



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

October 10, 2024

Via electronic mail



Via electronic mail

Mr. James S. Sinclair
Stobbs & Sinclair, Ltd.
500 Bond Street
Alton, Illinois 62002
jsinclair@sslalaw.com

RE: OMA Request for Review – 2024 PAC 83040

Dear [REDACTED] and Mr. Sinclair:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2023 Supp.)). For the reasons explained below, the Public Access Bureau concludes that the Board of Trustees (Board) of the Findlay Fire Protection District (District) violated OMA by interfering with [REDACTED] ability to record the District's September 12, 2024, regular meeting.

BACKGROUND

On September 13, 2024, this office received [REDACTED] Request for Review alleging that at the Board's September 12, 2024, meeting, she attempted to record the meeting but "was advised it was a business meeting, not an open public meeting and the State of Illinois requires me to notify when I'm recording such meeting."¹

On September 19, 2024, this office sent a copy of the Request for Review to the District and asked it to provide a written response to the allegation in [REDACTED] Request for

¹E-mail from [REDACTED] to publicaccess@atg.state.il.us (September 13, 2024).

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Review. On September 27, 2024, the District responded. On that same date, this office forwarded a copy of the District's response to ██████████. On October 2, 2024, ██████████ replied to the District's response. On October 3, 2024, the District confirmed that there is no recording of the meeting.

DETERMINATION

Section 2.05 of OMA (5 ILCS 120/2.05 (West 2022)) provides that "[s]ubject 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."

In its response to this office, the District stated the discussion regarding the recording of the meeting occurred when the Board addressed emergency service billing records:

[A] volunteer of the District's ambulance service who now handles billing matters for the District, apparently perceived that ██████████ was or was intending to record her report to the Board of Trustees and she voiced objection to being recorded. [Board President] McClain indicates that he stated to ██████████ that it was his understanding that under Illinois law a person making a recording of another person was required to notify the person being recorded. (Presumably, he was referring to the provisions of the Criminal Code regarding eavesdropping and surreptitious recording of a private conversation (720 ILCS 5/14-2).) At that point, according to Mr. McClain, ██████████ voluntarily ceased or did not initiate recording and indicated that she would simply make notes from Ms. Martz' report. None of the trustees told ██████████ that she could not record the meeting. Since ██████████ did not persist in her desire to record the meeting after she ceased those efforts of her own accord, nothing further transpired on the issue during the meeting.^[2]

The District further conceded that recording of open meetings is permitted under the statute, that permission is not required for a member of the public to record, and that this has since been conveyed to the Board President. However, the District's response stated that ██████████

²Letter from James S. Sinclair to Matthew C. Rogina, Senior Assistant Attorney General, Public Access Bureau (September 27, 2024), at 1.

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██████████ was not "formally prevented from recording the meeting on September 12, 2024 by action of the Board of Trustees of the District[.]"³

██████████ reply stated that she construed the comments during the meeting as requiring her to stop recording:

I clearly heard Trustee Tim Uphoff say "You're recording? You can't do that!" Perhaps Mr. McClain didn't hear that as he had called into the meeting and wasn't physically present.
2. Tina Martz clearly objected to being recorded, and Mr. McClains response, as I understood it at the time, was that I couldn't record without her consent as I needed everyone's approval to record the meeting. Please understand it wasn't a "willingness" to stop recording. The room had become tense, and in order to get answers to questions regarding billing I felt it necessary to stop recording.⁴

It is undisputed that the Board president and a volunteer informed ██████████ that they had objections to her recording the meeting. The Board President's comments that ██████████ would potentially violate the law if she proceeded with the recording clearly dissuaded her from recording the meeting even though the Board did not take formal action to prohibit her from doing so. Accordingly, this office concludes that the Board violated section 2.05 of OMA. To remedy that violation, the Public Access Bureau requests that the Board to permit members of the public to record its open meetings, subject only to the reasonable rules the Board may prescribe.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, please contact me at Matthew.Rogina@ilag.gov or (312) 814-3180.

Very truly yours,

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MATTHEW C. ROGINA
Senior Assistant Attorney General
Public Access Bureau

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³Letter from James S. Sinclair to Matthew C. Rogina, Senior Assistant Attorney General, Public Access Bureau (September 27, 2024), at 2.

⁴E-mail from ██████████ to [Matthew] Rogina and [James] Sinclair (October 2, 2024).