



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

June 13, 2023

Via electronic mail

The Honorable Pam Piersol
Parks and Marina Chair
Village of Albany



Via electronic mail

The Honorable Richard "Floyd" Boston
Budget Officer/Finance Committee Chairman
Village of Albany
102 South Main Street
Albany, Illinois 61230
finance@villageofalbany.com

RE: OMA Request for Review – 2022 PAC 71226

Dear Ms. Piersol and Mr. Boston:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2020)). For the reasons that follow, the Public Access Bureau is unable to conclude that the Village of Albany (Village) Board of Trustees (Board) improperly held a private meeting on March 25, 2022, or in the lead up to the April 4, 2022, Board meeting.

In her Request for Review, received April 13, 2022, Village Trustee Pam Piersol alleged, in pertinent part,¹ that: (1) at least a majority of a quorum of the Board held one or more unnoticed meetings on or around March 25, 2022, as three Board members were observed gathering and one observer in one instance stated that they had their laptops open; (2) a quorum

¹Ms. Piersol also alleged that the Village improperly kept on its terminally ill former Treasurer so she could retain her life insurance benefits. The Public Access Counselor's authority to resolve disputes, however, is limited to alleged violations of OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2020)). 15 ILCS 205/7(c)(3) (West 2020). Therefore, that allegation is not subject to review by this office, nor are Ms. Piersol's various claims about other kinds of alleged misconduct by Trustee Richard "Floyd" Boston.

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of the Board held an improper meeting, potentially via e-mail, to select a new Village President prior to the Board's April 4, 2022, meeting. Ms. Piersol attached statements from past or present Village employees and two former Village Presidents raising a variety of concerns about the operations of the Village and Mr. Boston, few of which concern OMA. Several of the statements indicated that they witnessed gatherings of at least a majority of a quorum of the Board, but they did not indicate when these incidents occurred other than an employee's statement that she witnessed three trustees gathered in the boardroom on March 25, 2022. Ms. Piersol also attached a video recording of a portion of the Board's April 4, 2022, meeting, noting that Trustee Boston indicated that four trustees were already on the same page about the Village President selection.²

On April 18, 2022, this office forwarded a copy of Ms. Piersol's Request for Review to the Board and asked it to provide, for this office's confidential review, copies of any communications (e-mails, text messages, social media messages, or documents) between Board members prior to the April 4, 2022, meeting concerning the selection of a new Village President, including from Board members' personal devices and accounts. This office also asked the Board to respond in writing to the two OMA allegations specified above, addressing whether three or more Board members held an unnoticed meeting on or around March 25, 2022, and/or in advance of the Board's April 4, 2022, meeting. The Board responded on April 26, 2022, by providing a set of statements from Village Clerk Angela Allen and five trustees; one of Mr. Boston's two statements was submitted under a claim of confidentiality.³ On May 3, 2022, Ms. Piersol submitted a reply.

DETERMINATION

It is the "public policy of this State that its citizens shall be given advance notice of and the right to attend all *meetings* at which any business of a public body is discussed or acted upon in any way." (Emphasis added.) 5 ILCS 120/1 (West 2020). "[T]he [Open Meetings] Act is designed to prohibit secret deliberation and action on business which properly should be discussed in a public forum due to its potential impact on the public." *People ex rel. Difanis v. Barr*, 83 Ill. 2d 191, 202 (1980); *see also Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989) ("The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly.").

²Village of Albany Board, Meeting, April 4, 2022, Video File (on file with the Public Access Bureau).

³5 ILCS 120/3.5(c) (West 2020) ("The Public Access Counselor shall forward a copy of the answer or redacted answer, if furnished, to the person submitting the request for review.").

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Section 2.01 of OMA (5 ILCS 120/2.01 (West 2020)) provides that "[a]ll meetings required by this Act to be public shall be held at specified times and places which are convenient and open to the public." Further, section 2(a) of OMA (5 ILCS 120/2(a) (West 2021 Supp.)) provides that "[a]ll meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." Therefore, the requirements of OMA to apply to any gathering of members of a public body that constitutes a "meeting" as defined by section 1.02 of OMA (5 ILCS 120/1.02 (West 2020)):

"Meeting" means any 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 a majority of a quorum of the members of a public body held for the purpose of discussing public business or, for a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public business.

Under this statutory definition, a "meeting" may include communications through e-mail or other electronic means. The Board is comprised of seven members.⁴ Accordingly, four Board members constitute a quorum, and a majority of the quorum is three members. Therefore, any gatherings, either in-person or through audio or video conferencing technology, and any contemporaneous, interactive e-mail or other electronic communications involving at least three members of the Board which concern "public business" would ordinarily constitute a meeting of the Board which would be subject to the procedural safeguards and requirements of OMA. The statute "is not intended to prohibit bona fide social gatherings of public officials[.]" *Barr*, 83 Ill. 2d at 202.

As an initial matter, this office determined that no further action was warranted as to Ms. Piersol's claim that she and others had witnessed three or four of the trustees gathered together on unspecified dates. Similarly, this office determined that no further action was warranted as to her complaint that:

[T]he other trustees, and the two prior mayors that have since resigned, have constantly brought things up at past meetings to vote on that I have never heard of. They have cross conversations, and there have been documents handed out during our town meetings, that are given ONLY to our towns attorney, and myself.

⁴In an e-mail on August 8, 2022, Ms. Piersol described a three-to-three vote among the Trustees, with the Village President breaking the tie. For reasons unclear to this office, the materials provided to this office appear to discuss five Trustees (Boston, Manon, Tegeler, Piersol, Hutton) and the Village President.

This is indicative to serial meetings taking place somewhere along the line. (Emphasis in original.)^[5]

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2020)) requires a Request for Review to be filed "not later than 60 days after the alleged violation[,]" unless "facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, by a person utilizing reasonable diligence," in which case "the request for review may be made within 60 days of the discovery of the alleged violation." Moreover, to warrant further action, a Request for Review must "include a summary of the facts supporting the allegation." 5 ILCS 120/3.5(a) (West 2020). Because Ms. Piersol did not provide dates or approximate dates of these alleged improper meetings, this office received insufficient facts to warrant further action on those claims. Nonetheless, this office will address the notion of "serial meetings" towards the end of this determination letter.

In its response to this office, the Board provided six non-confidential statements, from Trustees Boston, Hutton, Manon, Piersol, and Tegeler, as well as Village Clerk Allen. Trustee Piersol stated that she had no responsive communications. Trustee Hutton stated that she had no responsive communications either, nor had she engaged in any meetings with other trustees outside of official Board meetings. Trustee Tegeler stated that she had conducted no Village business on her personal e-mail or personal cell phone. Trustee Tegeler also stated that she had "attended many house gatherings with other trustees[,]" but that these gatherings were for birthday parties or other social events; she stated that these trustees were friends before they won their elections and do not discuss public business during these gatherings.⁶ Addressing the alleged March 25, 2022, meeting, Trustee Tegeler stated that she was in the Village boardroom working with Clerk Allen on updating cemetery maps, while Trustees Boston and Manon were on the other side of the room printing e-mails in order to respond to a FOIA request submitted by Ms. Piersol. Clerk Allen similarly stated that she had no communications about choosing the new mayor, and gave the same explanation as Trustee Tegeler about their activities in the boardroom on March 25, 2022. Trustee Manon stated, as typed:

I have no personal emails, texts or phone calls prior to April 4 currently on my cell phone. I use my cell phone exclusively for emails, and clear old emails weekly to clear storage space. I have already provided all emails from my village laptop.

⁵E-mail from Pam Piersol, Parks and Marina Chair - Village of Albany, To whom it may concern (March 31, 2022).

⁶Letter from Joyce Tegeler To Whom It May Concern (April 20, 2022).

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The only time I can recall three village trustees in the village office was when I was there with trustee Boston, we were both printing off emails from our village laptops on the village printer, and Trustee Tegler and our village clerk Allen were working on Cemetary map on the other side of the room. There was no village business discussed. To my knowledge, there was no prior meetings between trustees to elect a new mayor. We were Printing Emails to Provide for trustee Piersols FOIA request.^[7]

Lastly, in his non-confidential response, Mr. Boston addressed the alleged secret meeting to discuss appointing a new Village President as follows:

There were communications between three other trustees and me regarding the appointment of an acting president for our town. I had spoken with trustees Manon, Tegeler and Hutton just before sending an email to our attorney, Mr. William Shirk, which was carbon copied to these same three individuals. The conversations between these three trustees and I occurred one-on-one, and either in person or over the phone.^[8]

Mr. Boston explained that he did not include Ms. Piersol in the conversations because he was concerned Ms. Piersol would generate a controversy that would cause the candidate to change his mind. Mr. Boston asserted that he had no responsive documents concerning appointment of a new Village President on his personal phone or personal e-mail account. As to the alleged March 25, 2022, secret meeting, Mr. Boston's explanation aligned with the explanations by Clerk Allen and Trustees Tegeler and Manon.

In reply, Ms. Piersol contended that the responses contained conflicting stories:

First you have Trustee Teresa Hutton claiming that she has zero communication with any board members outside of meetings. You have Trustee Manon stating he has no records of texts, calls, or emails pertaining to the appointment of the new mayor. Nor to his knowledge, was there ever a meeting for such a purpose. Trustee Tegeler states she does not conduct village business on her

⁷Letter from Todd Manon, Village Trustee, Walks, Roads, Cemetary, To whom it may concern (April 26, 2022).

⁸Letter from Richard 'Floyd' Boston, Village of Albany Trustee – Budget/Finance Officer, to Josh Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (April 25, 2022), at [1].

personal phone or email. But yet, Trustee Boston openly admits, "There were communications between three other trustees and me regarding the appointment of an acting president for our town. I had spoken with trustees Manon, Tegeler, and Hutton just before sending an email to our attorney, Mr. William Shirk, **which was carbon copied to these same three individuals.** The conversations between these three trustees and I occurred one-on-one, and either in person or over the phone." These contradictions don't add up. (Emphasis in original.)^{9]}

As to the alleged secret meeting on March 25, 2022, Ms. Piersol argued that it was unnecessary to use the boardroom because "[t]here are multiple rooms available to use in our village hall. It doesn't make sense to me that they would put themselves in that kind of situation when they didn't need to."¹⁰

The information provided by the Board indicates that it did not hold a secret meeting on March 25, 2022, when three trustees were present in the boardroom. All four individuals in the boardroom at the time explained that two separate conversations were occurring, one between the Village Clerk and a trustee and the other between two trustees. Although Ms. Piersol argued that the trustees put themselves in a bad situation by carrying out activities in the boardroom, this office received no information suggesting that the three trustees deliberated about public business together at that time. The trustees' separate conversations did not violate OMA.

As to whether four trustees held an illegal secret meeting concerning who to select for Village President in advance of the April 4, 2022, Board meeting, this office analyzed whether the evidence reflects that either three or more members of the Board physically gathered to discuss the appointment, or three or more members engaged in "contemporaneous, interactive communication" about that matter, as required to constitute a meeting subject to the requirements of OMA. This office did not receive information suggesting that a majority of a quorum of the trustees secretly met in person about selecting the new Village President. Thus, the remaining question was whether one-on-one in-person meetings or telephone or electronic communications about the issue among three or four of the trustees were both contemporaneous and interactive in character.

⁹E-mail from Pam Piersol, Parks and Marina Chair, Village of Albany, to [Joshua] Jones (May 3, 2022).

¹⁰E-mail from Pam Piersol, Parks and Marina Chair, Village of Albany, to [Joshua] Jones (May 3, 2022).

OMA does not define "interactive" or "contemporaneous." In interpreting statutes such as OMA, undefined statutory terms must be afforded their "plain, ordinary, and popular meanings[,] which may be gleaned from dictionaries. *See, for example, Valley Forge Insurance Co. v. Swiderski Electronics*, 223 Ill. 2d 352, 366 (2006). "Interactive" is defined, in relevant part, as "mutually or reciprocally active."¹¹ "Contemporaneous" is defined as "existing, occurring, or originating during the same time."¹² In accordance with these definitions, a "contemporaneous interactive communication" occurs in the same general time frame, but is not necessarily simultaneous. Ill. Att'y Gen. PAC Req. Rev. Ltr. 14722, issued August 12, 2011, at 4 (citing John H. Brechin, *E-mail and the Open Meetings Act*, Illinois Bar Journal, 94 ILBJ 666, 667 (2006)). In prior matters, this office determined that we could not conclude that communications exchanged over a period of hours or longer were "contemporaneous" as a matter of law. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 18676, issued September 9, 2013, at 3 (e-mail responses sent hours apart did not constitute contemporaneous, interactive discussions of public business); Ill. Att'y Gen. PAC Req. Rev. Ltr. 40976, issued August 24, 2016, at 3 (unable to conclude that "text messages that may have stretched over a period over two hours" constituted contemporaneous communications).

The records this office has reviewed confirmed that Mr. Boston e-mailed Mr. Shirk on March 18, 2022, concerning the appointment of a new Village President, and copied the Village e-mail accounts of Trustees Manon, Hutton, and Tegeler. Mr. Boston indicated in the e-mail that he had spoken with those trustees, without indicating when or how. The records further reflect that Mr. Shirk responded to Mr. Boston in the morning of March 20, 2022, and Mr. Boston then forwarded the message to Trustees Manon, Hutton, and Tegeler that evening. Although Ms. Piersol alleged that the trustees' statements are inconsistent because three trustees denied having responsive communications while Mr. Boston confirmed that he copied those three trustees on an e-mail to Mr. Shirk, Trustees Manon and Tegeler expressly addressed only personal device/account communications in their statements. When Ms. Piersol separately submitted a FOIA request to the Village on March 21, 2022, seeking copies of e-mails on Village computers,¹³ Mr. Boston explained to this office that the Village withheld his communications with Mr. Shirk discussed above from Ms. Piersol pursuant to section 7(1)(m) of FOIA.¹⁴ Under these circumstances, the facts this office has received suggest that Mr. Boston had individual

¹¹Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/interactive> (last visited April 28, 2023).

¹²Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/contemporaneous> (last visited April 28, 2023).

¹³The Village's response to this FOIA request is under review in a separate Request for Review, 2022 PAC 71230.

¹⁴5 ILCS 140/7(1)(m) (West 2021 Supp.).

conversations with Trustees Manon, Hutton, and Tegeler before e-mailing Mr. Shirk on March 18, 2022, and copying the trustees' Village e-mail accounts. Mr. Boston then notified those trustees of Mr. Shirk's response two days later; this office has not received information suggesting that the three trustees and Mr. Boston corresponded as a group in the interim or in the time before the April 4, 2022, Board meeting. Absent response e-mails from the other trustees sent in close proximity in time, the Board did not engage in electronic communications that could constitute a meeting by being both contemporaneous and interactive.

As to whether Mr. Boston's separate conversations with Trustees Manon, Hutton, and Tegeler before e-mailing Mr. Shirk on March 18, 2022, constituted an improper "serial meeting" as Ms. Piersol alleged, the Public Access Bureau has reviewed similar allegations of serial meetings or "walking quorums" in other circumstances. In 2011 PAC 14722, the Public Access Bureau determined that an in-person gathering, at which single members of a public body alternated out of a discussion so that only two members were in the room at any given time, met the definition of a contemporaneous interactive communication of a majority of a quorum of the public body. Ill. Att'y Gen. PAC Req. Rev. Ltr. 14722, at 5. In that matter, although only two members spoke to each other at any given time, it was undisputed that three members of the committee were physically present at the gathering, and the series of two-person discussions occurred in the same general timeframe. In contrast, this office was not able conclude that a series of separate communications between two members of a public body held over a longer period of time was a "meeting," even though the communications involved the same matter of public business. *See, for instance*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 54002, issued October 22, 2018, at 5 (series of conversations between board chairperson and individual board members on same subject matter over course of time was not a "meeting" of board).

In this instance, this office did not receive information suggesting that Mr. Boston's conversations with Trustees Manon, Hutton, and Tegeler occurred close enough in time to qualify as both contemporaneous and interactive. In the context of this office's prior determinations concerning the definition of "meeting" in section 1.02 of OMA, this office is unable to conclude that the Board held a secret meeting to discuss the appointment of a new Village President in advance of its April 4, 2022, meeting.

Nevertheless, this office notes that communications concerning public business that involve multiple members of a public body skirt the purpose of OMA,¹⁵ even if spaced out over time, and have the potential to violate the Act. This office cautions the members of the Board to be mindful of the requirements of OMA, as well as the public policy favoring the open discussion of matters affecting the public interest, before engaging in such communications.

¹⁵Section 1 of OMA (5 ILCS 120/1 (West 2020)) provides that "is the intent of this Act to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly."

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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 joshua.jones@ilag.gov, or the Chicago address listed on the first page of this letter. This file is closed.

Very truly yours,



JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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