



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 29, 2019



Via electronic mail

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Via electronic mail

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RE: OMA Requests for Review – 2018 PAC 56265; 2019 PAC 57071

Dear  Mr. Brady, and Mr. O'Grady:

This determination letter is issued pursuant to sections 3.5(b) and 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b), (e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the President's Staff Committee (Staff Committee) of Northern Illinois University (University) is not a "public body" subject to the requirements of OMA.

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BACKGROUND

On December 28, 2018, ██████████ submitted a Request for Review to the Public Access Bureau alleging that the Staff Committee had held meetings without adhering to the requirements of OMA. He stated that he had received a copy of the calendar for University President, Lisa Freeman, covering the last six months in response to a Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2016)) request, and had observed that the Staff Committee had held 14 meetings from July 10, 2018, to December 11, 2018. He stated that he could not find the agendas or minutes of those meetings on the University's website. ██████████ contended that the Staff Committee is subject to OMA to the same extent as the University's Resource, Space, and Budget Committee (RSB Committee), which this office determined to be an advisory body subject to OMA in Ill. Att'y Gen. PAC Req. Rev. Ltr. 50176, issued December 5, 2018. He referred this office to Article 18.1 of the University Council Bylaws (Bylaws)¹ and argued: "Like the RSB committee, the President's Staff committee is defined in the University Council's Bylaws."²

On January 7, 2019, this office forwarded a copy of the Request for Review to the University's Office of General Counsel and asked it to respond in writing to the allegations in ██████████ Request for Review, particularly whether the Staff Committee is a "public body" as defined in section 1.02 of OMA (5 ILCS 120/1.02 (West 2016)). On January 14, 2019, this office received a written response from the University and additional materials for this office's review. On January 17, 2019, this office forwarded a copy of the written response to ██████████; the University provided ██████████ with copies of the additional materials on January 18, 2019. On January 28, 2019, ██████████ replied to this office and attached a document entitled "Senior Cabinet Recap for September 8, 2014." Additionally, on February 12, 2019, ██████████ sent this office a copy of a "Senior Cabinet Recap for September 11, 2015," which he said shows that the Staff Committee meets without the University's president.

On March 1, 2019, ██████████ submitted a subsequent Request for Review to the Public Access Bureau alleging: "I attempted to locate the dates of meetings for the President's Staff committee for 2019 at its primary place of business - Altgeld Hall - this morning. I couldn't locate any information in violation of OMA."³

¹Northern Illinois University, Bylaws of Northern Illinois University, Section 18.1: The President's Staff, https://www.niu.edu/u_council/constitution/bylaws/article18.shtml (last visited February 27, 2019).

²E-mail from ██████████ to Public Access [Bureau] (December 28, 2018).

³E-mail from ██████████ to Public Access [Bureau] (March 1, 2019).

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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 (2016).

Section 1.02 of OMA 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.

An "advisory body," for purposes of OMA, is an entity that generally has defined responsibilities and is a formal part of the structure of the public body that it advises. *Board of Regents of Regency University System v. Reynard*, 292 Ill. App. 3d 968, 977-78 (4th Dist. 1997). In contrast, OMA "is not intended to open to the public the deliberations of merely informal advisory committees who discuss internal" affairs of a public body. *Pope v. Parkinson*, 48 Ill. App. 3d 797, 800 (4th Dist. 1977). In *Pope*, the court held that a committee of four faculty and four student members appointed by the chancellor of a university to advise the chancellor and the director of the university's basketball arena on issues related to the arena was not subject to OMA because the committee was "not formally appointed by, or accountable to, any public body of the State." *Pope*, 48 Ill. App. 3d at 799. Rather, the committee solely advised university administrators and served at the pleasure of the chancellor. *Pope*, 48 Ill. App. 3d at 799. In *University Professionals of Illinois v. Stukel*, 344 Ill. App. 3d 856, 868 (1st Dist. 2003), the court held that a group of presidents and chancellors of public universities, which made recommendations to the Illinois Board of Higher Education (IBHE), was not an advisory body of IBHE after considering various factors for determining whether a group constitutes an advisory body under OMA:

Those factors include who appoints the members of the entity, the formality of their appointment, and whether they are paid for their tenure; the entity's assigned duties, including duties reflected in the entity's bylaws or authorizing statute; whether its role is solely advisory or whether it also has a deliberative or investigative

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function; whether the entity is subject to government control or otherwise accountable to any public body; whether the group has a budget; its place within the larger organization or institution of which it is a part; and the impact of decisions or recommendations that the group makes. *Stukel*, 344 Ill. App. 3d at 865.

As ██████████ highlighted, in 2017 PAC 50176, this office analyzed whether the RSB Committee is subject to the requirements of OMA. Ill. Att'y Gen. PAC Req. Rev. Ltr. 50176, issued December 5, 2018. Examining the committee's functions and organizational structure, this office observed, in pertinent part:

The RSB Committee's duties are defined in the University's bylaws, indicating that the RSB Committee is part of the formal organizational structure of the University—a primary consideration in determining whether it is subject to OMA. In addition, the bylaws specify the RSB Committee's composition and the lengths of its members' terms. The clearly assigned responsibilities, composition, and service periods signify the formality of the RSB Committee. Ill. Att'y Gen. PAC Req. Rev. Ltr. 50176, at 9.

This office further observed that the Bylaws set forth specific reporting provisions for the RSB Committee and noted that the committee's "periodic reporting to the University Council and key University officials indicates that there is significant University oversight of the RSB Committee's activities." Ill. Att'y Gen. PAC Req. Rev. Ltr. 50176, at 10. Because the RSB Committee displayed key characteristics of an advisory body, this office concluded that the RSB Committee is a "public body" subject to OMA.

In this matter, the Staff Committee at issue is listed under Article 18 of the Bylaws as one of two "Administrative Committees." The University Council's "Standing Committees," including the RSB Committee, are addressed separately in Article 2.⁴ Article 18 provides, in pertinent part:

18.1 The President's Staff .

⁴Northern Illinois University, Bylaws of Northern Illinois University, Article 2: Standing Committees of the University Council, https://www.niu.edu/u_council/constitution/bylaws/article18.shtml (last visited February 27, 2019).

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18.1.1 Composition The president's staff shall consist of the president and other members determined by the president.

18.1.2 Duties

18.1.2.1 To act as an advisory body to the president regarding the administration of the university.

18.1.2.2 To discuss basic university policy as requested by the president and to make recommendations to the University Council concerning such policies.

18.1.2.3 To serve as a liaison body between the administrative divisions of the university and between the constituent parts of these divisions.^[5]

In its response to this office, the University stated that it had previously corresponded via e-mail with [REDACTED] in late 2017 when he had requested online links to the Staff Committee's meeting agendas and minutes. The University provided this office with a copy of the correspondence, in which it had acknowledged that the Staff Committee is listed under Article 18 of the Bylaws but had contended that the Committee is not a public body. Under the framework of the *Stukel* factors, the University had asserted, in relevant part:

The Constitution and Bylaws merely acknowledge the President's ability to hold an administrative committee that is determined by the president, and not [sic] one else. The president's staff is purely advisory to the president regarding internal university affairs. Any members of the president's staff are determined by the President, are not officially appointed in any way, and can be removed at the discretion of the President. The president's staff performs a purely advisory function and serves at the pleasure of the President. The make-up, responsibilities, formality, etc. of any grouping of the

⁵Northern Illinois University, Bylaws of Northern Illinois University, Section 18.1: The President's Staff, https://www.niu.edu/u_council/constitution/bylaws/article18.shtml (last visited February 27, 2019).

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president's staff is within the pure discretion of the President and not of any public body of the State.^[6]

Yet, in its response to this office, the University contended that "the 'President's Staff' as described in the University Constitution and Bylaws is not currently in operation."⁷ Rather, the University asserted that "NIU President Lisa Freeman maintains a 'Senior Leadership Roundtable [(Roundtable)],' which, as discussed [at a July 18, 2017, meeting], is different in form and substance from the 'President's Staff' listed in the NIU Constitution and University Bylaws."⁸ According to the University, the "Roundtable serves as an advisory body to the President, informing her of the key issues or developments in each of their respective administrative divisions, and providing feedback or input to the President on the issues of the day or on administrative matters that the President is handling."⁹ The University asserted that the Roundtable "only serves at the pleasure of President Freeman and does not interact [with] or otherwise make recommendations to the University Council at all. The duties of the Senior Leadership Roundtable are instead set by the President."¹⁰

In reply to that answer, [REDACTED] maintained that the Staff Committee is part of the formal organizational structure of the University. He argued that "[l]ike in *Reynard* where the Council is created by the Academic Senate under its bylaws, the President's Council is created by the University Council under its bylaws."¹¹ He further argued that the Staff

⁶Letter from Gregory A. Brady, Acting Vice President and General, and Thomas O'Grady, Assistant University Council, Northern Illinois University, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (January 14, 2019), at 3.

⁷Letter from Gregory A. Brady, Acting Vice President and General, and Thomas O'Grady, Assistant University Council, Northern Illinois University, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (January 14, 2019), at 7.

⁸Letter from Gregory A. Brady, Acting Vice President and General, and Thomas O'Grady, Assistant University Council, Northern Illinois University, to Ms. Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (January 13, 2018), at 3.

⁹Letter from Gregory A. Brady, Acting Vice President and General, and Thomas O'Grady, Assistant University Council, Northern Illinois University, to Ms. Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (January 13, 2018), at 8.

¹⁰Letter from Gregory A. Brady, Acting Vice President and General, and Thomas O'Grady, Assistant University Council, Northern Illinois University, to Ms. Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (January 13, 2018), at 7.

¹¹Letter from [REDACTED] to AAG. Teresa Lim (January 28, 2019).

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Committee is comparable to the council in *Reynard* with regard to member appointments and the scope of its responsibilities. Additionally, [REDACTED] disputed the University's claim that the Roundtable is different from the Staff Committee as described in the Bylaws, arguing that the former is simply another name for the latter body. He contended: "When you compare the description of the form and substance of the Senior Leadership Roundtable at its first meeting on July 18, 2017, it is exactly what the membership of the President's Staff committee is defined in the bylaws, and the duties are overlapping. It is not an optional committee."¹²

This office has reviewed the Bylaws and the parties' arguments and will assume, for the sake of this analysis, that the Staff Committee is operable under the parameters set forth in the Bylaws. Although the Staff Committee is recognized in the Bylaws like the RSB Committee, the former does not have the same clearly assigned composition, service periods, and oversight as the latter. Unlike the RSB Committee's composition of a specified set of faculty, staff, and student members, the Staff Committee's membership is determined by the President. Similarly, unlike the RSB Committee's service periods and reporting requirements which are set out in the Bylaws, the service periods and reporting terms for members of the Staff Committee are not specified in the Bylaws; according to the University, service periods and oversight are left to the discretion of the President. Further, in contrast to the RSB Committee's responsibilities, which are described broadly in the Bylaws,¹³ the Staff Committee's prescribed duties appear limited primarily to supporting the President on internal administrative matters. In particular, the Bylaws provide that the Staff Committee is to advise the president on administrative issues and serve as a liaison between and within the University's administrative divisions. While the Bylaws state that the Staff Committee's duties include making recommendations to the University Council on issues discussed with the President, those recommendations are expressly limited to "*basic* university policy" rather than substantive policy issues. (Emphasis added.)¹⁴ Thus, the available information indicates that the Staff Committee serves a limited function and does not share the same grounding in the formal organizational structure of the University Council as the RSB Committee.

¹²Letter from [REDACTED] to AAG. Teresa Lim (January 28, 2019).

¹³Under Article 2.6 of the University Bylaws, the duties of the RSB Committee include participating in long-range planning with University leadership; advising University leadership regarding goals and priorities for the use of resources, space, and budgets, with periodic progress evaluations; making reports and recommendations to the Faculty Senate and the University Council regarding resource allocations and utilization; and advising University leadership on critical budget issues. Ill. Att'y Gen. PAC Req. Rev. Ltr. 50176, issued December 5, 2018, at 6.

¹⁴Northern Illinois University, Bylaws of Northern Illinois University, Section 18.1.2.2, https://www.niu.edu/u_council/constitution/bylaws/article18.shtml (last visited February 27, 2019).

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Furthermore, as the holding in *Pope* demonstrates, the creation of a group to advise university administrators does not mean that the group must constitute a public body of the university. *See also* Ill. Att'y Gen. PAC Req. Rev. Ltr. 35973, issued August 21, 2015, at 4 (concluding that college's Paralegal Advisory Committee was not a "public body" subject to OMA because it functioned independently and had "only a limited function within the College's formal organizational structure as a liaison between the educational program and professionals working in the legal field."); Ill. Att'y Gen. PAC Req. Rev. Ltr. 45537, issued April 6, 2017 (concluding that a Superintendent's Task Force was not a "public body" under OMA because it "was an internal group formed to assist the Superintendent rather than any public body."). This office's review of the "Senior Cabinet Recaps" [REDACTED] provided revealed that they reflect similarly limited purposes related to advising the president, regardless of her apparent absence from one of the two gatherings. Because the Staff Committee lacks the key features of an advisory body or subsidiary body, this office concludes that the Staff Committee is not a "public body" subject to the requirements of OMA. Consequently, under [REDACTED] reasoning that the Roundtable is just the Staff Committee by another name, the Roundtable is likewise not subject to the requirements of OMA for the above-explained reasons.¹⁵

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

Very truly yours,

[REDACTED]
TERESA LIM
Assistant Attorney General
Public Access Bureau

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¹⁵For the same reasons, [REDACTED] March 1, 2019, Request for Review (2019 PAC 57071) alleging that the Staff Committee had not adhered to OMA is unfounded.