



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

February 29, 2024

Via electronic mail

[REDACTED]

Via electronic mail

Mr. Eric Ertmoed
Village Manager
Village of Lisle
925 Burlington Avenue
Lisle, Illinois 60532
ertmoed@villageoflisle.org

RE: OMA Request for Review – 2023 PAC 79408

Dear [REDACTED] and Mr. Ertmoed:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA).¹ For the reasons explained below, the Public Access Bureau concludes that the Board of Trustees (Board) of the Village of Lisle (Village) did not violate OMA.

In her Request for Review, [REDACTED] alleged that the Board violated section 2.06(c) of OMA² during its December 18, 2023, meeting when the Board voted to destroy its February 21, 2022, March 7, 2022, April 4, 2022, April 18, 2022, May 2, 2022, and May 16, 2022, closed session verbatim recordings before approving the minutes from those closed meetings.

On January 9, 2024, this office forwarded a copy of the Request for Review to the Board and asked it to respond in writing, specifically addressing whether the Board voted to

¹5 ILCS 120/3.5(e) (West 2022).

²5 ILCS 120/2.06(c) (West 2022).

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approve the written minutes of the relevant closed sessions in accordance with section 2.06(c) before destroying the verbatim recordings at issue. If so, this office asked the Board to provide copies of the agenda and minutes for the meetings in which the closed session minutes were approved. On January 23, 2024, the Board submitted, among other things, a written answer, a web link to view the Board's January 8, 2024, meeting,³ and a copy of the agenda for that meeting. On January 24, 2024, this office forwarded a copy of the Board's answer to [REDACTED]; she replied on January 25, 2024. On February 14, 2024, via e-mail with an Assistant Attorney General (AAG) in the Public Access Bureau, the Village clarified certain aspects of its written answer.

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 2022). "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 2.06(c) of OMA provides:

(c) The **verbatim record may be destroyed** without notification to or the approval of a records commission or the State Archivist under the Local Records Act or the State Records Act no less than 18 months after the completion of the meeting recorded **but only after:**

- (1) the public body approves the destruction of a particular recording; and
- (2) the public body approves minutes of the closed meeting that meet the written minutes requirements of subsection (a) of this Section. (Emphasis added.)

In its answer to this office, the Board confirmed that during its December 18, 2023, meeting, the Board approved "Resolution 2023-4418, *A Resolution Authorizing the Destruction of Certain Closed Session Verbatim Recordings of Meetings Occurring Between February 21, 2022 and*

³Village of Lisle Board of Trustees, *January 8, 2024, Board Meeting*, YouTube (January 8, 2024), <https://www.youtube.com/watch?v=cKOKJiP9z0A>.

May 16, 2022."⁴ The Board's answer to this office did not dispute [REDACTED] allegation that the Board had not yet approved the relevant closed session meeting minutes as of December 18, 2023, when it voted on the motion to authorize the destruction of the verbatim recordings. However, the Board's response stated that it voted to approve the relevant closed session meeting minutes during the open session portion of its January 8, 2024, meeting, which is supported by the agenda and recording of that meeting. On February 14, 2024, the Village informed an AAG that the verbatim recordings were not destroyed until January 9, 2024.

[REDACTED] replied to the Board's response, in pertinent part, by reiterating that the Board's failure to first vote to approve the closed session minutes before approving the destruction of the verbatim recordings at issue was a violation of section 2.06(c) of OMA, and she argued that the "[a]pproval of the closed minutes after-the-fact is not permitted by statute as a method to authorize destruction of closed meeting records."⁵

The plain language of section 2.06(c), however, requires that **prior to destruction of a closed session verbatim recording**, a public body must vote to approve destruction of the recording and vote to approve the written minutes of that closed session. *See Buonauro v. City of Berwyn*, No. 08-C-6687 (N.D. Ill. Aug. 25, 2011) ("OMA permit[s] the destruction of [closed session verbatim] recordings without notification eighteen months after the completion of the recorded meeting, provided that the public body approves the destruction and adequate minutes of the meeting have been taken and approved."). Therefore, if a public body destroys the verbatim recording of a closed session before following the procedures set forth in both sections 2.06(c)(1) and 2.06(c)(2) of OMA, the destruction would violate section 2.06(c).

On December 18, 2023, the Board voted to approve the destruction of the recordings as required by section 2.06(c)(1) of OMA; on January 8, 2024, the Board approved the corresponding closed session minutes, as required by section 2.06(c)(2) of OMA; and on January 9, 2024, the Board destroyed the verbatim recordings. Because the Board approved the closed session minutes before destroying the recordings, it is immaterial that the vote to destroy the recordings preceded the vote to approve the minutes. Accordingly, this office concludes that the Board did not violate section 2.06(c) of OMA under these circumstances.

⁴Letter from Eric Ertmoed, Village Manager, Village of Lisle, to Shannon Barnaby, Senior Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (January 23, 2024), attaching Resolution 2023-4418.

⁵E-mail from [REDACTED] to [Shannon] Bar[n]aby (January 25, 2024).

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The Public Access Counselor has determined that the resolution of this matter does not require the issuance of a binding opinion. This matter is closed. If you have any questions, my e-mail address is Shannon.Barnaby@ilag.gov.

Very truly yours,

[REDACTED]
SHANNON BARNABY
Senior Assistant Attorney General
Public Access Bureau

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