

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

January 18, 2022

Via electronic mail

[REDACTED]

Via electronic mail

Mr. Timothy F. Horning
Meyer & Horning, P.C.
3400 North Rockton Avenue
Rockford, Illinois 61103
thmeyerhorning@aol.com

RE: OMA Request for Review – 2021 PAC 68606

Dear [REDACTED] and Mr. Horning:

This determination 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 explained below, the Public Access Bureau concludes that the Board of Commissioners (Board) of the Housing Authority of the County of DeKalb (Authority) made its full November 16, 2021, meeting reasonably accessible to the public.

In his Request for Review, submitted November 17, 2021, [REDACTED] alleged that the Board did not provide the public with sufficient access to its meeting the day before. He claimed that he arrived at the meeting room for the Board's November 16, 2021, meeting by the start time of 2:30 p.m., but was not allowed in until five minutes later. He alleged that it appeared that a quorum of the Board was discussing public business before the members of the public in attendance (he and his friend) were let in. [REDACTED] also alleged that the meeting was not convenient and open to the public because the meeting room was behind locked doors and he had to explain his reason for being there to the receptionist. [REDACTED]

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argued that this matter is similar to a March 23, 2020, remote meeting of the Urbana City Council, providing a link to a blog post about the meeting.¹

On November 22, 2021, this office sent a copy of the Request for Review to the Board and asked for a copy of the minutes (in draft form if necessary, for this office's confidential review) and any recordings of the open session of its November 16, 2021, meeting. This office also asked the Board to address in writing ██████████ allegations that the Board improperly prohibited the public from entering the meeting room while it was discussing public business and held the meeting in a manner that was not convenient and open to the public. On December 2, 2021, the Board's outside counsel provided those materials, except a recording of the open meeting because the Board did not make one. The Board's counsel also furnished a drawing of the Authority's offices, a statement by the Authority's receptionist concerning her interactions with ██████████ when he arrived for the meeting, and video footage from two cameras in the lobby of the building. On December 12, 2021, ██████████ submitted a reply.

DETERMINATION

Section 1 of OMA (5 ILCS 120/1 *et seq.* (West 2020)) provides that members of the public have "the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." ██████████ claim that the Board improperly discussed public business before he was allowed into the meeting room alleges a violation of section 2(a) of OMA (5 ILCS 120/2(a) (West 2020), as amended by Public Act 102-558, effective August 20, 2021), which 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." This office also construed ██████████ Request for Review as alleging a violation of section 2.01 of OMA (5 ILCS 120/2.01 (West 2020)), which 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."

"By its plain terms, section 2.01 requires a venue that is not only 'open,' but 'convenient,' to the public." *Gerwin v. Livingston County Board*, 345 Ill. App. 3d 352, 359 (4th Dist. 2003). In addressing the meaning of "convenient" for purposes of section 2.01 of OMA, the *Gerwin* court stated that "[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. The court, however, construed section 2.01 as requiring "not 'absolute accessibility' but 'reasonable accessibility.'" *Gerwin*, 345 Ill. App. 3d at 362 (quoting *State ex*

¹*Urbana City Council Locks Out Citizens, Violates Open Meetings Act*, C-U Underground (undated), <https://cu-underground.com/urbana-city-council-locks-out-citizens-violates-open-meetings-act/>.

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rel. Badke v. Village Board of the Village of Greendale, 173 Wis. 2d 553, 579, 494 N.W.2d 408, 418 (Wis. 1993)).

In its response to this office, the Board denied the allegation that it discussed public business before it allowed ██████████ into the meeting room, which is within the Authority's offices. Using video footage from the Authority's lobby, the Board provided a timeline of ██████████ arrival at the office and entrance to the meeting room. The Board asserted that it did not begin discussing public business until ██████████ and the other member of the public entered the meeting room and the meeting was called to order. The Board noted that ██████████ did not indicate what public business he believed the Board was discussing prior to his entry.

The Board also argued that the meeting was convenient and open to the public, despite the public's inability to enter the Authority's lobby and proceed to the meeting room without being buzzed in and escorted. According to the Board's counsel:

Due to the layout of the building, there are certain areas of the office building that cannot for security purposes have members of the general public present. The doors to the office area are therefore locked, not for purposes of keeping the public from attending a board meeting, rather for purposes of providing security to employees of the [Authority] and confidentiality to client files contained within the office areas. Reasonable accessibility can include the public being escorted through the office area to the board room for a public meeting.^[2]

Additionally, addressing ██████████ allegation that the receptionist improperly questioned his reason for being there, the Board's counsel asserted that the receptionist recalls simply asking him how she could help him. In her statement, the receptionist described letting ██████████ into the lobby and his subsequent complaints about wanting to enter the meeting room promptly; the receptionist stated that the Authority's Operations Director, Vivian Wright, informed her that the meeting had not yet started when Ms. Wright came to escort ██████████ and the other member of the public to the meeting room. The Board further argued that the March 23, 2020, meeting of the Urbana City Council, which ██████████ analogized the Board's November 16, 2021, meeting, is dissimilar with respect to meeting accessibility, because the issue with the Urbana meeting was the public's inability to access the remote meeting electronically.

²Letter from Timothy F. Horning, Meyer and Horning P.C., to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (December 2, 2021), at 3.

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In his reply, ██████████ argued that this office should be skeptical of the Board's response because, he claimed, the Board has a pattern of OMA violations under the guidance of its attorney, who provided the Board's response in this matter. ██████████ disputed the accuracy of the office diagram provided by the Board, alleging that the office has a second door not depicted. He also disputed the Board's mention of confidential files by claiming that neither he nor the other member of the public who attended the meeting viewed any file cabinets while walking to the meeting room. Additionally, ██████████ disputed the veracity of the receptionist's statement as to peripheral details such as his tone when he asked to access the meeting room. He emphasized that "[i]t seems like it is [the Authority's] policy not to allow members to the meeting room until after the public meeting has started."³ (Emphasis omitted.) As to any evidence that the Board held an improper discussion concerning public business before he was allowed in, ██████████ stated: "We don't know if the quorum of the public body discussed any public body business as there were no member[s] of the public allowed in the meeting room nor was the meeting being video taped."⁴ Citing two binding opinions issued by this office concerning section 2.01 of OMA, which concern a meeting held in a private residence⁵ and a meeting held approximately 26 miles away from the public body's regular meeting location,⁶ ██████████ argued:

Being buzzed into the lobby area in another locked room.
Being denied access to the meeting room until after the published starting time of the meeting. Being escorted to the meeting room.
Being escorted from the meeting. All of these items deter citizens from attending the meeting. Also, the time of the meeting at 2:30 p.m. clearly deters citizens from attending.^[7]

³Letter from ██████████ to Joshua M. Jones, Deputy Bureau Chief, PAC (December 12, 2021), at 3.

⁴Letter from ██████████ to Joshua M. Jones, Deputy Bureau Chief, PAC (December 12, 2021), at 3.

⁵Ill. Att'y Gen. Pub. Acc. Op. No. 12-008, issued April 4, 2012.

⁶Ill. Att'y Gen. Pub. Acc. Op. No. 13-014, issued September 5, 2013.

⁷Letter from ██████████ to Joshua M. Jones, Deputy Bureau Chief, PAC (December 12, 2021), at 5.


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██████████ did not raise the allegation concerning the meeting time in his Request for Review, therefore it is outside the scope of this matter.⁸

Having carefully reviewed and considered all of the information submitted by the parties, the facts presented do not sustain the allegation that the Board violated OMA in connection with its November 16, 2021, meeting. The Board's attorney confirmed that the Board did not begin discussing public business until the public entered the meeting room and the meeting was called to order. This office received no information undermining that assertion. It is immaterial that members of the Board were seated in the meeting room before the public was allowed in, as no provision of OMA prohibits that practice absent improper deliberation about public business during that time. Members of the public body may appropriately make small talk and compose themselves for the meeting. Similarly, OMA does not prohibit a public body from waiting to usher the public into the meeting room until it is ready to call the meeting to order. OMA did not require the Board to welcome the public into the meeting room at the exact time listed on the agenda given that the Board had yet to begin the meeting.

Moreover, the Public Access Bureau has previously determined that a public body does not violate OMA by holding public meetings within its offices even if the public must be buzzed in and escorted to and from the meeting room. *See e.g.*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 17711, issued March 27, 2012, at 3 (meeting not inaccessible to members of the public because they had to ask receptionist to grant them access to a locked area of police station and be escorted to the meeting). ██████████ set forth no facts suggesting that the Board misused standard security procedures to prevent reasonable access to the meeting. No right of access was restricted when the receptionist asked ██████████ if she could help him or his reason for wanting to enter the Authority's offices and then buzzed him in upon confirmation that he was there for an open meeting. Further, regardless of whether ██████████ viewed file cabinets on his way to the meeting room, a public body is not obligated to let the public roam freely with unfettered access to all of its offices and files in order to host an open meeting. Rather, a public body may properly guide the public to and from the meeting room to uphold the purpose of accessing the meeting while maintaining appropriate security and confidentiality. In addition, the Urbana meeting ██████████ cited is inapposite because ██████████ attended the Board's full, in-person meeting, unlike the Urbana meeting where members of the public had difficulty accessing the remote meeting remotely and a member of the public was barred from entering the building because the public body was not meeting in person. Under these circumstances, the Board made the meeting reasonably accessible.


⁸In addition, the Public Access Bureau has consistently determined that a public body does not violate OMA by holding a meeting during the workday. *See e.g.*, Ill. Att'y Gen. Req. Rev. Ltrs. 41771 and 41807, issued June 30, 2016, at 5 ("A public meeting held during regular business hours is not inherently inconvenient to the public[.]").


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For the reasons set out above, this office concludes that the Board did not violate OMA in connection with its November 16, 2021, meeting.

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 joshua.jones@ilag.gov. This letter serves to close this file.

Very truly yours,


JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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