



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 18, 2018

Via electronic mail

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Mr. Redeatu G. Kassa
Director of State Legislation
City of Chicago Department of Law
Legal Counsel Division
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RE: OMA Request for Review – 2016 PAC 42647

Dear [REDACTED] and Mr. Kassa:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the Health in All Policies Task Force (Task Force) is a public body for purposes of OMA. The Public Access Bureau further concludes that the Task Force violated the requirements of the Act in connection with its May 31, 2016, meeting.

On June 27, 2016, [REDACTED] submitted this Request for Review alleging that the Task Force, which was formed pursuant to a May 18, 2016, City of Chicago (City) City Council resolution, had failed to adhere to the requirements of OMA in connection with its meetings. On July 11, 2016, this office sent a copy of the Request for Review to the City and asked it to furnish a detailed written response to [REDACTED] allegations.

On July 25, 2016, the City responded, asserting that the Task Force was not a public body under OMA. On September 15, 2016, [REDACTED] replied to each of the City's arguments, reiterating her contention that the Task Force was subject to the requirements of OMA.

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 (West 2016).

Section 1.02 of OMA (5 ILCS 120/1.02 (West 2016)) defines "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 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. (Emphasis added).

In *University Professionals of Illinois, Local 4100 of the Illinois Federation of Teachers v. Stukel*, 344 Ill. App. 3d 856 (1st Dist. 2003), the plaintiff alleged that a group of presidents and chancellors of public universities (Council), which made recommendations to the Illinois Board of Higher Education (IBHE), violated OMA by meeting privately before IBHE meetings to discuss issues related to funding for public education because it constituted an advisory body. *Stukel*, 344 Ill. App. 3d at 858. In holding that the Council was not an advisory body of the IBHE for purposes of OMA, the court considered the following factors to be relevant to that assessment:

[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.

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Task Force Selection and Membership

In its response to this office, the City described the Task Force's organization and structure in relation to the *Stukel* factors set out above. Specifically, the City asserted that department heads were allowed to attend Task Force meetings or, in the alternative, designate technical employees to work on the respective issues in their place. The selection of Task Force members was an internal, informal department process and all but two of the 31 Task Force meeting attendees were technical employees. In her reply, ██████████ contested the City's assertion that the appointment of Task Force members was informal. She emphasized that the formally-adopted City resolution both expressly authorized department heads to designate attendees in their place should they not desire to serve, but also required various City departments to work together on the Health in All Policies initiative.

Task Force Duties and Compensation

The City emphasized that, because members were already City department or agency employees, their attendance at meetings was merely part of their job duties and they received no additional compensation for their service. However, ██████████ noted that, while Task Force members may not receive additional compensation for their service, they are compensated by the City for performing their assigned governmental duties. ██████████ also provided several examples of Chicago-area public bodies that are subject to the requirements of OMA despite their members receiving no outside compensation for their participation. ██████████ also minimized the fact that the Task Force lacked its own budget, noting that its members are paid government employees and that the Task Force convenes in City facilities, uses City supplies and administrative resources, and receives legal support from the City's law department.

Task Force Accountability and Recommendations

The City next asserted that the Task Force's sole purpose was to create a single report with respect to the Health in All Policies initiatives, and that those recommendations would not be binding on the City Council. Similarly, the City asserted, the Task Force was not created to continually advise the City Council, nor did the Task Force have any investigative or deliberative role. However, ██████████ countered by citing the City Council's resolution, which commissioned the Task Force to do the following:

[I]dentify and pursue opportunities to improve health, including but not limited to affordable, safe, and healthy housing; active living and transportation; quality education; access to healthy food; clean air, water, and soil; parks, recreation, and green spaces; economic opportunity; and safety and violence prevention. All

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departments shall participate in developing ongoing channels for cross-department collaboration, identifying and pursuing funding streams that support improved health outcomes, ensuring that new investments support community health goals, incorporating health criteria into planning and policy development, sharing relevant data, and participating in collaborative efforts to understand how built environment policies and programs are affecting health outcomes.^[1]

██████████ also noted that the Task Force was *required* to provide a report and make recommendations concerning health policies to aid the City Council in its own deliberations.

Since ██████████ submitted her Request for Review, the Task Force issued its Final Report on August 1, 2017, which noted that "[a]fter months of deliberation, 16 recommendations emerged from the process[.]"² With respect to the future of the Task Force, that report also provided the following:

The HiAP Task Force was a working group established for the purpose of producing a one-time report for the City Council of the City of Chicago. To ensure health remains a central consideration in how the City operates, *the Task Force recommends that its members meet periodically to share updates and feedback on the implementation of these recommendations and to consider new opportunities to work together to promote health.*

The Task Force will continue in the form of a working group whose members will be designated informally by department heads and who will not be paid for their participation in the working group. The Task Force will not have a budget of its own, nor will it be controlled by or be part of the formal organizational structure of any public body. The Task Force will receive reports on HiAP activities, and seek feedback on progress

¹Chicago City Council, SR2016-177, Establishment of Health in All Policies initiative and creation of task force to identify and pursue opportunities to improve health of City residents (May 18, 2016).

²City of Chicago Health in All Policies Task Force, Final Report, August 1, 2017, at 7 (*available at* https://www.cityofchicago.org/content/dam/city/depts/cdph/CDPH/HealthInAllPoliciesReport_08012017.pdf).

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and emerging opportunities to advance health through City operations and policy.^{3]} (Emphasis added.)

After careful review of both parties' arguments in light of the *Stukel* factors, together with our review of the final report issued by the Task Force, this office concludes that the Task Force is a public body that is subject to the requirements of OMA. Under the *Stukel* test, the role of the Task Force in identifying and incorporating health-related policies affects numerous City departments. Although Task Force members may have been informally selected by department heads through their own internal process, the City Council's resolution expressly set out the procedures for such selection. Furthermore, although Task Force members may not have received additional compensation for their service, the City acknowledged that Task Force membership could be considered an obligation of members' taxpayer-funded, government employment—this office has received no information indicating that Task Force members served on a voluntary basis. Furthermore, while the Task Force may have lacked its own budget, it has not been disputed that the Task Force had several of the City's resources at its disposal. Finally, although the City contends that the sole purpose of the Task Force was to issue a single, non-binding report to the City Council, that final report includes a recommendation that it reconvene periodically to receive updates on progress and to hear feedback on ways to promote health through the conduct of City business.


Despite the Task Force having issued its final report, for the reasons set out above, this office requests that the Task Force conduct all future meetings in accordance with the provisions of the Act. Among other things, the Task Force should provide advance notice of its meetings (5 ILCS 120/2.02 (West 2016)), keep written minutes (5 ILCS 120/2.06(a) (West 2016)), and provide members of the public with an opportunity to address Task Force members (5 ILCS 120/2.06(g) (West 2016)). This office also requests that each Task Force member complete the OMA electronic training curriculum developed and administered by the Public Access Counselor. See 5 ILCS 120/1.05 (West 2016).

³City of Chicago Health in All Policies Task Force, Final Report, August 1, 2017, at 13 (available at https://www.cityofchicago.org/content/dam/city/depts/cdph/CDPH/HealthInAllPoliciesReport_08012017.pdf).


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

Very truly yours,


CHRISTOPHER R. BOGGS
Assistant Attorney General
Public Access Bureau

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