



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

October 6, 2023

Via electronic mail



RE: OMA Request for Review – 2023 PAC 77468

Dear 

On July 25, 2023, you submitted this Request for Review alleging that the Cook County Board of Review (Board) violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2022)) in connection with a July 25, 2023, meeting of the Finance Committee (Committee) of the Cook County Board of Commissioners. For the reasons set forth below, the Public Access Bureau has determined that no further action is warranted in this matter.

As an initial matter, section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2022)) provides, in pertinent part, 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," which "must include a summary of the facts supporting the allegation." You alleged that during the Committee's annual budget hearing on July 25, 2023, "the 3 sitting Cook County Board of Review Commissioners were present and provided testimony as to what their budget request is and answered individual Board Commissioners' questions."¹ Further, you have limited your allegations solely to the gathering of Board members, acknowledging that the Committee complied with the notice requirements of OMA for its July 25, 2023, budget hearing.

For the requirements of OMA to apply, a gathering must constitute a "meeting" as defined by section 1.02 of OMA (5 ILCS 120/1.02 (West 2022)):

"Meeting" means any 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

¹Request for Review from  to Public Access [Counselor] (July 25, 2023).

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 public body members is determined to be a "meeting," then all the requirements of OMA apply, including proper posting of notice and an agenda (5 ILCS 120/2.02) (West 2022)), and keeping minutes (5 ILCS 120/2.06 (West 2022)).

The Board is comprised of three members. Accordingly, a quorum of the Board is two members, and a majority of the quorum for the purposes of OMA would also consist of two members. Therefore, if any two members of the Board gathered and held deliberative discussions of public business during the hearing, those discussions would have constituted a meeting of the Board subject to the procedural safeguards and requirements of OMA. It is undisputed that all three Board members attended the July 25, 2023, Committee budget hearing.²

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 Opinion 95-004 (Ill. Att'y Gen. Op. No. 95-004, issued July 14, 1995, at 10), the Attorney General explained that "[i]n theory, there is no absolute prohibition against the members of a public body attending an 'informational meeting' without triggering the application of" OMA. The Attorney General further explained that the "mere fact that a majority of a quorum of the members of a public body attend and participate in a bona fide presentation on new legislative developments in an area of public concern" did not make the presentation subject to OMA. Ill. Att'y Gen. Op. No. 95-004, at 10. The Attorney General concluded, however, that the gathering at issue fell within the scope of OMA because a "few county board members" made "[d]eliberational statements" and engaged in "unrecorded discussions" amongst themselves. Ill. Att'y Gen. Op. No. 95-004, at 11; *see also Nabhani v. Coglianese*, 552 F. Supp. 657, 661 (N.D. Ill. 1982) (a gathering does not constitute a meeting for purposes of OMA when the members of the public body do not participate in examination or weighing of reasons for or against a course of action, an exchange of facts preliminary to a decision, or an attempt to reach accord on a specific matter of public business). Consistent with this authority, in 2016 PAC 38142, the Public Access Bureau was unable to find that a Trustee Workshop convened by the Village Clerk and attended by a majority of a quorum of members of the Board constituted a meeting without any evidence that the members "collectively engaged" in deliberative discussions of public business. Ill. Att'y Gen. PAC Req. Rev. Ltr. 38142, issued September 2, 2016, at 3.

²Although Commissioners Cardenas and Steele attended the hearing in person, our review of the July 25, 2023, hearing reflected that Commissioner Rogers remotely attended via video conference.

As noted above, you have alleged that all three Board members attended the Committee meeting, providing testimony and answering individual questions posed by Committee members. However, you have not alleged that at least two Board members collectively engaged in deliberative discussions of public business during that meeting. Nonetheless, this office has reviewed a publicly-available recording of the approximately 90-minute Committee meeting.³ At the start of the meeting, Board Chair Cardenas provided the Committee with a 10-minute summary introduction of the Board's accomplishments over the relevant period, accompanied by a PowerPoint presentation. For the next hour and twenty minutes, individual Committee members asked various questions of the Board and its staff, ranging from topics concerning budget allocation, staffing issues, information technology concerns, and the like. In turn, individual Board members or their staff answered these questions, at all times directly addressing Committee members when providing their testimony. At no time during the meeting did any two or more Board members engage in discussion amongst themselves. In fact, one of the few, if not the only, instances of a Board member directly referencing another Board member involved a statement from Commissioner Rogers praising the work of his two fellow Board members who each assumed office in December 2022 – even so, Commissioner Rogers' compliment was made directly to the Committee.

Although all three members of the Board participated in the July 25, 2023, hearing, that hearing was not conducted by the Board and the Board did not engage in deliberations or receive information in anticipation of taking final action. Rather, the Board conveyed information for the Committee to consider in the Committee's deliberations. Under these circumstances, the requirements of OMA clearly were applicable to the Committee, and it is undisputed that the Committee held the meeting in accordance with OMA. OMA, however, is not intended to apply to members of a public body who appear at another public body's meeting to convey information that the public body holding the meeting requires for its own deliberations. Similar to the gathering discussed in Attorney General Opinion 95-004, the gathering of the Board members in attendance at the Committee meeting potentially could have evolved into a Board meeting if, for example, deliberations amongst Board members broke out about their budget request; however, the video recording of the Committee meeting provides no indication that two or more Board members engaged in such deliberations. Because the facts you have alleged do not support the allegation that the Board violated OMA, the Public Access Bureau has determined that no further action is warranted in this matter.

³Cook County Board of Commissioners, Finance Committee, Meeting, July 25, 2023, <https://cook-county.legistar.com/MeetingDetail.aspx?ID=1113839&GUID=D350E966-6CF2-42B8-ABD3-A5638495BA09&Options=info|&Search=>.

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Accordingly, this file is closed. If you have questions, please contact me at the Springfield address on the first page of this letter.

Very truly yours,

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CHRISTOPHER R. BOGGS
Deputy Public Access Bureau
Public Access Bureau

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cc: *Via electronic mail*
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