



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

October 3, 2023

Via electronic mail



Via electronic mail

Mr. Thomas Szromba
Chair, Cook County Board of Ethics
69 West Washington Street, Suite 1130
Chicago, Illinois 60602
cookcounty.ethics@cookcountyil.gov

RE: OMA Requests for Review – 2023 PAC 75164; 2023 PAC 75165

Dear [REDACTED] and Mr. Szromba:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2022)).¹ For the reasons explained below, the Public Access Bureau concludes that the Cook County Board of Ethics (Board) violated OMA at its March 10, 2022, and June 2, 2022, meetings.

BACKGROUND

On January 23, 2023, this office received the above-referenced Requests for Review submitted by [REDACTED]. The first Request for Review² alleged that, based on his review of the minutes of the closed session portion of the Board's March 10, 2022, meeting, the Board improperly discussed the status of an audit and procedural rule changes in closed

¹This office has consolidated these two Requests for Review in this determination because they concern similar allegations and legal issues.

²2023 PAC 75164.

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session. The second Request for Review³ alleged that, based on his review of the minutes of the closed session portion of the Board's June 2, 2022, meeting, the Board improperly discussed the enforcement of the Board's annual vendor familial relationship disclosure policy in closed session.

On February 1, 2023, this office sent copies of the Requests for Review to the Board and requested that it provide copies of the March 10, 2022, and June 2, 2022, agendas, open and closed session minutes, open session recordings, and the verbatim recordings of the relevant closed sessions for this office's confidential review. This office also requested that the Board provide a written response identifying the specific exception(s) in section 2(c)⁴ of OMA that the Board publicly cited as its basis for entering closed session. This office requested that the Board explain how that exception, or any other exception listed in section 2(c) of OMA, applied to the Board's closed session discussions. The Board provided the requested materials and on March 3, 2023, this office forwarded to ██████████ the Board's written answers. He did not submit a reply in either matter.

DETERMINATION

OMA is intended "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2022). Accordingly, section 2(a) of OMA⁵ 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. The section 2(c) exceptions are to be "strictly construed, extending only to subjects clearly within their scope."⁶ See also *Henry v. Anderson*, 356 Ill. App. 3d 952, 996-97 (4th Dist. 2005) (strictly construing section 2(c)(1) of OMA).

March 10, 2022, Meeting

In its answer to this office, the Board stated that it entered closed session to discuss the status of an audit pursuant to section 2(c)(29) of OMA⁷ providing, "[t]his [closed

³2023 PAC 75165.

⁴5 ILCS 120/2(c) (West 2022).

⁵5 ILCS 120/2(a) (West 2022).

⁶5 ILCS 120/2(b) (West 2022).

⁷5 ILCS 120/2(c)(29) (West 2022).

session] included a discussion about two specific contributions, investigative techniques, and whether these two specific contributions would be found in violation."⁸

Section 2(c)(29) of OMA permits a public body to adjourn to closed session to consider "[m]eetings between internal or external auditors and governmental audit committees, finance committees, and their equivalents, **when the discussion involves internal control weaknesses, identification of potential fraud risk areas, known or suspected frauds, and fraud interviews** conducted in accordance with generally accepted auditing standards of the United States of America." (Emphasis added.) The plain language of this exception limits its applicability to instances in which the public body meets with an auditor, or an audit or finance committee, to consider the specifically enumerated topics. The Board did not state, and it is not apparent to this office, that the Board's March 10, 2022, closed session discussion included an auditor or relevant committee nor that the discussion pertained to any of the listed subjects. Accordingly, this office concludes that the Board's closed session discussion did not fall within the scope of section 2(c)(29).

The Board did not identify a closed session exception that permitted it to enter closed session to discuss the proposed procedural rule changes, stating only that it entered closed session pursuant to "deliberative process, attorney client privilege."⁹ No provision of OMA, however, permits a public body to consider matters in closed session merely because the subject matter to be considered is a part of that public body's deliberative process. Such an interpretation would run counter to the clear intent of OMA "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). Further, while section 2(c)(11) of OMA¹⁰ permits a public body to close a meeting to discuss pending or probable litigation, there is not an OMA exception that authorizes a closed session discussion based only on a general claim of attorney-client privilege. The Board's discussion of procedural rule changes did not involve pending or probable litigation.

Accordingly, this office concludes that the Board improperly discussed its audit and the procedural rule changes in closed session. The Board, however, has already remedied these violations by making publicly available those referenced portions of the closed session minutes and closed session verbatim recording. Therefore, no further remedy is necessary at this

⁸Letter from [Cook County Board of Ethics] to Shannon Barnaby, [Senior Assistant Attorney General], [Public Access Bureau] (undated).

⁹Letter from [Cook County Board of Ethics] to Shannon Barnaby, [Senior Assistant Attorney General], [Public Access Bureau] (undated).

¹⁰5 ILCS 120/2(c)(11) (West 2022).

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time. Still, this office cautions the Board to strictly construe the scope of each OMA exception in the future when determining which, if any, exception applies to a potential closed session discussion.

June 2, 2022, Meeting

In its response to this office, the Board stated that it entered closed session to discuss of the enforcement of the Board's annual vendor familial relationship disclosure pursuant to sections 2(c)(4) and 2(c)(15) of OMA¹¹ stating, "[s]taff was seeking permission to forego enforcement due to investigative issues and providing factual evidence related to attorney-client communications and preliminary discussions regarding policies and actions."¹² Section 2-582(b) of the Cook County Code of Ordinances (Code), provides that "[n]o employee, official, or board or commission appointee shall directly supervise or participate in the evaluation of the work or job performance of any relative of such employee, official or board or commission appointee" except in certain enumerated circumstances.¹³ Section 2-582(e) of the Code requires any person doing business with Cook County to disclose to the Board the existence of any relevant familial relationship; section 2-582(f) of the Code requires disclosure by January 2 of each calendar year or within 30 days of the execution of a contract or lease.¹⁴

Section 2(c)(4) permits a public body to hold closed meetings to consider "**evidence or testimony** presented in open hearing, or in closed hearing where specifically authorized by law, to a quasi-adjudicative body * * * provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning." (Emphasis added.) The Board appears to argue that this provision permits it to consider in closed session when to start enforcing the disclosure requirements in section 2-582(e) of the Code. The plain language of the exception, however, limits its applicability to instances in which a quasi-adjudicative public body¹⁵ enters into closed session to consider evidence or

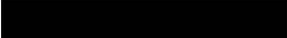
¹¹5 ILCS 120/2(c)(4), (c)(15) (West 2022).

¹²Letter from [Cook County Board of Ethics] to Shannon Barnaby, [Senior Assistant Attorney General], [Public Access Bureau] (undated).

¹³Cook County Code of Ordinances, Chapter 2, Section 2-582(b), https://library.municode.com/il/cook_county/codes/code_of_ordinances?nodeId=PTIGEOR_CH2AD_ARTVIIET.

¹⁴Cook County Code of Ordinances, Chapter 2, Sections 2-582(e), (f), https://library.municode.com/il/cook_county/codes/code_of_ordinances?nodeId=PTIGEOR_CH2AD_ARTVIIET.

¹⁵Section 2(c) of OMA defines a "quasi-adjudicative body" as "an administrative body charged by law or ordinance with the responsibility to conduct hearings, receive evidence or testimony and make determinations based thereon."


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testimony that has been presented during a hearing. This office has listened to the closed session recording of the June 2, 2022, meeting. The Board did not discuss evidence or testimony presented at any hearing about any alleged violations of the section 2-582(e) disclosure requirements; the discussion was about a general enforcement policy decision rather than about any specific alleged violation of the Code. Accordingly, this office concludes that the Board's closed session discussion did not fall within the scope of section 2(c)(4) of OMA.

Section 2(c)(15) of OMA permits public bodies to hold closed meetings to consider "[p]rofessional ethics or performance when considered by an advisory body appointed to advise a licensing or regulatory agency on matters germane to the advisory body's field of competence." The Public Access Bureau has previously determined that the Board improperly relied on section 2(c)(15) of OMA to conduct a closed session discussion because this provision is limited to professional advisory groups appointed to assist governmental agencies, such as the Illinois Department of Financial and Professional Regulation, in carrying out its licensing responsibilities, and because there is no indication that the Board fits within that description. Ill. Att'y Gen. PAC Req. Rev. Ltr. 74933, issued May 31, 2023, at 2-3. This office adopts the same conclusion expressed in that determination for the Board's June 2, 2022, meeting.

Additionally, it is not apparent to this office that the discussion fell within any other OMA exception. Accordingly, this office concludes that the Board improperly discussed whether to delay the enforcement of the section 2-582(e) disclosure requirements in closed session. The Board has already disclosed a copy of the closed session minutes in which it made public the content of these portions of the closed session; this office requests that the Board also vote to disclose and make publicly available 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 matter is closed. If you have any questions, my e-mail address is Shannon.Barnaby@ilag.gov.

Very truly yours,


SHANNON BARNABY
Senior Assistant Attorney General
Public Access Bureau

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cc: *Via electronic mail*
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