



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

April 29, 2019

*Via electronic mail*

Ms. Emily Coleman, Reporter  
*Lake County News-Sun*  
Chicago Tribune Media Group  
emcoleman@tribpub.com

*Via electronic mail*

Mr. Thomas A. Morris, Jr.  
Waukegan Public Schools  
Lincoln Center for Educational Services  
1201 North Sheridan Road  
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tmorris@wps60.org

RE: OMA Request for Review – 2019 PAC 57245

Dear Ms. Coleman and Mr. Morris:

This determination 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 explained below, the Public Access Bureau concludes that the Waukegan Community Unit School District No. 60 (District) Board of Education (Board) violated OMA during its March 4, 2019, meeting by discussing a specific matter in closed session that was outside the scope of the exceptions, to the general requirement that public bodies conduct business openly, that the Board relied on to close the meeting.

### BACKGROUND

On March 13, 2019, this office received Ms. Emily Coleman's Request for Review, submitted on behalf of the *Lake County News-Sun*, alleging that at its March 4, 2019, closed session meeting, the Board violated OMA by improperly discussing matters related to the District's actions in response to one of its employees being arrested. To support her allegation, Ms. Coleman referenced comments by Board members during the open session portion of the meeting that she believed indicated that improper discussion had taken place in the closed

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session portion of the meeting. On March 18, 2019, this office sent a copy of the Request for Review to the Board and requested that it provide a written response to Ms. Coleman's allegation. This office requested copies of the meeting agenda, open and closed session minutes, and the verbatim recording of the closed session discussion. On March 26, 2019, this office received the requested materials and the Board's answer, which was asserted to be confidential. The Board also provided this office with an analysis of the closed session discussion, portions of which were asserted to be confidential. On March 27, 2019, this office sent Ms. Coleman a non-confidential version of the analysis the Board provided to this office. On March 28, 2019, this office received Ms. Coleman's reply.

### 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 (5th Dist. 1989).

### Closed Session Discussion

Section 2(a) of OMA (5 ILCS 120/2(a) (West 2017 Supp.), as amended by Public Act 100-646, effective July 31, 2018) provides that all meetings of a public body shall be open to the public unless the subject of the meeting falls within one of the exceptions set out in section 2(c) of OMA (5 ILCS 120/2(c) (West 2017 Supp.), as amended by Public Act 100-646, effective July 31, 2018). The section 2(c) exceptions are to be "strictly construed, extending only to subjects clearly within their scope." 5 ILCS 120/2(b) (West 2017 Supp.), as amended by Public Act 100-646, effective July 31, 2018; *see also Henry v. Anderson*, 356 Ill. App. 3d 952, 996-97 (4th Dist. 2005) (strictly construing section 2(c)(1) of OMA (5 ILCS 120/2(c)(1) (West 2002)).

The draft minutes provided by the Board of the open portion of its March 4, 2019, meeting indicate that the Board voted to enter closed session citing, among other sections, section 2(c)(1) of OMA (5 ILCS 120/2(c)(1) (West 2017 Supp.), as amended by Public Act 100-646, effective July 31, 2018). That provision permits a public body to discuss in closed session "[t]he appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body." In construing section 2(c)(1) of OMA, the Attorney General has concluded that "the General Assembly did not intend to permit public bodies to hold general discussions concerning categories of employees in closed session pursuant to section 2(c)(1)." Ill. Att'y Gen. Pub. Acc. Op. No. 16-013, issued December 23, 2016, at 4. Rather, "section 2(c)(1) of OMA 'is intended to permit public bodies to candidly discuss the relative merits of individual employees, or the conduct of individual employees.'" Ill. Att'y Gen. Pub. Acc. Op. No. 16-013, at 5 (quoting Ill. Att'y Gen. Pub. Acc. Op. No. 12-011,

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issued July 11, 2012, at 3). The Public Access Bureau has previously determined that "[t]he use of the term 'specific employees' in section 2(c)(1) significantly limits the scope of the exception" to "the hiring merits, performance, conduct or terms of employment of individual employees." Ill. Att'y Gen. PAC Req. Rev. Ltr. 12658, issued July 7, 2011, at 4.

The Board stated, in the non-confidential portion of its analysis of the closed session discussion, that its discussion concerned the performance of a particular employee who was charged with sexual abuse of a minor and "the performance of specific individuals in managing communications with the Board of Education related to the 'arrest' and criminal charges allegedly filed against [that employee] sometime after he left Lincoln Center \* \* \* on Tuesday afternoon, February 19, 2019, in the company of two Chicago police officers."<sup>1</sup> The Board's analysis described the discussions as "critiques by certain Board members about the job performance of specific individuals (in relationship to [the arrested individual])."<sup>2</sup> In her reply, Ms. Coleman disputes that the term "performance" for purposes of section 2(c)(1) should be broadly construed to encompass closed session discussions in which a public body reviews employees' policy decisions.

Based on this office's review of the verbatim recording of the March 4, 2019, meeting, most of the Board's discussion concerned the performance of the employee who was charged and how other specific employees of the District exercised judgment in performing their duties after the employee left the District office with police. Questions were posed to employees and related discussions ensued which primarily evaluated specific employees' conduct. We agree with the Board's characterization of the discussions as critiques of job performance—discussions evaluating specific employees' exercise of judgment directly concerns those employees' performance. At no time, with the exception of a single comment at the 12:40 mark that is addressed below, did the Board discuss or otherwise assess District policies. Thus, the portions of the Board's closed session discussion that critiqued the performance of District employees were authorized by the section 2(c)(1) exception.

The Board, however, did not entirely limit its closed session discussion to personnel matters encompassed by section 2(c)(1) of OMA. In one instance, as acknowledged by the Board, at the 12:40 mark of the verbatim recording of the first closed session an individual present in the closed session asked whether the Board should consider implementing a policy change. Before deliberations could begin on that topic, two individuals stated that discussion of that question was not a proper topic for closed session.

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<sup>1</sup>Analysis of Closed Session Discussion, Redacted Version for Release to Requester, from Thomas A. Morris, Jr., General Counsel, Waukegan Community Unit School District No. 60 (undated), at 1.

<sup>2</sup>Analysis of Closed Session Discussion, Redacted Version for Release to Requester, from Thomas A. Morris, Jr., General Counsel, Waukegan Community Unit School District No. 60 (undated), at 2.

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More significantly, at various points between the 32:00 and 38:10 marks of the verbatim recording, the Board discussed in detail the conduct and performance of particular Board members. The conduct and performance of specific Board members is not within the scope of section 2(c)(1) of OMA. Ill. Att'y Gen. Pub. Acc. Op. No. 17-013, issued November 21, 2017, at 4 (concluding that trustees of a village hold public office and are not employees of the village). Although section 2(c)(3) of OMA (5 ILCS 120/2(c)(3) (West 2017 Supp.), as amended by Public Act 100-646, effective July 31, 2018) authorizes a public body to discuss in closed session matters relating to the performance of an occupant of public office, that discussion is permitted only "when the public body is given power to remove the occupant under law or ordinance." Article 10 of the School Code (105 ILCS 5/10-1 *et seq.* (West 2016)), which lists the powers of school boards, does not grant a school board the power to remove a school board member. Even if the Board did have such authority, it did not cite the section 2(c)(3) exception as a basis for entering closed session. Accordingly, this office concludes that the portions of the Board's closed session discussion concerning the conduct and performance of Board members and the suggested policy change were not authorized by the section 2(c)(1) exception that the Board relied upon to close the meeting. To remedy this violation, this office requests that the Board publicly release those portions of the closed session verbatim recording

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 (217) 782-9054, [mhartman@atg.state.il.us](mailto:mhartman@atg.state.il.us), or the Springfield address on the first page of this letter:

Very truly yours,



MARY HARTMAN  
Assistant Attorney General  
Public Access Bureau

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