



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

October 9, 2019

*Via electronic mail*



RE: OMA Request for Review – 2019 PAC 60015

Dear [REDACTED]

This determination letter is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2018)). For the reasons set forth below, the Public Access Bureau concludes that no further action in this matter is warranted.

On October 4, 2019, you submitted this Request for Review to the Public Access Bureau alleging that the City of Elmhurst's (City) Finance, Council Affairs, and Administrative Services Committee (Committee) violated OMA during its September 10, 2019, special meeting by discussing an item that was not specifically set forth under the agenda item "Other Business."<sup>1</sup>

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2018)) provides that "[a] person who believes that a **violation of this Act by a public body has occurred** may file a request for review with the Public Access Counselor established in the Office of the Attorney General[.] \* \* \* The request for review \* \* \* must include a summary of the **facts supporting the allegation.**" (Emphasis added.)

Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2018)) provides, in relevant part, that "[p]ublic notice of any special meeting except a meeting held in the event of a bona fide emergency, or of any rescheduled regular meeting, or of any reconvened meeting, shall be given at least 48 hours before such meeting, which notice shall also include the agenda for the special, rescheduled, or reconvened meeting[.]" Section 2.02(a) further states that "[t]he requirement of a **regular meeting agenda** shall not preclude the consideration of items not specifically set forth in the agenda." (Emphasis added.) Given this language, the Public Access

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<sup>1</sup>Elmhurst City Council, Finance, Council Affairs, & Administrative Services Committee, Agenda Item 6, Other Business (September 10, 2019), *available at* <https://go.boarddocs.com/il/coe/Board.nsf/Public>.

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Bureau has determined that, during **special** meetings, OMA does not permit a public body to discuss, topics that were not listed on the agenda. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 32604, issued April 9, 2015, at 3 ("The General Assembly's express provision for consideration of items not on the agenda at a regular meeting coupled with its silence concerning consideration of items not on the agenda at a special meeting signifies that the General Assembly did not intend to allow a public body to consider items that are not on the agenda of a special meeting.")

You alleged that the following portion of the Committee's September 10, 2019, meeting minutes demonstrated improper discussions by Committee members on an item not listed on the agenda for that special meeting: "Director of Finance Trosien updated the Committee on the status of the Line of Credit renewal/modification."<sup>2</sup> This portion of the minutes indicates that the Committee received a status report from an individual officer who does not serve on the Committee; there is no indication that the Committee discussed or deliberated on the update. Although it may have been the best and most transparent practice for the Committee to include the finance director's update on the agenda, construing OMA to preclude a public body from receiving any information that does not appear on a special meeting agenda would unreasonably constrain a public body's ability to function during a meeting. Merely receiving an update does not rise to the level of discussions or "the consideration of items" by Committee members under section 2.02(a) of OMA. Because you have not provided any evidence that Committee members substantively discussed the finance director's update, you have not provided facts supporting the allegation that the Committee violated section 2.02(a) of OMA. Accordingly, this office has determined that no further action is warranted as to this matter.

This letter serves to close this file. If you have any questions, you may contact me at (217) 785-7438 or [cboggs@atg.state.il.us](mailto:cboggs@atg.state.il.us).

Very truly yours,

  
CHRISTOPHER R. BOGGS  
Supervising Attorney  
Public Access Bureau

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<sup>2</sup>Elmhurst City Council, Finance, Council Affairs, & Administrative Services Committee, Meeting, September 10, 2019, Minutes (unnumbered), *available at* <https://go.boarddocs.com/il/coe/Board.nsf/Public>.

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cc: The Honorable Noel Talluto  
Chair, Finance, Council Affairs, & Administrative Services Committee  
Elmhurst City Council  
City Hall  
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Elmhurst, Illinois 60126