

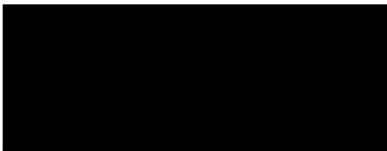


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

May 12, 2022

Via electronic mail



Via electronic mail

The Honorable Katie Mulcrone
President, Board of Education
Brookfield LaGrange Park School District 95
3724 Prairie Avenue
Brookfield, Illinois 60513
kmulcrone@district95.org

RE: OMA Request for Review – 2022 PAC 69573

Dear [REDACTED] and Ms. Mulcrone:

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 that follow, the Public Access Bureau concludes that the Board of Education (Board) of Brookfield LaGrange Park School District 95 (School District) did not hold an improper closed session discussion at its December 9, 2021, meeting.

BACKGROUND

On January 20, 2022, [REDACTED] submitted a Request for Review to the Public Access Bureau alleging that the Board violated OMA at its December 9, 2021, meeting by discussing a topic in closed session that did not fall within one of OMA's exceptions to the general requirement that public bodies conduct meetings openly. In particular, [REDACTED] asserted that the Board moved to close the meeting "to discuss 'appointment, employment, compensation, discipline, performance or dismissal of specific employees of the District[,]'" but

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that the Board did not limit its discussion to that subject.¹ She stated that during the meeting's open session, one of the Board members "can be heard stating 'like I mentioned in closed session' before proceeding to discuss equipment that was purchased by the Village of Brookfield for purposes of live streaming their own monthly Board meetings."²

On January 31, 2022, this office forwarded a copy of the Request for Review to the Board and asked it to provide this office with copies of its December 9, 2021, meeting agenda, open and closed session minutes, and closed session verbatim recording for this office's confidential review, together with a written response to [REDACTED] OMA allegations. On February 9, 2022, and February 10, 2022, this office received the requested materials, including a complete response for this office's confidential review and a redacted version for this office to forward to [REDACTED].³ On February 16, 2022, this office forwarded a copy of the Board's response to [REDACTED]; she replied on February 23, 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). Section 2(a) of OMA (5 ILCS 120/2(a) (West 2020)) provides that all meetings of a public body shall be open to the public unless the subject of discussion falls within one of the exceptions set out in section 2(c) of OMA (5 ILCS 120/2(c) (West 2020)), and the meeting is closed in accordance with section 2a of OMA (5 ILCS 120/2a (West 2020)). The section 2(c) exceptions are to be "strictly construed, extending only to subjects clearly within their scope." 5 ILCS 120/2(b) (West 2020).

Section 2(c)(1) of OMA⁴ permits a public body to hold a closed session to discuss, in pertinent part:

The appointment, employment, compensation, discipline, performance, or dismissal of specific employees, specific individuals who serve as independent contractors in a park,

¹Letter from [REDACTED] to Sarah Pratt, Public Access Counselor, Public Access Bureau (January 20, 2022).

²Letter from [REDACTED] to Sarah Pratt, Public Access Counselor, Public Access Bureau (January 20, 2022).

³See 5 ILCS 120/3.5(c) (West 2020) ("The Public Access Counselor shall forward a copy of the answer or redacted answer, if furnished, to the person submitting the request for review.").

⁴5 ILCS 120/2(c)(1) (West 2020), as amended by Public Act 102-558, effective August 20, 2021; 102-237, effective January 1, 2022.

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recreational, or educational setting, or specific volunteers of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee, a specific individual who serves as an independent contractor in a park, recreational, or educational setting, or a volunteer of the public body or against legal counsel for the public body to determine its validity.

The "purpose of the [2(c)(1)] exception is to protect the identity and reputation of a person[.]" 1974 Ill. Att'y Gen. Op. No. S-726, issued March 22, 1974, at 128. The Attorney General has previously explained in binding opinions that "[t]he use of the phrase 'specific employees of the public body' significantly limits the scope of this exception. Based on this language, the exception 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. 15-005, issued August 4, 2015, at 6 (quoting Ill. Att'y Gen. Pub. Acc. Op. No. 12-011, issued July 11, 2012, at 3).

In its redacted response to this office, the Board denied that it had discussed in closed session the merits of purchasing equipment to livestream its meetings. It acknowledged that the potential equipment purchase was mentioned in closed session, but it asserted that the purchase related to its discussion of a specific School District employee, and that the Board member who referenced the equipment purchase did not ask the other members to deliberate on that topic. The Board asserted that the same member further alluded to having "an open session discussion later about whether it would be a good idea to make such a purchase."⁵ During the closed session discussion, the Board contended that "Superintendent Mark Kuziewski addressed several matters relating to individual employees[.]" and that he did not discuss the issue of "employment or compensation of a whole category of employees or some undetermined employee."⁶ The Board argued that its members limited their deliberations and comments to Dr. Kuziewski to those specific employees. The Board's confidential submission to this office included additional details regarding the context in which the equipment purchase was mentioned.

In reply to that answer, [REDACTED] emphasized that the Board had confirmed that the topic of an equipment purchase came up in closed session. She contended that "[a]ny discussion of equipment purchased by the Village or whether live-streaming should be resumed

⁵Letter from John M. Izzo, Petrarca, Gleason, Boyle & Izzo, to Teresa Lim, Assistant Attorney General, Public Access Bureau (February 9, 2022), at 2.

⁶Letter from John M. Izzo, Petrarca, Gleason, Boyle & Izzo, to Teresa Lim, Assistant Attorney General, Public Access Bureau (February 9, 2022), at 1-2.

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is not an allowable exception for discussion in closed session under Section 2(c) of the OMA."⁷ She further argued that "a discussion of potentially hiring some unknown independent contractor, is an attempt to muddy the waters."⁸ Additionally, [REDACTED] asserted that the Board violated its own Board policy concerning out-of-order comments.⁹


Based on this office's review of the verbatim closed session recording and the Board's complete response, the Board discussed the employment, performance, or compensation of a few School District employees. This office's review confirmed that Dr. Kuziewski and Board members discussed the topic of an equipment purchase in connection with a specific individual's employment; the discussion did not concern whether to purchase equipment. Another brief topic of discussion toward the end of the closed session also arose in connection with and was relevant to considering that specific individual's employment even though it did not directly focus on the individual. Because these portions of the discussion provided context that was needed to fully consider the specific individual's employment, performance or compensation, they did not exceed the scope of section 2(c)(1). *Galena Gazette Publications, Inc. v. County of Jo Daviess*, 375 Ill. App. 3d 338, 344 (2d Dist. 2007) (discussion of the racking of promotional brochures at property that was the subject of a proposed subleasing agreement was permissible under the exception that permits public bodies to discuss "[t]he purchase or lease of real property for the use of the public body[]"¹⁰ in closed session "because it was pertinent to the terms, effects, or desirability of the proposed subleasing arrangement. The participants did not discuss the racking of promotional literature separately from their consideration of the proposed subleasing * * *. To abstract any such discussions from the larger context would ignore the participants' purposes in raising the issue[.]"). Accordingly, this office concludes that the Board's closed session discussion did not violate OMA.

⁷Letter from [REDACTED] to Sarah Pratt, Public Access Counselor, Public Access Bureau, Illinois Attorney General's Office (February 23, 2022), at 3.

⁸Letter from [REDACTED] to Sarah Pratt, Public Access Counselor, Public Access Bureau, Illinois Attorney General's Office (February 23, 2022), at 3.


⁹The Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2020)). *See* 15 ILCS 205/7(c)(3) (West 2020). Accordingly, this office does not have the authority to take further action on the allegation that the Board violated its own policy.

¹⁰5 ILCS 120/2(c-5) (West 2004).


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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,


TERESA LIM
Assistant Attorney General
Public Access Bureau

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cc: *Via electronic mail*
Mr. John Izzo
Attorney for Brookfield LaGrange Park School District 95
Petarca, Gleason, Boyle & Izzo, LLC
19730 Governors Highway – Suite 10
Flossmoor, Illinois 60422
jizzo@petrarcagleason.com