



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 18, 2018

Via electronic mail
Ms. Julie L. Ajster
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Via electronic mail
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RE: OMA Request for Review – 2018 PAC 51987

Dear Ms. Ajster and Ms. Piscia:

This determination letter 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 that follow, the Public Access Bureau concludes that the City of Peru (City) City Council's Committee of the Whole (Committee) held unauthorized closed session discussions during its November 13, 2017, December 11, 2017, January 8, 2018, and January 22, 2018 meetings. The Public Access Bureau further concludes that the closed session minutes of those meetings do not contain sufficient information about the matters discussed.

On March 5, 2018, Ms. Ajster, of Ajster Law Office, submitted the above-captioned Request for Review alleging that during closed sessions on November 13, 2017, December 11, 2017, January 8, 2018, and January 22, 2018, the Committee improperly discussed the consolidation of, or sharing of services among, several police departments. On March 8, 2018, this office forwarded a copy of the Request for Review to the Committee and asked it to

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provide this office with copies of the agendas, open and closed session minutes (in draft form if necessary), and verbatim recordings of the closed sessions of those meetings for this office's review, together with a written response to Ms. Ajster's allegations.

On March 20, 2018, the Committee provided this office with those materials and a written response in which it denied Ms. Ajster's allegations concerning the December 11, 2017, and January 22, 2018, meetings. However, the Committee stated that it would be reviewing the November 13, 2017, and January 8, 2018, closed session materials for public release shortly, and would send Ms. Ajster copies as well. On March 21, 2018, this office sent a copy of the Committee's response to Ms. Ajster; she did not reply. On April 4, 2018, the Committee confirmed to this office that it provided Ms. Ajster with copies of the November 13, 2017, and January 8, 2018, closed session verbatim recordings. Ms. Ajster confirmed her receipt during a telephone conversation with this office on April 13, 2018.

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 2016).

Reasonable Diligence

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides, in pertinent part:

A person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General ***not later 60 days after the alleged OMA violation. If facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, by a person utilizing reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation.*** The request for review must be in writing, must be signed by the requester, and must include a summary of the facts supporting the allegation. (Emphasis added.)

In her Request for Review, Ms. Ajster alleged:

On January 18, 2018, the Chiefs of Police and the Mayors of the Cities of Peru, Spring Valley, LaSalle and Oglesby held a

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press conference to announced [sic] that they were looking into the possibility of consolidation of these respective police departments and/or the sharing of services. * * * This announcement came as a complete and total surprise to myself and other members of the public * * * because all the discussions regarding this possible consolidation and/or sharing of services was conducted in secret in executive closed session meetings of the aforementioned City Councils. The first time that the general public heard of this possibility was at the press conference.¹¹

Although the Committee's November 13, 2017, and December 11, 2018, meetings were held more than 60 days before Ms. Ajster submitted her Request for Review on March 5, 2018, it appears that she could not have learned material facts concerning the alleged violations at the time that they occurred despite using reasonable diligence because the possible violations occurred during closed session and the public had no indication that the Committee was discussing potential consolidation/sharing of services. Further, she submitted her Request for Review to this office on March 5, 2018, which was within 60 days after she appears to have discovered the alleged violations on January 18, 2018. Because the Request for Review appears to have been submitted within the time limits set out in section 3.5(a) of OMA, this office has authority to review Ms. Ajster's allegations.

Closed Sessions

Section 2(a) of OMA (5 ILCS 120/2(a) (West 2016), as amended by Public Acts 100-201, effective August 18, 2017; 100-465, effective August 31, 2017) 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. The section 2(c) exceptions are to be "strictly construed, extending only to subjects clearly within their scope." 5 ILCS 120/2(b) (West 2016), as amended by Public Acts 100-201, effective August 18, 2017; 100-465, effective August 31, 2017.

The open session minutes of the Committee's November 13, 2017, meeting² indicate that the Committee went into closed session pursuant to the exception, to the general requirement that public bodies conduct public business openly, in section 2(c)(5) of OMA (5 ILCS 120/2(c)(5) (West 2016), as amended by Public Acts 100-201, effective August 18, 2017; 100-465, effective August 31, 2017). The open session minutes of the Committee's December

¹Letter from Julie L. Ajster, Ajster Law Office, to Sarah Pratt, Public Access Counselor, Illinois Attorney General (March 5, 2018).

²Peru Committee of the Whole, Meeting, November 13, 2017, Minutes 1.

11, 2017, meeting indicate that the Committee entered closed session pursuant to section 2(c)(5) as well as sections 2(c)(6) and 2(c)(23) of OMA (5 ILCS 120/2(c)(6), (c)(23) (West 2016), as amended by Public Acts 100-201, effective August 18, 2017; 100-465, effective August 31, 2017).³ The open session minutes of the Committee's January 8, 2018, meeting indicate that the Committee entered closed session pursuant to sections 2(c)(5) and 2(c)(6) of OMA.⁴ Additionally, the open session minutes of the Committee's January 22, 2018, meeting indicate that the Committee entered closed session pursuant to sections 2(c)(1) (5 ILCS 120/2(c)(1) (West 2016), as amended by Public Acts 100-201, effective August 18, 2017; 100-465, effective August 31, 2017) as well as sections 2(c)(5) and 2(c)(6).⁵

Sections 2(c)(1), 2(c)(5), 2(c)(6), and 2(c)(23) of OMA allow public bodies to enter into closed session to consider:

(1) The appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee of the public body or against legal counsel for the public body to determine its validity.

* * *

* * *

(5) The purchase or lease of real property for the use of the public body, including meetings held for the purpose of discussing whether a particular parcel should be acquired.

(6) The setting of a price for sale or lease of property owned by the public body.

* * *

(23) The operation by a municipality of a municipal utility or the operation of a municipal power agency or municipal natural gas agency when the discussion involves (i) contracts relating to

³Peru Committee of the Whole, Meeting, December 11, 2017, Minutes 1.

⁴Peru Committee of the Whole, Meeting, January 8, 2018, Minutes 1.

⁵Peru Committee of the Whole, Meeting, January 22, 2018, Minutes 1.

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the purchase, sale, or delivery of electricity or natural gas or (ii) the results or conclusions of load forecast studies.

In its response to this office, the Committee stated that it believes that the "session and recording are properly exempt and desires that the recording remain exempt" for both the December 11, 2017, and January 22, 2018 closed sessions.⁶ The Committee did not, however, explain why it believes the topics it discussed were authorized by the exceptions on which it relied to close the meetings. As noted above, the Board did not dispute the allegation that the November 13, 2017, and January 8, 2018, closed session discussions were improper, and disclosed the verbatim recordings of those closed sessions to Ms. Ajster.

Based on this office's confidential review of the closed session recordings for each of the four meetings, the Committee discussed topics outside the scope of the exceptions that the Committee relied on to close the meetings. The issue of consolidating several police departments into one, including feasibility, levels of support, and plans for soliciting public funding, is not within the scope of any OMA exception. The Committee discussed this issue at length during closed sessions at its November 13, 2017, and January 8, 2018, meetings, and also intermittently during the December 11, 2017, closed session and briefly at the end of the January 22, 2018, closed session. Because a law enforcement agency clearly is not a municipal utility,⁷ municipal power agency, or municipal natural gas agency, the section 2(c)(23) exception is inapplicable. With respect to section 2(c)(1), that 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. 16-013, issued December 23, 2016, at 5 (quoting Ill. Att'y Gen. Pub. Acc. Op. No. 12-011, issued July 11, 2012, at 3). 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, at 4. The Committee's discussions concerned the police department in general rather than individual employees of the police department and, therefore, falls outside the scope of section 2(c)(1).

Certain portions of three of the Board's closed sessions were permissible under sections 2(c)(5) and 2(c)(6), but those exceptions did not apply to the entire discussions. Although section 2(c)(5) authorized the discrete portions of the Committee's discussions at the December 11, 2017, and January 22, 2018, meetings that concerned the purchase of real estate in

⁶Letter from Stephanie Piscia, City of Peru FOIA Officer, to Marie Hollister, Assistant Attorney General, Public Access Bureau (undated).

⁷A "public utility" is defined as "[a] company that provides necessary services to the public, such as telephone lines and service, electricity, and water." Black's Law Dictionary (10th ed. 2014), available at Westlaw BLACKS.

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connection with the police cooperation issue, the section 2(c)(5) exception does not encompass the significant portion of those discussions that centered on the cooperation itself, rather than just acquiring real estate. Ill. Att'y Gen. PAC Req. Rev. Ltrs. 36399, 36401, issued June 2, 2016, at 4 ("Section 2(c)(5) is limited to discussions concerning the *purchase* of property for the use of the public body[.]" (Emphasis in original)). Lastly, the clear and unambiguous language of section 2(c)(6) of OMA, which must be strictly construed, does not allow a public body to discuss the sale or lease of public property in closed session other than to set a price. Apart from a brief portion of the January 8, 2018, closed session in which the Board directly discussed setting a price for the sale of City property, section 2(c)(6) did not authorize the remaining portions of that closed session or the other closed sessions at issue in this matter.

Accordingly, this office concludes that the Committee violated OMA by discussing unauthorized topics in closed session during its November 13, 2017, December 11, 2017, January 8, 2018, and January 22, 2018, meetings. To remedy this violation, this office asks that the Committee vote to release the relevant portions of the December 11, 2017, and January 22, 2018, closed session recordings to the public, except for the discrete portion of the Committee's discussions concerning the purchase of real estate which was authorized by section 2(c)(5). Because the Committee already has disclosed the verbatim recordings of the November 13, 2017, and January 8, 2018, closed sessions, no additional remedial action is required.

Section 2.06(a) of OMA

Section 2.06(a) of OMA (5 ILCS 120/2.06(a) (West 2016)) provides:

All public bodies shall keep written minutes of all their meetings, whether open or closed, and a verbatim record of all their closed meetings in the form of an audio or video recording. Minutes shall include, but need not be limited to:

- (1) the date, time and place of the meeting;
- (2) the members of the public body recorded as either present or absent and whether the members were physically present or present by means of video or audio conference; and
- (3) a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken.

OMA does not further address the degree of information that must be included in meeting minutes, and no Illinois reviewing court appears to have addressed the issue. The Public Access

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Bureau, on the other hand, has construed the provision and concluded that "brief, very general minutes are insufficient to satisfy the requirements of section 2.06(a) of OMA." Ill. Att'y Gen. PAC Req. Rev. Ltr. 40309, issued May 20, 2016, at 4.

Under the plain language of section 2.06(a)(3) of OMA, the Committee was required to include in the closed session minutes of its November 13, 2017, December 11, 2017, January 8, 2018, and January 22, 2018, meetings a summary of all matters proposed, deliberated, or decided during those closed sessions. Yet, the closed session minutes of all four meetings contain just a few general, vague sentences concerning the Committee's closed session discussions. The sentences are essentially the text of the closed session exceptions themselves. Minutes need not contain the level of detail of a transcript, but section 2.06(a) expressly requires a public body to keep minutes that summarize discussions of all matters proposed, deliberated, or decided. Rather than providing such a summary, the Board's December 11, 2017, and January 22, 2018, minutes merely identify the topics of its closed session discussions. Because those minutes fail to provide a sufficient summary of all matters proposed, deliberated, or decided, this office concludes that the Committee violated section 2.06(a) of OMA. To remedy this matter, this office requests that the Committee revise the closed session minutes for the four meetings in question with the proper level of detail as required by OMA.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. Please contact me at (312) 793-0865 or the Chicago address listed on the first page of this letter if you have questions. This correspondence serves to close this matter.

Very truly yours,



MARIE HOLLISTER
Assistant Attorney General
Public Access Bureau