



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

January 29, 2024

Via electronic mail

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] e. [REDACTED]

Via electronic mail

The Honorable Eileen Phipps
President
Village of Wayne
5N430 Railroad Street
Wayne, Illinois 60184
c/o clerk@villageofwayne.org

RE: OMA Request for Review – 2023 PAC 77314

Dear [REDACTED]s and Ms. Phipps:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2022)).

BACKGROUND

On July 13, 2022, [REDACTED] submitted a Request for Review to the Public Access Bureau alleging that the Village of Wayne Board of Trustees (Board) violated OMA at its July 5, 2023, meeting by failing to read aloud a written comment she had submitted prior to the meeting. [REDACTED]s stated that she attended the meeting via Zoom, and that the public cannot participate interactively through that option. She stated that, on the morning of July 3, 2023, she e-mailed a written comment to the Village and received a reply from the Village Clerk stating that the comment was received after the cutoff date. She asserted:

500 South 2nd Street
Springfield, Illinois 62701
(217) 782-1090 • Fax: (217) 782-7046

115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-3000 • Fax: (312) 814-3806

1745 Innovation Drive, Suite C
Carbondale, Illinois 62903
(618) 529-6400 • Fax: (618) 529-6416

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In [the Village Clerk's] email, she references the Village of Wayne's publication on the meeting agenda that all public statements are required to be submitted by noon on the Thursday prior to the board meeting in order to be included in the packet provided to the Trustees. There is nothing documented in that statement regarding reading a public statement into the record.^[1]

[REDACTED] also stated that she had submitted written comments on previous occasions, and all were read into the record at meetings. She further stated that "[t]he agenda for the meeting is not released until after noon on Thursdays. It is impossible to submit a public statement addressing an agenda item prior to the agenda being published."² [REDACTED] provided copies of the July 5, 2023, meeting agenda, her e-mailed submission, and a copy of a resolution adopting a public comment policy, which she explained the Board voted on at the July 5, 2023, meeting.

On July 20, 2023, this office forwarded a copy of the Request for Review to the Board and asked it to provide this office with copies of its July 5, 2023, meeting agenda, minutes, and any Board rules governing public comment in effect at the time of the meeting, together with a written response to [REDACTED]' OMA allegations. On July 21, 2023, this office received a written response. That same day, this office forwarded a copy of the Board's response to [REDACTED]; she replied on July 24, 2023.

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). So long as public bodies allow the public to attend meetings in person, they may, additionally, live stream a meeting on a website, social media, or other electronic platform.

Section 2.06(g) of OMA provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." This provision "requires that all public bodies subject to the Act provide an opportunity for members of the public to address public officials at open meetings." Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 5. Public bodies are not required to recite during meetings public comments that were submitted in writing unless they have established rules providing such an option. Ill. Att'y Gen. Req. Rev. Ltr. 76163, issued May 22, 2023, at 2 ("Section 2.06(g) does not require a public body to accept public comment in writing when it

¹Letter from [REDACTED] to Office of the Attorney General (July 6, 2023).

²Letter from [REDACTED] to Office of the Attorney General (July 6, 2023).

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allows individuals to attend meetings and deliver comments in person, and no other provision of OMA guarantees members of the public an unfettered right to address a public body by e-mail at any time.").

In its response to this office, the Board denied that it improperly restricted the public from addressing its members and asserted that, at the time of the meeting, "the Village had no time or other limitation on addressing the Board in person and anyone appearing at the meeting was and is given the opportunity to speak."³ The Board contended that the agenda provides "as an accommodation, that persons may, at their option, also submit written comments which will be distributed to the Board."⁴ The Board's July 5, 2023, meeting agenda stated, in relevant part:

The Public Comment section is intended to give the public an opportunity to present a comment or opinion to the Board of Trustees. * * * Public Comment should be limited to this portion of the agenda and the public shall not interrupt the Board during the remainder of the meeting. Written comments received by the Clerk will be distributed to the Board.^[5]

At the bottom, the agenda further stated: "Any Public Comments submitted in writing to the Village Clerk * * * prior to noon on the Thursday before the meeting will be distributed to the Board with their packets."⁶ The Board acknowledged that the agenda provides a cut-off time for submitting written comments. However, it highlighted that [REDACTED]' comments were nevertheless distributed to its members in their meeting packets, as stated in the e-mail from the Village Clerk. The Board further contended that its "President recited that the written comment had been received and summarized its content."⁷ The Board confirmed that the public has the option of attending the meeting remotely via Zoom, but argued that it was not required "to also provide for remote statements from the public so long as the meeting is held in person and the

³Letter from Peter K. Wilson, Jr. Mickey, Wilson, Weiler, Renzi, Lenert & Julien, P.C., to Teresa Lim, Supervising Attorney, Public Access Bureau (July 21, 2023), at [1].

⁴Letter from Peter K. Wilson, Jr. Mickey, Wilson, Weiler, Renzi, Lenert & Julien, P.C., to Teresa Lim, Supervising Attorney, Public Access Bureau (July 21, 2023), at [1].

⁵Village of Wayne, Agenda Item III, Public Comment (July 5, 2023).

⁶Village of Wayne, Agenda (July 5, 2023).

⁷Letter from Peter K. Wilson, Jr. Mickey, Wilson, Weiler, Renzi, Lenert & Julien, P.C., to Teresa Lim, Supervising Attorney, Public Access Bureau (July 21, 2023), at [1].

public has the right to attend and make comments."⁸ Additionally, the Board argued that the binding opinion⁹ cited by ██████████s in her Request for Review was not applicable to this matter because that opinion concerned an advance sign up rule to speak in person at a meeting whereas it did not enforce such a rule at its meeting.

In reply to that answer, ██████████s argued that she had a reasonable expectation that her written comments would be read aloud based on the Board's previous practice of doing so: "Written comments, submitted by multiple residents, have been read aloud into the public record over the past year and a half or so. Every one of my public statements was submitted after noon on the Thursday prior to the meeting."¹⁰ ██████████s also disputed the Board's claim that it had summarized the content of her written public comment at the meeting and provided a link to a recording of the meeting. She contended that the President merely "stated that the email contained 'comments generally related to the resolution 23-R-14 adopting public comment policy.'"¹¹ Additionally, ██████████s noted that the Board has changed how written comments are entered into the record several times over the past year, and that the July 5, 2023, meeting minutes did not mention any public comments that were received or entered into the record. She also asserted that "village residents fought to get Zoom access for residents to attend village meetings because the location where the village meetings are held is not ADA compliant. * * * The written public comment is the only opportunity afforded to those residents who attend virtually."¹²

It is undisputed that the Board did not read aloud, verbatim, ██████████s' written comment at the July 5, 2023, meeting. As discussed above, a public body may, but is not required by any provision of OMA, to offer options for the public to speak remotely during in person meetings.¹³ Ill. Att'y Gen. Req. Rev. Ltr. 76163, at 2 The Board's response to this office

⁸Letter from Peter K. Wilson, Jr. Mickey, Wilson, Weiler, Renzi, Lenert & Julien, P.C., to Teresa Lim, Supervising Attorney, Public Access Bureau (July 21, 2023), at [2].

⁹Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014 (rule requiring members of the public to sign up to comment five days in advance of meetings, before the board was required to post its agenda, imposed an unreasonable restriction on public comment).

¹⁰Letter from ██████████ to Teresa Lim, Office of the Attorney General (July 24, 2023), at 1.

¹¹Letter from ██████████ to Teresa Lim, Office of the Attorney General (July 24, 2023), at 1.

¹²Letter from ██████████ to Teresa Lim, Office of the Attorney General (July 24, 2023), at 2.

¹³The Public Access Counselor does not have the authority to review ██████████' allegation that some members of the public cannot attend meetings in person due to the physical limitations of the Board's meeting location because that complaint alleges violations of other laws. See 15 ILCS 205/7(c)(3) (West 2022)

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indicated that it established rules during its July 5, 2023, meeting that require public comments submitted in writing by a certain time to be read during its meetings, but the response stated that those rules were not in effect at the time of the meeting. The meeting minutes indicate generally that the designated public comment period occurred near the beginning of the meeting. Although [REDACTED] demonstrated that written comments have been read aloud at meetings over the past year or so, the July 5, 2023, meeting agenda simply indicated that written comments would be distributed to its members if submitted by a certain cutoff time. Further, no cutoff time appears to have been enforced, as [REDACTED]'s written comments were still shared with members of the Board.¹⁴ Because the Board provided an opportunity for the public to address its members in person and because it did not have a rule in place that required public comment submitted in writing to be read aloud during the public comment portion of its July 5, 2023, meeting, this office concludes that the Board did not violate section 2.06(g) of OMA.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,

[REDACTED]
TERESA LIM
Supervising Attorney
Public Access Bureau

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cc: *Via electronic mail*
Mr. Peter K. Wilson, Jr.
Attorney for the Village of Wayne
Mickey, Wilson, Weiler, Renzi, Lenert & Julien, P.C.
140 South Municipal Drive
Sugar Grove, Illinois 60554
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(Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act).

¹⁴Because [REDACTED]'s allegation that her comments were not properly entered into the record was not part of her initial Request for Review submission, this office declines to address that allegation. In general, however, this office notes that no provision of OMA precludes a public body from omitting a member of the public's public comments from meeting minutes, so long as the public body memorialized in the minutes any discussions among its members that rose to the level of deliberation in relation to those comments. See Ill. Att'y Gen. PAC Req. Rev. Ltr. 36909, issued September 2, 2015, at 2.