (2015), last amended at 25 Ill. Reg. 16386, effective December 20, 2001), stipulates what Trauma Center Medical Directors or Trauma Center Medical Directors Committees must include in EMS Region Plans (210 ILCS 50/3.30 (West 2014)), and designates and oversees all Trauma Centers (210 ILCS 50/3.90 (West 2014)). When a dispute arises over the contents of an EMS Region Plan between the Region's EMS Medical Directors Committee and Trauma Center Medical Directors or Trauma Center Medical Directors Committee, whichever is applicable, the Department's Director "shall intervene through a mechanism established by the Department[.]" 210 ILCS 50/3.25(c) (West 2014). These and other provisions of the EMS Systems Act and corresponding Department rules demonstrate that RTACs are directly accountable to Trauma Center Medical Directors or Trauma Center Medical Directors Committees, whichever is applicable, which in turn are accountable to the Department.

⁷Letter from William Bryant, Acting Freedom of Information Officer, to Christopher R. Boggs, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (October 8, 2015), at 4.

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Next, the Department acknowledged that RTACs may have budgets, but stated that it does not provide them with funding. Additionally, the Department argued that the RTACs are not part of the Department's formal organizational structure, which the court in *Stukel* identified as a primary consideration in determining whether a public body is subject to OMA. The Department also recognized, however, that "[e]ach RTAC is part of one of the 11 EMS Regions designated by administrative rule" (77 Ill. Adm. Code §515.200 (2015)), and "assist[s] * * * in determining the trauma needs of the region."⁸ Given that RTACs have an express statutory role in developing EMS Region Plans and designating new trauma centers in order for the Department to fulfill its own statutory responsibilities, RTACs are not outside entities. To the contrary, RTACs have a formal place in planning and decision-making processes under the authority of the Department.

As to the final *Stukel* factor, the Department contended that an RTAC's decisions have minimal direct impact on the Department, but granted that "an RTAC's recommendations may be relatively significant in its region."⁹ As Ms. Schorsch highlighted, the advice of an RTAC can have a considerable impact on the designation of a new trauma center as well as the formulation of an EMS Region Plan. The impact of an RTAC's recommendations may be most directly felt within its Region, but the Regions are extensively managed by the Department, so weighty decisions within a Region also reverberate to the Department.

Taking all of these factors into account, RTACs have the characteristics of advisory bodies, and should conduct themselves accordingly. In particular, the duties and composition of RTACs are set by statute, are accountable to entities directly subject to the Department's control, have a formal role in the decision-making process, and make impactful recommendations. Because OMA defines a "public body" to include advisory bodies of the State, this office concludes that RTACs are subject to the requirements of OMA.

For the reasons stated above, this office requests that each RTAC conduct its meetings in compliance with OMA. Specifically, the RTACs should provide advance notice¹⁰ of all future meetings, which should be held in locations that are open and convenient to the

⁸Letter from William Bryant, Acting Freedom of Information Officer, to Christopher R. Boggs, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (October 8, 2015), at 4.

⁹Letter from William Bryant, Acting Freedom of Information Officer, to Christopher R. Boggs, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (October 8, 2015), at 5.

¹⁰See 5 ILCS 120/2.02 (West 2016).

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public.¹¹ The RTACs should also keep written minutes of all meetings¹² and provide an opportunity for public comment.¹³ This office further requests that each RTAC member complete the OMA electronic training curriculum developed and administered by the Public Access Counselor. *See* 5 ILCS 120/1.05 (West 2016).

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, please contact me at the Springfield address listed on the first page of this letter. This letter serves to close this file.

Very truly yours,



CHRISTOPHER R. BOGGS
Assistant Attorney General
Public Access Bureau

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¹¹See 5 ILCS 120/2.01 (West 2016).

¹²See 5 ILCS 120/2.06(a) (West 2016).

¹³See 5 ILCS 120/2.06(g) (West 2016).