



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

June 13, 2023

Via electronic mail



Via electronic mail

Ms. Danielle M. Costello
Hinshaw & Culbertson LLP
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RE: OMA Request for Review – 2023 PAC 75513

Dear [REDACTED] and Ms. Costello:

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 is unable to conclude that the Board of Directors (Board) of the Mason District Hospital (Hospital) did not make its January 25, 2023, meeting open and convenient to the public, but this office asks the Board to more clearly notify the public of its meeting location(s).

In a Request for Review submitted on February 11, 2023, [REDACTED] and [REDACTED] alleged, in relevant part, that the agenda for the Board's January 25, 2023, regular meeting did not notify the public that the meeting location was somewhere other than the boardroom, and that the process for locating the meeting was unclear and overly difficult. In support of their allegations, the [REDACTED] included a copy of the January 25, 2023, Board meeting agenda that was posted to the Board's website, which did not specify the location of the meeting.¹

¹Mason District Hospital Board of Directors, Agenda Header (January 25, 2023).

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On February 27, 2023, this office forwarded a copy of the ██████████ Request for Review to the Board and asked it to provide copies of the Board's annual schedule of meetings, as well as the notice and agenda for the January 25, 2023, meeting. Additionally, this office asked for an explanation about where the meeting was held and the information communicated to the public about the meeting location. On March 8, 2023, counsel for the Board provided this office with the requested materials and its written response. On March 9, 2023, this office forwarded a copy of the Board's response to the ██████████. On March 16, 2023, the ██████████ replied and incorporated a statement from ██████████, another member of the public who stated that he attended the January 25, 2023, Board meeting.

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." 5 ILCS 120/1 (West 2020). "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).

As an initial matter, this office determined that further inquiry was warranted only to certain parts of the ██████████ Request for Review. In their Request for Review, the ██████████ also made broad allegations pertaining to the Board's review of executive session minutes, posting of meeting minutes, and posting of annual reports. Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2020)) provides:

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 not later than 60 days after the alleged violation. * * * The request for review * * * must include a summary of the *facts supporting the allegation*. (Emphasis added.)

The ██████████ allegation that the Board deferred its review of past closed session minutes during its January 25, 2023, meeting alone does not indicate that the Board violated OMA, absent facts indicating that the Board did not take up that matter as soon as practicable after six months had transpired since the previous review. *See* 5 ILCS 120/2.06(d) (West 2021 Supp.) ("Each public body shall periodically meet to review minutes of all closed meetings. Meetings to review minutes shall occur every 6 months, or as soon thereafter as is practicable, taking into account the nature and meeting schedule of the public body."). Additionally, the allegation that the Board failed to post meeting minutes on its website was generalized, and, as discussed further

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below, the Board's attorney advised that the Board's webpage is not maintained by full-time staff of the public body. *See* 5 ILCS 120/2.06(b) (West 2021 Supp.) ("[A] public body that has a website that **the full-time staff of the public body maintains** shall post the minutes of a regular meeting of its governing body open to the public on the public body's website within 10 days after the approval of the minutes by the public body." (Emphasis added.) Furthermore, OMA does not require that the Board post annual reports. Therefore, this office determined no further action was warranted as to these allegations in the ██████████ Request for Review.

Posting of Meeting Location

Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2020)) provides that "[e]very public body shall give public notice of the schedule of regular meetings at the beginning of each calendar or fiscal year and shall state the regular dates, times, and **places** of such meetings." (Emphasis added.) Section 2.03 of OMA (5 ILCS 120/2.03 (West 2020)) similarly provides, in relevant part: "In addition to the notice required by Section 2.02, each body subject to this Act must, at the beginning of each calendar year or fiscal year, prepare and make available a schedule of all its regular meeting for such calendar or fiscal year, listing the times and **places** of such meetings." (Emphasis added.) Section 2.02(a) also provides that "[a]n agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting." Section 2.02(b) of OMA (5 ILCS 120/2.02(b) (West 2020)) adds that "a public body that has a website that **the full-time staff of the public body maintains** shall post notice on its website of all meetings of the governing body of the public body." (Emphasis added.)

Counsel for the Board explained in response to this office's inquiry letter that the agenda was posted five full days before the January 25, 2023, Board meeting in two places at the Hospital: "one on a notice board across from the Business Office in the Hospital (where agendas are regularly posted), and a second copy on the entrance door to the West Campus building (located on the Hospital's campus), which is the building in which the meeting would occur."² The Board stated that these agendas identified "West Campus" as the meeting location and enclosed a copy.³ Additionally, the Board acknowledged that the agenda posted online did not include a meeting location, but explained that a part-time employee maintained the website.

²Letter from Danielle M. Costello, Hinshaw & Culbertson LLP, to [Katie] Goldsmith, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (March 8, 2023), at 1.

³Letter from Danielle M. Costello, Hinshaw & Culbertson LLP, to [Katie] Goldsmith, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (March 8, 2023), at 1.

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The Board provided this office with its schedule of annual meetings, which listed the location of its Board meetings as "the Administrative Conference Room."⁴ The Board stated in its response to this office, though, that "Board meetings have been regularly held in recent months at the West Campus Main Area; this is not a new location utilized by the Board for the January 25 meeting."⁵

In the [REDACTED] Request for Review, they alleged that the agenda posted online did not give notice that the meeting was being moved from the boardroom to a room in a separate building. In their reply, the [REDACTED] included a statement from [REDACTED] who stated: "The only meeting agenda that I saw did NOT mention the location." (Emphasis in original.)⁶ It is unclear whether [REDACTED] was referring to the agenda posted online or the agendas posted at the Hospital. Regardless, neither the Request for Review nor the reply contested whether the January 25, 2023, Board meeting agenda was posted at the meeting building or online at least 48 hours in advance. The dispute is over whether the posted agenda(s) for the January 25, 2023, Board meeting improperly omitted the specific meeting location.

As opposed to the annual schedule of regular meetings, OMA does not include a requirement that a particular meeting agenda include the location of a meeting. *See Ill. Att'y Gen. PAC Req. Rev. Ltr. 50231, issued October 30, 2017, at 2* ("The plain language of section 2.02 of OMA[] does not require a public body to include the physical address of the location where the meeting will be held on its agenda or notice."). However, the absence of an express requirement to include the meeting location of a regular meeting on the agenda must be understood in the context of the requirements to post an annual schedule of regular meetings that sets forth the meeting location and to post the agenda at both the public body's principal office and the meeting location. Where, as here, the annual schedule of regular meetings listed a room within a different building as the meeting location, the absence of the meeting location from the agenda deprived the public of written notice of the meeting location. The Board's explanation that it had met in the West Campus building on previous occasions despite the notice to the contrary on the annual schedule of regular meetings indicates that the Board should have updated its annual schedule of regular meetings sooner, not that the Board in fact provided notice of the new location by holding meetings there before. This office asks the Board to update its annual schedule of regular meetings to reflect the true locations of Board meetings so that members of the public have sufficient information to enable them to attend upcoming meetings.

⁴Mason District Hospital Board of Directors, Board of Directors Meeting Dates for 2023 (undated).

⁵Letter from Danielle M. Costello, Hinshaw & Culbertson LLP, to [Katie] Goldsmith, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (March 8, 2023), at 2.

⁶E-mail from [REDACTED] to [Katie] Goldsmith (March 16, 2023).

Convenient and Open Meetings

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." "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.

In denying that the January 25, 2023, 7:00 a.m. Board meeting was held in an inconvenient manner, the Board asserted:

[T]he front doors to the Hospital do not open until 7:00 a.m. each morning, as the front door is not staffed until this time and this is a safety measure for the Hospital. This has been the case for a number of years. However, there is a side door to the Hospital through which individuals can be buzzed in, and individuals can also enter the Hospital through the Emergency Department, which remains open 24 hours a day. The process for accessing the Hospital prior to 7:00 a.m. has not changed in at least the last five years.^[7]

In their reply, the [redacted] passed along [redacted] explanation that: "I arrived at the main doors of [the Hospital] before 7 am and found them locked. I walked to the east side of [the Hospital] and was able to get in, but no one knew where the meeting was. I was then escorted to the board room at [the Hospital] which was empty. * * * Finally, I walked to the West Campus and found the meeting in progress."⁸

This office has determined that merely holding a meeting in a locked area does violate OMA, provided that measures are taken to ensure members of the public who wish to attend are able to do so. *See* Ill. Att'y Gen. PAC Req. Ltr. 17711, issued March 27, 2012 (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). In this instance,

⁷Letter from Danielle M. Costello, Hinshaw & Culbertson LLP, to [Katie] Goldsmith, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (March 8, 2023), at 2.

⁸E-mail from [redacted] to [Katie] Goldsmith (March 16, 2023).

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members of the public seeking to attend the January 25, 2023, Board meeting could have gained access to the main hospital building by being buzzed in a side door or entering through the Emergency Department. [REDACTED] acknowledged that he was able to access the main hospital building sometime around the meeting start time. [REDACTED] also acknowledged that he subsequently found the meeting in the West Campus building, but did not indicate how he was able to locate the meeting. Under these circumstances, this office has not received facts from which we could conclude that the January 25, 2023, meeting was held in such an ill-suited, unaccommodating, or unadvantageous place that members of the public were deterred from attending it. As noted above, however, the lack of notice of the meeting location did impede access to the meeting.

The Office of the Public Access Counselor is also charged with providing advice and education to both the public and public officials. *See* 15 ILCS 205/7(a), (b), (c) (West 2020). In that capacity, this office notes that specifying the meeting room rather than just the meeting building in its notices would help avoid confusion in the future, as would notifying Hospital receptionists in advance where Board meetings will be held so that they may accurately guide the public.

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 katherine.goldsmith@ilag.gov. This letter serves to close this file.

Very truly yours,

[REDACTED]
KATIE GOLDSMITH
Assistant Attorney General
Public Access Bureau

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cc: *Via electronic mail*
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[REDACTED]