

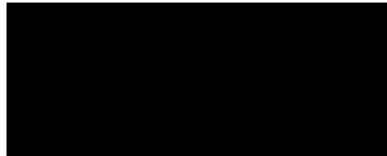


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

November 18, 2022

Via electronic mail



Via electronic mail

Mr. Colin Barry
Attorney
City of Oglesby
110 East Walnut Street
Oglesby, Illinois 61348
Colin.barry@akmsb.com

RE: OMA Request for Review – 2020 PAC 63411

Dear [REDACTED] and Mr. Barry:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2020)). For the reasons explained below, the Public Access Bureau concludes that while the City Council of the City of Oglesby (City Council) discussed certain authorized matters concerning specific employees in closed session on August 5, 2019, the City Council also improperly discussed various unauthorized budgetary matters.

On June 15, 2020, [REDACTED] submitted a Request for Review to the Public Access Bureau alleging that the City Council violated OMA during its August 5, 2019, meeting by improperly discussing various matters in closed session, such as water rates, the annual tax levy, and interfund transfers. He stated that he discovered the alleged violation following the City Council's disclosure of the closed session meeting minutes on May 4, 2020.¹

¹A person exercising reasonable diligence could not have discovered facts concerning the alleged violation within 60 days of the August 5, 2019, meeting because the public was not privy to the closed session, and [REDACTED] submitted his Request for Review within 60 days of the public disclosure of the closed session minutes. Therefore, his Request for Review was timely. *See* 5 ILCS 120/3.5(a) (West 2020).

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On August 16, 2022, this office forwarded a copy of the Request for Review to the City Council and asked it to provide copies of the notice, agenda, and closed session minutes, together with a written answer to ██████████ allegation. On August 5, 2022, this office received those materials. On that same date, this office forwarded a copy of the City Council's response to ██████████ and notified him of his opportunity to reply. He did not do so. The City Council subsequently provided this office with a copy of the closed session verbatim recording from its August 5, 2019, meeting for this office's confidential review on November 17, 2022.

DETERMINATION

The intent of OMA is "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2020). Accordingly, section 2(a) of OMA² provides that all meetings of a public body must be open to the public unless the discussion falls within the scope of one of the exceptions set out in section 2(c) of OMA.³ The section 2(c) exceptions are to be "strictly construed, extending only to subjects clearly within their scope."⁴ See also *Henry v. Anderson*, 356 Ill. App. 3d 952, 996-97 (4th Dist. 2005) (strictly construing OMA section 2(c)(1)).

In its response to this office, the City Council argued that the entirety of the its August 5, 2019, closed session was authorized by section 2(c)(1) of OMA.⁵ Section 2(c)(1) of OMA permits a public body to hold a closed meetings to consider "[t]he appointment, employment, compensation, discipline, performance, or dismissal of specific employees, specific individuals who serve as independent contractors in a park, recreational, or educational setting, or specific volunteers of the public body or legal counsel for the public body[.]" In construing this exception, 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, issued July 11, 2012, at 3). In addition, 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

² 5 ILCS 120/2(a) (West 2021 Supp.), as amended by Public Act 102-813, effective May 13, 2022.

³ 5 ILCS 120/2(c) (West 2021 Supp.), as amended by Public Act 102-813, effective May 13, 2022.

⁴ 5 ILCS 120/2(b) (West 2021 Supp.), as amended by Public Act 102-813, effective May 13, 2022.

⁵ 5 ILCS 120/2(c)(1) (West 2021 Supp.), as amended by Public Act 102-813, effective May 13, 2022.


employees." Ill. Att'y Gen. PAC Req. Rev. Ltr. 12658, issued July 7, 2011, at 4. Although budgetary considerations may impact the employment and compensation of certain personnel, closed session budgetary discussions that do not center on the merits or conduct of specific employees or prospective employees are not authorized by section 2(c)(1). Ill. Att'y Gen. Pub. Acc. Op. No. 18-012, issued October 2, 2018, at 4.

The City Council contended that its closed session discussion was proper because:

The discussion at the August 5, 2019 closed session involved the pay raise of a specific employee, the pay raise of a group of employees, namely the electric department linemen, the hiring and pay for two specific, then unfilled positions of Economic Director and Event Planner, as well as discussion of whether the city and its departments would be able to pay for such new employees and raises * * * . While it is true that the discussion tangentially wandered into cost of certain capital outlays, such as a sound system and the potential need for a new water plant, those came up in the context of how the City would be able to afford the pay of new employees and the contemplated raises to current employees. * * * The discussion of an increase in water rates, as well as the potential fines that could be issued, takes place in the context of the Council's discussion on how to raise revenues in the water fund to pay for the contemplated employee salary and raises. * * * It is the City's position that not only is such a discussion wholly appropriate when considering hiring new employees or giving current employees raises, it also would be irresponsible to consider those issues in a vacuum without also considering the financial impact that necessarily would follow.^[6]

This office's review of the closed session verbatim recording confirmed that the City Council discussed certain matters that fall within the scope of section 2(c)(1) because they concern specific employees or job candidates, such as a specific employee's compensation and the relative merits of named candidates for employment with the City. ██████████ acknowledged that such matters concerning specific employees are legitimate closed session discussion topics under section 2(c)(1). In contrast, the structural employment matters the City Council discussed, such as the creation of two new positions, fell outside the scope of section 2(c)(1), as the exception applies only when the subject is specific people. Moreover, the City Council's discussion of budgetary matters was clearly improper under section 2(c)(1), regardless

⁶Letter from City of Oglesby, Illinois, by Colin P. Barry, One of Its Attorneys, to Jane Sternecky, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (August 25, 2022), at 1-2.



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of the extent to which fiscal considerations limited the City's ability to afford certain salaries and raises. The City Council's discussion of budgetary matters, such as water rates, was not a brief aside to its discussion of employee compensation; the City discussed potentially raising revenues at considerable length with little to no mention of specific employees or job candidates much of the time. While, as the City Council contends, it generally may be irresponsible for a public body to raise expenditures without regard to revenues, it does not follow that a public body may deliberate about revenue-raising options in closed session under section 2(c)(1). Rather, the budgetary impacts of employee raises or new hires must be discussed in open session. The subjects are not so intertwined that they could not have been discussed separately. The City Council could have discussed possible raises for specific employees in closed session, and then discussed in open session how to generate the necessary revenue to fund the raises before taking final action on the raises. Because the City Council did not confine its August 5, 2019, closed session discussion to the relative merits of specific employees or job candidates, the City Council discussed unauthorized matters behind closed doors on that date.

To remedy this violation, this office asks the City Council to vote to publicly disclose most portions of its August 5, 2019, closed session verbatim recording, subject to the permissible redaction of the limited portions concerning specific individual employees and job candidates.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. Please contact me at joshua.jones@ilag.gov if you have any questions.

Very truly yours,



JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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