OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

February 9, 2022

Via electronic mail
[redacted]

RE: OMA Request for Review – 2022 PAC 69534

Dear [redacted]

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2020)). On January 21, 2022, the Public Access Bureau received your correspondence alleging that the Madison County Board (Board) violated OMA in connection with its December 15, 2021, review of closed session minutes. For the reasons set forth below, the Public Access Bureau concludes that no further action is warranted as to this matter.

At the time of the Board's December 15, 2021, meeting, section 2.06(d) of OMA (5 ILCS 120/2.06(d) (West 2020)) provided,[1] in pertinent part:

> Each public body shall periodically, but no less than semi-annually, meet to review minutes of all closed meetings. At such meetings a determination shall be made, and reported in an open session that (1) the need for confidentiality still exists as to all or part of those minutes or (2) that the minutes or portions thereof no

[1]Public Act 102-653, effective January 1, 2022, amended section 2.06(d) as follows:

> 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. Committees which are ad hoc in nature shall review closed session minutes at the later of (1) 6 months from the date of the last review of closed session minutes or (2) at the next scheduled meeting of the ad hoc committee.

> longer require confidential treatment and are available for public inspection.

Your Request for Review challenges the sufficiency of the Board's review of its closed session minutes at the December 15, 2021, meeting. Specifically, you contend that

> there was no review by the County Board, there was only [a] vote where it was claimed the minutes were reviewed. I can attest to this because I was present at the meeting before they went into executive session purportedly to review them and watched through the window. Common sense dictates it would have been impossible for them to review all of the meetings in the short amount of time they were sequestered, but facts don't lie, and the schedule of what they were reviewing that was reported to be part of the agenda wasn't created until two days later. * * * [W]hat is important is that a binding opinion be issued that describes mere voting to conceal what happened during a closed session does not constitute, especially when the board has turned over and then members have not listened to a closed session and so are not fulfilling their duty of reviewing closed sessions so that they can make an informed determination whether or not the need exists for them to remain closed instead of abdicating that responsibility to their legal counsel and there [*sic*] compliance with the act be reduced to merely voting.[2]

Your Request for Review included a copy of the Board's December 15, 2021, meeting minutes, which included the resolution the Board passed concerning its review of the closed session minutes for all periods prior to October 31, 2021. That resolution stated, in relevant part, that

> a review of closed session minutes by the Office of the Madison County State's Attorney, in conjunction with the review by the County Board recommends that the closed session minutes listed on Schedule B, and the verbatim recordings for the meetings listed on Schedule C, require continued confidentiality due to ongoing exemptions under the Illinois Open Meetings Act, 5 ILCS 120 and/ or the Illinois Freedom of Information Act, 5 ILCS 140, including but not limited to one or more of the following reasons, attorney-

[2]E-mail from [redacted] to [Public Access Bureau, Office of the Attorney General] (January 21, 2022).

> client privilege communications between members of the County Board and its attorney(s) in which legal advice, communication and opinions were given which would not be subject to discovery in litigation, the Tort Immunity Act, ongoing pending litigation, security, real estate negotiations, or confidential personnel or medical information[.][3]

Schedule B and Schedule C list, by individual meeting, the general reasons why the Board determined that the closed session minutes and verbatim recordings from those meetings continue to require confidential treatment.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2020)) 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[,]" and that the submission "**must include a summary of the facts supporting the allegation**." (Emphasis added.)

As this office has previously stated, OMA does not set forth any guidelines about the need for closed session minutes' confidentiality or otherwise limit a public body's discretion to determine whether its closed session minutes require confidential treatment. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. S-0184, issued July 2, 2021, at 3 (noting that the OMA does not provide a basis on which the Public Access Counselor may review the Madison County Board's determinations about the need for confidentiality of closed session meeting minutes). Similarly, OMA does not describe the manner by which a public body must conduct its semi-annual review, such as how long a public body must take to review its minutes or whether it may seek the advice of counsel. Based on the information in your Request for Review, it appears that the Madison County State's Attorney's Office, which serves as legal counsel to the Board, reviewed the relevant closed session minutes, and in conjunction with its counsel's review, the Board determined whether the need for confidentiality still exists for its closed session minutes and verbatim recordings. Further, the Board provided a general explanation for why certain minutes required continued confidential treatment. In light of the discretion that OMA affords public bodies to determine whether closed session minutes require confidential treatment and in the absence of any procedural requirements for reviewing closed session minutes, your allegation that the Board conducted an insufficient review does not provide a basis upon which this office can conclude that the Board violated OMA. Accordingly, this office will take no further action in this matter.

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[3]Madison County Board, Meeting, December 15, 2021, Minutes 86.

This letter closes this file. If you have any questions, you may contact me at the Springfield address on the first page of this letter or Laura.Harter@ilag.gov.

Very truly yours,

[redacted]

LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

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cc: *Via electronic mail*
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