



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 3, 2017

Via electronic mail

Via electronic mail

The Honorable Andrew Winkel
Village President
Village of Clifton
350 East Fourth Avenue
Clifton, Illinois 60927
andrew.winkel@cliftonillinois.com

RE: OMA Request for Review – 2017 PAC 49436

Dear [REDACTED] and Mr. Winkel:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau is unable to conclude that the water/sewer committee (Committee) of the Board of Trustees (Board) of the Village of Clifton (Village) violated the requirements of OMA in connection with a gathering at [REDACTED] residence on August 8, 2017.

On August 28, 2017, [REDACTED] submitted a Request for Review to the Public Access Bureau alleging that despite two out of the three members of the Committee holding a meeting at his home on August 8, 2017, regarding a culvert on a Village easement, the Committee did not provide 48 hours' advance notice, did not post an agenda, and did not take minutes of the meeting.

On September 7, 2017, this office sent a copy of the Request for Review to the Board and asked it to respond to [REDACTED] allegations by addressing whether the two Committee members deliberated about the public business of their Committee at or near [REDACTED] property on August 8, 2017. This also asked to confidentially review any documentation of the Committee members' visit on that date, such as notes or recommendations.

[REDACTED]
The Honorable Andrew Winkel
October 3, 2017
Page 2

On September 14, 2017, the Board responded by denying the allegations. On September 22, 2017, this office forwarded a copy of the response to [REDACTED] he did not reply.

DETERMINATION

OMA is intended "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2016).

Section 2(a) of OMA (5 ILCS 120/2(a) (West 2016)) provides that "[a]ll meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." Section 1.02 of OMA (5 ILCS 120/1.02 (West 2016)) defines a "meeting" subject to the Act as:

[A]ny gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business or, for a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public business.

If a gathering of members of a public body meets this definition, then all of the requirements of OMA apply, including the proper posting of notice and an agenda (5 ILCS 120/2.02(a) (West 2016)), holding the meeting at a specified time and place that is convenient and open to the public (5 ILCS 102/2.01 (West 2016)), keeping minutes (5 ILCS 120/2.06(a) (West 2016)), and allowing public comment (5 ILCS 120/2.06(g) (West 2016)).

The Office of the Attorney General has stated that "whether a gathering falls within the definition of meeting as used in the Act, would depend upon the peculiar facts in each situation." 1974 Ill. Att'y Gen. Op. No. S-726, issued March 22, 1974, at 126. "In theory, there is no absolute prohibition against the members of a public body attending an 'informational meeting' without triggering the application of" OMA, as long as the members do not make "[d]eliberational statements" or engage in "unrecorded discussions" concerning public business amongst themselves. Ill. Att'y Gen. Op. No. 95-004, issued July 14, 1995, at 10-11. In that opinion, the Attorney General concluded that "[t]he mere fact that a majority of a quorum of the members of a public body attend[ed] and participate[d] in a bona fide presentation on new legislative developments in an area of public concern within the scope of the public body's power to act" did not make the presentation subject to OMA, but that the extensive discussions of public business amongst members of two county boards during the presentation did trigger the

[REDACTED]
The Honorable Andrew Winkel
October 3, 2017
Page 3

requirements of OMA. (Emphasis in original.) Ill. Att'y Gen. Op. No. 95-004, at 10-11; *see also Nabhani v. Coglianesi*, 552 F. Supp. 657, 661 (N.D. Ill. 1982) (a gathering does not constitute a meeting for purposes of OMA when there is "no examining or weighing of reasons for or against a course of action, no exchange of facts preliminary to a decision, [and] no attempt to reach accord on a specific matter of public business.").

In its September 14, 2017, response to this office, the Board explained that Trustee Randy Gigl, Chairman of the Committee, scheduled a visit to [REDACTED]'s residence through text message for August 8, 2017. The Board stated that "[t]he purpose of the visit was to look at a collapsed culvert beneath [REDACTED] driveway."¹ On August 8, 2017, the Board stated, Trustee Gigl and another Committee member, Paul Hess, "measured the culvert and reviewed the physical damage to the culvert. Neither Gigl nor Hess had notes to supply. Both Hess and Gigl estimated the total time they visited [REDACTED] was no more than ten minutes[.]"² Further, the Board explained that the culvert was "discussed during a public meeting of the [Committee] on August 10, 2017. The August 8 visit served to prepare both trustees for their committee meeting by giving them a recent look at the situation."³ In an email sent on September 27, 2017, the Board clarified that, due to the size of the Village (approximately 1,500 residents), it only has one full-time and two part-time maintenance employees. It stated that while it asks for its maintenance employee's advice, "it is not unusual for trustees to visit the site of issues to observe the situation first hand, especially to help make sense of specifics that may not be clear from photographs or reports. * * * They schedule a visit, observe the situation, then deliberate during a public meeting."⁴

The information available to this office indicates that the visit on August 8, 2017, was intended to be informational for the Committee members. This office has not received facts demonstrating that deliberative discussions of public business occurred at [REDACTED] property on that date. It appears that the two Committee members were at [REDACTED] residence to gather information in order to then deliberate at the public meeting two days later. Accordingly, this office is unable to conclude that the August 8, 2017, visit constituted a meeting of the Committee subject to the requirements of OMA.

¹Letter from Andrew Winkel, Village President, Village of Clifton, to Marie Hollister, Office of the Attorney General (September 14, 2017).

²Letter from Andrew Winkel, Village President, Village of Clifton, to Marie Hollister, Office of the Attorney General (September 14, 2017).

³Letter from Andrew Winkel, Village President, Village of Clifton, to Marie Hollister, Office of the Attorney General (September 14, 2017).

⁴Email from Andrew Winkel to Marie Hollister (September 27, 2017).

[REDACTED]
The Honorable Andrew Winkel

October 3, 2017

Page 4

This office cautions, however, that if a majority of a quorum of the members of a public body, such as a committee of the Board, engages in a deliberative discussion of public business while visiting a site such as [REDACTED] property on August 8, 2017, that event would become a meeting, triggering the requirements of OMA. Deliberative discussions of public business have the potential to arise during such a gathering even if they are not anticipated. Therefore, if Committee members must conduct property inspections before meetings, they may wish to consider doing so individually rather than in groups of two or three.

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 (312) 793-0865.

Very truly yours,

[REDACTED]

MARIE HOLLISTER
Assistant Attorney General
Public Access Bureau

49436 o 2a meeting proper mun