



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

May 8, 2024

Via electronic mail



Via electronic mail

Mr. Mark Thompson
Deputy General Counsel
Division of Professional Regulation
Illinois Department of Financial and Professional Regulation
Mark.thompson@illinois.gov

RE: OMA Request for Review – 2024 PAC 80495

Dear [REDACTED] and Mr. Thompson:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2022)).

On March 6, 2024, [REDACTED] submitted a Request for Review alleging that that the Illinois State Medical Board (Board) violated section 2.01 of OMA (5 ILCS 120/2.01 (West 2022)) by prohibiting him from attending the Board's meeting earlier that day, with the exception of the public comment portion. Specifically, [REDACTED] stated:

I arrived at the security check point at 555 W. Monroe at 8:50ish AM on 2/6/2024 for the Illinois State Medical Board meeting that is open to the public. I was denied entry to the entire (emphasis) open meeting except for the public participation. I wanted to attend the whole meeting as is my RIGHT. My contention is alleging a violation of section 2.01 of the OMA, which states that "[a]ll meetings required by this Act to be public shall be held at specified times and places which are convenient

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and open to the public." (Emphasis added.) [See 5 ILCS 120/2.01 (West 2022)]. This is the same exact violating behavior from a previous request for review of an OMA violation that warranted an investigation from the PAC's Office 2023 PAC 78367.^[1]

On March 22, 2024, this office sent a copy of the Request for Review to the Board and asked it to provide copies of the minutes (draft form if necessary) of the Board's March 6, 2024, meeting, a recording of the meeting if such a recording exists, and any correspondence or other documents related to ██████████ ability to attend the meeting. This office also requested a written response clarifying whether the Board or any other individual or entity restricted ██████████ access to the meeting. On March 29, 2024, the Board submitted a response. On April 5, 2024, this office forwarded the Board's response to ██████████ he replied on April 16, 2024.

DETERMINATION

"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 (1989). Section 2.01 of OMA 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."

The Board's response to this office explained that its March 6, 2024, meeting was conducted in its Chicago and Springfield offices with the two locations linked by video conference, and that members of the public had the option of physically attending the meeting at either location or calling into the meeting by phone or video link. The Chicago meeting location where ██████████ attended is a 10th floor conference room in a building managed by the Department of Central Management Services with security provided by the Illinois State Police (ISP). The Board stated that on March 4, 2024, the Department of Financial and Professional Regulation's (Department) liaison to the Board received an e-mail from ██████████ stating that he would attend the meeting,² but ██████████ was not present when the meeting convened at 9:01 a.m. The Board stated that ISP notified the Department during the meeting that ██████████ was in the lobby and wished to attend, and that the Board remained in session to await ██████████ arrival even though it had concluded its business. The Board stated that a Department supervisor went to the lobby and observed a verbal altercation between ██████████ and ISP security. The Board further explained:

¹E-mail from ██████████ BS Biology EIU, Dean's List Recipient, Private Company Owner, to [Leah] Bartelt (March 6, 2024).

²In his reply, ██████████ stated he sent the e-mail on March 3, 2024.

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ISP asked if ██████████ was allowed to bring his recording devices into the meeting. The supervisor confirmed that he could. Once matters were resolved, the supervisor with an ISP officer escorted ██████████ to the tenth floor meeting room.

Once ██████████ arrived in the meeting room, he set up his tripod and organized his papers. Once he was ready to proceed, the board chair read a statement of the rules for public comment and then turned the floor over to ██████████. At the conclusion of ██████████ remarks, the Board, having no further business, adjourned the meeting.^[3]

In his reply, ██████████ asserted that the Board violated OMA because its liaison failed to notify ISP and the Board that he planned to attend the meeting so proper arrangements could be made to ensure "the meeting was convenient and open to the public so that no verbal altercations resulted from a member of the public trying to attend a public meeting that was not conven[ien]t nor open[.]"⁴ He also suggested the Board commenced the meeting in an unusually timely manner to prevent him from attending the business portion of the meeting.

This office has reviewed a recording of the meeting, which is consistent with the Board's explanation that it was notified during the meeting that ██████████ wished to attend and provide public comment. The Board waited for him to arrive even though it had finished discussing public business, and permitted him to address the Board without interruption in accordance with its established and recorded rules. An Assistant Attorney General in the Public Access Bureau also confirmed, in a telephone conversation with the Deputy General Counsel of the Department's Division of Professional Regulation, that the Board did not instruct ISP to restrict ██████████ or otherwise take action to interfere with his ability to attend the meeting.

The source of the disagreement between ISP that delayed ██████████ from attending the meeting is unclear, but any actions by ISP are not attributable to the Board under the circumstances. Although a public body could potentially violate OMA by directing or acquiescing to its personnel imposing unreasonable security measures to make meetings inaccessible to the public, that is not what happened in this instance. The Board does not oversee or control security of the building; ██████████ verbal altercation with ISP was not foreseeable to the Board simply because he notified the Board liaison that he would attend the March 6, 2024, meeting. The information provided to this office indicates that upon being made aware of ██████████

³Letter from Mark Thompson, Deputy General Counsel, Division of Professional Regulation, Illinois Department of Financial and Professional Regulation, to Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General (March 29, 2024), at 2.

⁴Letter from ██████████ to Steven Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General (April 16, 2024).

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██████████ presence in the lobby, an employee of the Department helped facilitate his access to the meeting by confirming that he was permitted to record the Board meeting and escorting him to the meeting room.⁵ Further, the allegation that the Board commenced the meeting shortly after the starting time listed on the agenda to thwart ██████████ from attending is unsupported by facts and, in any event, would not constitute an OMA violation. The Act does not require public bodies to delay meetings until members of the public arrive. Accordingly, this office concludes that the Board did not violate OMA in connection with its March 6, 2024, meeting.

To the extent that ██████████ recording equipment was the source of his verbal altercation with ISP, this office recommends that the Board take measures to ensure ISP security personnel are made aware that section 2.05 of OMA (5 ILCS 120/2.05 (West 2022)) provides: "Subject to the provisions of Section 8-701 of the Code of Civil Procedure, any person may record the proceedings at meetings required to be open by this Act by tape, film or other means. The authority holding the meeting shall prescribe reasonable rules to govern the right to make such recordings." This office also notes that the public's right to attend meetings does not preclude routine security screening measures to ensure the safety of a meeting or the building in which it is held.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed.

Very truly yours,

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STEVE SILVERMAN
Bureau Chief
Public Access Bureau

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⁵The requirement of OMA apply to public bodies that hold meetings subject to the Act. 5 ILCS 120/1 (West 2022). ISP security is not a "public body" under OMA.