



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 15, 2024

Via electronic mail

[REDACTED]
[REDACTED]

Via electronic mail

Ms. Molly A. Krebs
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Via electronic mail

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Metropolitan Water Reclamation District of Greater Chicago
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RE: OMA Request for Review – 2023 PAC 78085; 78204

Dear [REDACTED], Ms. Krebs, and Ms. Morakalis:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2022)). For the reasons explained below, the Public Access Bureau concludes that the City of Harvey (City) City Council (Council) violated OMA in connection with a gathering at Harvey City Hall on September 7, 2023. This office further concludes that the Metropolitan Water Reclamation District of Greater Chicago (District) Board of Commissioners (Board) did not violate OMA in connection with the same gathering.

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BACKGROUND

On September 8, 2023, this office received ██████████ Request for Review alleging that the Council and Board required members of the public to show proof of Harvey residency, including showing identification to armed officers, in order to attend a gathering held on September 7, 2023, to discuss an upcoming stormwater management project in the City of Harvey (City). ██████████ Request for Review included a partial video recording of the gathering.

On September 19, 2023, this office forwarded copies of the Request for Review to the Council and Board and asked each of them to provide this office with a written response addressing any requirements imposed on members of the public to attend the gathering, the reasons for any such requirements, whether any individuals were prohibited from attending, and whether the Council and Board believed the September 7, 2023, gathering constituted a "meeting" as defined in section 1.02 of OMA.¹ On October 3, 2023, and October 16, 2023, this office received responses from the Council. On October 4, 2023, and October 20, 2023, this office forwarded copies of the Council's responses to ██████████. On October 18, 2023, this office received the Board's response. On October 20, 2023, this office forwarded a copy of the Board's response to ██████████. On October 23, 2023, ██████████ replied to the responses by the Council and Board.

DETERMINATION

"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(a) of OMA² 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 2.01 of OMA³ further provides, in pertinent part: "All meetings required by this Act to be public shall be held at specified times and places which are convenient and open to the public." Among other things, OMA also requires public bodies to provide advance notice of meetings, permit an opportunity for public comment, and approve and maintain minutes.⁴

¹5 ILCS 120/1.02 (West 2022).

²5 ILCS 120/2(a) (West 2022), as amended by Public Act 103-311, effective July 28, 2023.

³5 ILCS 120/2.01 (West 2022).

⁴5 ILCS 120/2.02, 2.06(a), 2.06(g) (West 2022).

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By way of background, in a letter addressed to City residents, the Mayor invited residents to attend a "Community Meeting" on September 7, 2023, that would "ensure that you have all the necessary information and an opportunity to actively participate in this endeavor[.]"⁵ The letter also provided information about the stormwater management project, noting that the District would install a water basin in the City.

In their responses to ██████████ Request for Review, the Board and Council did not dispute ██████████ contention that access to the September 7, 2023, gathering was limited to individuals with identification demonstrating that they were Harvey residents. Instead, both public bodies argued that the gathering was not a meeting subject to OMA.

Section 1.02 of OMA defines a "meeting" 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[.]** (Emphasis added.)

If a gathering of public body members constitutes a "meeting," then all the procedural safeguards and requirements of OMA apply, including providing access to members of the public regardless of where they reside.

Neither the Council nor the Board disputed that a majority of a quorum of its members attended the September 7, 2023, gathering at Harvey City Hall. However, in their responses to this office, they each contended that their members did not discuss among themselves the public business of the City or the District, characterizing the event as intended to provide information to residents affected by the imminent stormwater management project. In his reply, ██████████ explained that residents and some members of the Harvey City Council did not know what information was included in the ordinance the Council previously passed authorizing the project, and that members of the Council were prohibited from sharing certain information with the public. Due to this lack of information, ██████████ argued that the September 7, 2023, gathering was a meeting subject to OMA, as it was "the only time residents

⁵Letter from Christopher J. Clark, Mayor, City of Harvey, to Residents of Harvey (September 1, 2023).

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AND politicians could debate, discuss, and deliberate about the proposal to handle flooding and the possibility of forcing residents from their homes."⁶

The Office of the Attorney General has stated, "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" 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 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, but the extensive discussions of public business by members of two county boards during the presentation did trigger the 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.").

Discussion by Members of the Board

In its response to this office, the Board noted that Commissioner Yumeka Brown provided "introductory remarks regarding the MWRD's role in the Project and stormwater management in Cook County."⁷ This office's review of the recording provided by ██████████ confirmed that the remarks were limited in scope to providing the basis for MWRD staff to answer questions from members of the public, including the background on both the Board and the Council's actions leading to the project. Therefore, the remarks were merely informational rather than deliberational statements, and no other commissioner commented or weighed in right after this introduction. The Board stated that the District's Engineer and Head Assistant Attorney also made statements regarding the process underlying the project and the roles that both the Council and the Board played in approving the project.

⁶E-mail from ██████████ to Benjamin Silver, [Assistant Attorney General], [Public Access Bureau] (October 23, 2023).

⁷Letter from Susan T. Morakalis, General Counsel, Metropolitan Water Reclamation District of Greater Chicago, to Benjamin J. Silver, Assistant Attorney General, Public Access Bureau (October 18, 2023), at 4.

Although not mentioned in the Board's response, another member, the Board President, spoke about twenty minutes after Commissioner Brown made her introductory remarks. In addition to reassuring the audience that the Board and its staff were at the meeting to hear public concerns, she stated "we are totally open to your suggestions and to hear what other options are available."⁸ She also suggested that if the public or City did not want this project, it was a conversation that the Board could have. Although the Board argued to this office that it had already undertaken its official actions relating to the project prior to the September 7, 2023, gathering, the President's remarks could be characterized as inviting a discussion on a future course of action for the Board. However, despite the Board President's comments, there is no indication that the Board was actually considering reversing any of the official actions it had previously taken with respect to the project, that an intent of the September 7, 2023, gathering was for the Board members to collect or exchange facts for a potential future course of action, or that any members of the Board responded to the Board President's remarks or otherwise engaged in an interactive discussion of other options.

Under these circumstances, this office cannot conclude that this gathering, in which only two commissioners made limited remarks, constituted a "meeting" of the Board under the definition in section 1.02 of OMA. However, this office urges the members of the Board to use caution in future gatherings of a majority of a quorum to avoid potential violations.

Discussion by Members of the Council

In its first response to this office, the Council acknowledged that three aldermen made comments, but argued that its members "did not engage in the collective inquiry of deliberations and exchange information in anticipation of possibly taking further action[,]"⁹ citing Ill. Att'y Gen. Pub. Acc. Op. No. 23-003, issued March 14, 2023, at 7. The Council described the members' participation as follows:

Corean Davis, the City Administrator, attended the September 7, 2023, gathering. Davis recalls the following City Aldermen make comments: Alderwoman Shirley Drewenski, Alderwoman Colby Chapman, Alderman Tracy Key. Each Alderman expressed their familiarity with location subject to MWRD's water basin project and their hope that MWRD's project will benefit the subject households from future flooding. Alderwoman Chapman made a comment regarding the location of

⁸Video recording of September 7, 2023, gathering provided by [REDACTED], at 31:55.

⁹Letter from Molly A. Krebs, Ancel Glink, to Benjamin J. Silver, Assistant Attorney General, Public Access Bureau (October 3, 2023), at 2.

the water basin project, and asked whether there are alternative location sites for the water basin.^[10]

In the cited binding opinion, the Attorney General concluded that a gathering in which a majority of a quorum of a library board held a "Meet and Greet" where "staff members presented questions and concerns about substantive library issues" met the definition of a meeting under OMA.¹¹ In that matter, the board contended that the gathering was an informal gathering intended to allow staff employees to get to know the trustees and to ask questions or present concerns to the board.¹² Although there was no indication that the board attempted to reach an accord on any matters, the Attorney General noted that "[t]he requirements of OMA apply not only to those gatherings in which public bodies take formal actions, but also to discussions of public business for the purpose of collecting information."¹³ Because the trustees had engaged in the collective inquiry phase of deliberations by gathering and exchanging information on issues of library business, the Attorney General determined that the board improperly held a "meeting" without following OMA's requirements.¹⁴

This office's review of the September 7, 2023, video recording found that at least four members of the Council, including the Mayor,¹⁵ spoke during the meeting, discussing the history of the project and decades of flooding in the City. Because the Council had already voted to initiate the project, much of the discussion pertained to issues within the purview of only the Metropolitan Water Reclamation District staff about how to proceed with the project. Some of this discussion also concerned whether alternative sites for the project had been explored. Additionally, several comments from members referenced the continuing concerns of residents throughout the City and the need for additional future projects. The members also briefly interacted with each other at times, including the Mayor asking a member for confirmation regarding the history of the project.

¹⁰Letter from Molly A. Krebs, Ancel Glink, to Benjamin J. Silver, Assistant Attorney General, Public Access Bureau (October 16, 2023), at 1.

¹¹Ill. Att'y Gen. Pub. Acc. Op. No. 23-003, issued March 14, 2023, at 6-7.

¹²Ill. Att'y Gen. Pub. Acc. Op. No. 23-003, at 4.

¹³Ill. Att'y Gen. Pub. Acc. Op. No. 23-003, issued March 14, 2023, at 7.

¹⁴Ill. Att'y Gen. Pub. Acc. Op. No. 23-003, at 6-7.

¹⁵Section 3.1-40-5 of the Illinois Municipal Code (65 ILCS 5/3.1-40-5 (West 2022)) stipulates that "[t]he city council shall consist of the mayor and alderpersons."


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Although the Council had already approved the stormwater project and the substantive work on the project was now in the hands of the District, the acquisition of properties and construction of a retention basin within the City under an agreement entered into by the Council still pertained to the public business of the Council. While the additional discussion of prospective projects did not implicate the immediate business of the Council, the definition of a meeting under OMA does not include merely immediate business. Rather, the requirements of OMA extend to "discussions of public business for the purpose of collecting information."¹⁶ In contrast to the two Board commissioners' limited remarks, the Mayor and alderpersons held an interactive discussion in which the members commented on various project issues, questioned the exploration of alternative sites, and contemplated future projects. When a public body engages in discussion to collect information concerning a current or even far distant project that is within its authority, it has engaged in the collective inquiry phase of deliberations regarding public business. Therefore, this office concludes that the Council violated OMA by holding a meeting on September 7, 2023, without following the procedural safeguards and requirements of OMA.

In accordance with the conclusions set forth above, this office requests that the Council, to the best of its ability, create and approve minutes for the meeting and make them available for public inspection. Because the Council did not take any action at this meeting, no further remedial action is required. The Council should be mindful of the potential for gatherings of a majority of a quorum its members to constitute a meeting even if the gathering is not for the purpose of taking final action.

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 benjamin.silver@ilag.gov or (773) 590-7878.

Very truly yours,


BENJAMIN J. SILVER
Assistant Attorney General
Public Access Bureau

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¹⁶See Ill. Att’y Gen. Pub. Acc. Op. No. 23-003, issued March 14, 2023, at 7.

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cc: *Via electronic mail*
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