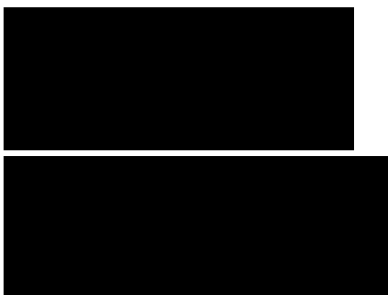




OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 30, 2016



Via electronic mail
Mr. Mitchell Bair
City Manager
City of Collinsville
125 South Center Street
Collinsville, Illinois 62234
mbair@collinsvilleil.org

RE: OMA Request for Review – 2016 PAC 41771; 2016 PAC 41807

Dear [REDACTED] and Mr. Bair:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2014), as amended by Public Act 99-402, effective August 19, 2015). The Public Access Bureau received two Requests for Review alleging the same violation of OMA with respect to the May 4, 2016, meeting of the Collinsville Southwest Corridors TIF Joint Review Board (Board). Therefore, we have consolidated those matters for this determination. For the reasons that follow, the Public Access Bureau concludes that scheduling the May 4, 2016, meeting of the Board at 10:00 a.m. did not violate the provisions of OMA requiring that public bodies meet at times and places convenient to the public.

BACKGROUND

On May 6, 2016, the Public Access Bureau received a Request for Review in which [REDACTED] alleged the Board had violated OMA by holding its May 4, 2016,

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meeting at an inconvenient time. Specifically, ██████████ alleged that the Board's 10:00 a.m. meeting on a Wednesday was inconvenient because it was in the middle of a work day and most residents were unable to attend the meeting. On May 9, 2016, the Public Access Bureau received a Request for Review from ██████████ who also alleged that the Board's May 4, 2016, meeting time was inconvenient and that it had been intentionally scheduled to exclude members of the public from attending. Both ██████████ further assert that the meeting was intentionally scheduled at an inconvenient time to affect the selection of the public member of the Board.

On May 17, 2016, this office forwarded copies of the Requests for Review to the Board and asked it to provide a written response to the allegations of ██████████. On May 26, 2016, the Board responded, asserting that a weekday meeting during business hours is not an inconvenient time. The Board stated that the May 4, 2016, meeting time had been announced at the April 11, 2016, Collinsville City Council (Council) meeting. The Board also stated that it had published notice of the meeting in the *Belleville News-Democrat* on April 19, 2016, and had posted the meeting agenda at City Hall and on the City's website on April 28, 2016. The Board's response stated that 7 members of the public, including ██████████ were present at the May 4, 2016, meeting and that an additional 25 members of the public viewed the Board's live webcast of the meeting.

On May 26, 2016, this office sent copies of the Board's response to ██████████ and ██████████ and offered them the opportunity to reply. On June 13, 2016, ██████████ replied by asserting that the meeting was held at an inconvenient time to discourage public participation. ██████████ alleged that more than 100 people had attended the March 22, 2016, evening meeting of the Council concerning the proposed tax increment financing district (TIF District) and an equal number were expected to attend a Council meeting on June 13, 2016, when the TIF District was to be discussed. ██████████ stated that "only 4 members of the public who regularly attend every council meeting as gadflies, the chairman of the chamber of commerce, a preselected public member of the proposed TIF JRB, and a newspaper reporter attended"¹ the May 4, 2016, Board meeting. ██████████ also alleged that the meeting time prevented a sufficient number of members of the public from attending the meeting to allow for a proper selection of the public member of the Board.

DETERMINATION

¹Letter from ██████████ to [Matt] Hartman, [Assistant Attorney General], [Public Access Bureau] (June 13, 2015).

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"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." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989). Section 2.01 of OMA (5 ILCS 120/2.01 (West 2014) provides, in pertinent part, that "[a]ll meetings required by [the] Act to be public shall be held at specified times and places which are convenient and open to the public." [REDACTED] allege that the Board held its May 4, 2016, meeting at an inconvenient time because the meeting was scheduled during regular business hours when many people are at work.

OMA does not define what is "convenient." Undefined statutory terms must be given their plain and ordinary meaning. *Exelon Corp. v. Dept. of Revenue*, 234 Ill. 2d 266, 275 (2009) (finding that where a statute fails to specifically define a word, a court may use a dictionary to determine the word's plain and ordinary meaning). "'Convenient' means 'suited to a personal comfort or to easy performance' or 'affording accommodation or advantage.'" *Gerwin v. Livingston Co. Board*, 345 Ill. App. 3d 352, 361 (4th Dist. 2003) (quoting Merriam-Webster's Collegiate Dictionary 252 (10th ed. 2000)). Although the court in *Gerwin* addressed the issue of whether a meeting place (a small room) rather than a meeting time was convenient, the term "convenient" in section 2.01 modifies both "times" and "places." "Open" and "convenient" are not synonymous under the Act; accordingly, "[a] meeting can be open in the sense that no one is prohibited from attending it, but it can be held in such an ill-suited, unaccommodating, unadvantageous place that members of the public, as a practical matter, would be deterred from attending it." *Gerwin*, 345 Ill. App. 3d at 361. ***To the same extent, a meeting can be held at such an unaccommodating, unadvantageous time that the public would be unreasonably deterred from attending it.*** The concept of public convenience implies a "rule of reasonableness, not 'absolute accessibility' but 'reasonable accessibility.'" *Gerwin*, 345 Ill. App. 3d at 362, quoting *State ex rel. Badke v. Village Board of the Village of Greendale*, 173 Wis. 2d 553, 579, 494 N.W. 2d 408, 418 (1993).

The Public Access Bureau has previously determined that holding meetings during regular business hours does not violate section 2.01 of OMA. Ill. Att'y Gen. PAC Req. Rev. Ltr. 39854, issued June 22, 2016 (concluding that special meetings by a village board concerning the budget and a tax levy, each held on a Tuesday, one at 4:00 p.m. and one at 5:00 p.m., did not violate OMA); Ill. Att'y Gen. PAC Req. Rev. Ltr. 29045, issued May 5, 2014 (determining that facts provided were not sufficient to show that a meeting by a township board at 3:00 p.m. on a Tuesday was inconvenient); Ill. Att'y Gen. PAC Req. Rev. Ltr. 20968, issued August 23, 2013 (finding that a township's monthly meeting at noon on a weekday complied with the requirements of OMA); Ill. Att'y Gen. PAC Req. Rev. Ltr. 14311, issued June 6, 2011 (concluding that weekday meetings of a county board and its committees during regular business hours did not violate OMA); Ill. Att'y Gen. PAC Req. Rev. Ltr. 12761, issued March 17, 2011

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(holding that a school board's rescheduled regular meeting at 4:00 p.m. and committee meetings at noon did not violate OMA). Given that members of the public have different work schedules and other obligations, no particular meeting time is likely to be convenient to all who might wish to attend. A public meeting held during regular business hours is not inherently inconvenient.

The facts alleged do not support a conclusion that the meeting time was so inconvenient that it violated OMA. ██████████ have alleged that the Board's meeting time during regular business hours was actually inconvenient because few people were able to attend the meeting. In support of this assertion, ██████████ contrasted the smaller attendance at the May 4, 2016, meeting of the Board with prior evening meetings of the Council concerning the TIF District, which had been well attended. However, any number of factors other than the scheduling of the meeting could have affected public interest in attending. We are not in a position to speculate as to what factors might have influenced members of the public not to attend May 4, 2016, meeting.

In addition, at least four members of the public did attend the Board's meeting. Although ██████████ alleged that the members of the public who attended "are watchdogs who regularly attend every city council meeting and speak,"² their presence should not be discounted on that basis.

Further, members of the public wishing to attend the Board's meeting had significant advance notice of the time of the meeting. According to the Board, the meeting time was publicly announced three weeks before at a Council meeting and was published two weeks before in the local newspaper. The agenda was also physically posted at City Hall and on the City's website six days before the meeting. If members of the public who work during the day wished to attend the City's meeting, they had ample time in which to make arrangements to do so. Moreover, the Board made the meeting available to the public by live webcast.

██████████ also alleged that the Board intentionally scheduled the meeting at an inconvenient time to discourage public participation concerning the TIF District proposal. The Board explained that it decided the meeting time based on the former City manager contacting Board members in 2015 "to determine which dates and times were preferred to ensure a quorum would be met for each meeting."³ The former City manager determined that a majority of the members of the Board preferred weekday mornings for meeting times. ██████████

²E-mail from ██████████ to Public Access Bureau, Office of the Attorney General (May 9, 2016).

³Letter from Mitchell Bair, City Manager, City of Collinsville, to Matthew S. Hartman, Assistant Attorney General, Public Access Bureau (May 26, 2016).

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[REDACTED] disputed the accuracy of the Board's explanation, asserting that the former City manager could not have known to contact the Board's members concerning the scheduling of the May 4, 2016, Board meeting for the proposed TIF District because he was relieved of his duties in July, 2015. However, it is not unlikely that the former City manager would have asked Board members sometime in early 2015 about their preference for meeting times because the Board is required to hold an annual meeting under section 11-74.4-5(e) of the Illinois Municipal Code (65 ILCS 5/11-74.4-5(e) (West 2014)). The City's website indicates that the Board held only one meeting in 2015, on March 25, 2015, at 10 a.m.

Because a public meeting held during regular business hours is not inherently inconvenient to the public and because [REDACTED] have not provided sufficient facts to show that the meeting was held at such an unaccommodating, unadvantageous time that the public would be unreasonably deterred from attending it, this office concludes that scheduling the Board's May 4, 2016, meeting at 10:00 a.m. did not violate OMA.

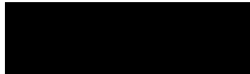
Please also note that the Public Access Counselor's authority is limited to resolving disputes concerning OMA and the Freedom of Information (FOIA) (5 ILCS 140/1 *et seq.* (West 2014). *See* 15 ILCS 205/7(c) (West 2014). To the extent that [REDACTED] allege that the selection of the public member of the Board was improper under the Illinois Municipal Code, that claim does not allege violations of either FOIA or OMA. Therefore, this office does not have authority to review that allegation.

The Public Access Counselor has determined that resolution of these matters do not require the issuance of a binding opinion. Please contact me at (217) 782-9054 or the Springfield address listed on the first page of this letter if you have questions. This correspondence serves to close these matters.

Very truly yours,

[REDACTED]
MATT HARTMAN
Assistant Attorney General
Public Access Bureau

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cc: *Via electronic mail*
Ms. Kimberly Wasser
Administrative Coordinator/City Clerk
Freedom of Information Officer
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Collinsville, Illinois 62234
kwasser@collinsvilleil.org