



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 2, 2019

Via electronic mail



Via electronic mail

Mr. John Savage
President, Board of Library Trustees
Aurora Public Library
101 South River Street
Aurora, Illinois 60506
board@aurorapubliclibrary.org

RE: OMA Request for Review – 2018 PAC 55687

Dear [REDACTED] and Mr. Savage:

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 most of the closed session discussions held by the Board of Library Trustees (Board) of the Aurora Public Library (Library) on January 24, 2018, March 28, 2018, July 25, 2018, and August 29, 2018, were permitted by exceptions in OMA to the general requirement that public bodies conduct business openly. However, this office further concludes that discrete portions of the discussions were not authorized by the exceptions under which the Board entered closed session.

On November 13, 2018, [REDACTED] submitted the above-captioned Request for Review alleging that on October 16, 2018, the president of the Board participated in a press conference with the mayor of Aurora and the superintendent of West Aurora School District 129 (District) during which the Board president stated that during 2018 the Board had held closed session discussions about possibly moving the Library's West Branch. [REDACTED] alleged that OMA does not contain an exception permitting closed session discussions about the possibility

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of such a move. On November 20, 2018, this office forwarded a copy of the Request for Review to the Board and asked it to provide copies of the closed session minutes (in draft form if necessary) and verbatim recordings from the Board's closed session meetings held on March 28, 2018, July 25, 2018, and August 29, 2018, along with the records from any other meetings held in 2018 during which the Board discussed issues related to the possible relocation of the West Branch. This office also asked the Board to identify the closed session exception or exceptions that permitted those discussions, together with a written response to ██████████ allegations.

On November 30, 2018, the Board provided this office with those materials and a written response in which it acknowledged that it discussed the possible relocation of the West Branch during the closed sessions of four meetings held in 2018, but argued that each of those discussions fell within the scope of either section 2(c)(5) or 2(c)(6) of OMA (5 ILCS 120/2(c)(5), (c)(6) (West 2017 Supp.), as amended by Public Act 100-646, effective July 31, 2018). The Board furnished this office with a written response to the Request for Review, along with a redacted version of its response suitable for disclosure to ██████████. On December 4, 2018, this office sent a copy of the Board's response to ██████████; he replied on December 9, 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).

Time Limits for Requests for Review

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

¹5 ILCS 120/3.5(c) (West 2016) ("[T]he public body may also furnish the Public Access Counselor with a redacted copy of the answer excluding specific references to any matters at issue. The Public Access Counselor shall forward a copy of the answer or redacted answer, if furnished, to the person submitting the request for review.").

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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 his Request for Review, ██████████ stated that the Board had not discussed the possibility of relocating the West Branch during open session at any of its meetings held during 2018, and had denied that there were plans in place to do so. Thus, the alleged violations were not discovered until the October 16, 2018, press conference. Although each of the Board's 2018 closed session meetings during which it acknowledges discussing this issue were held more than 60 days before ██████████ submitted his Request for Review on November 13, 2018, it appears that he 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 sessions. ██████████ submitted this Request for Review to this office on November 13, 2018, which was within 60 days after the discovery of the alleged violations on October 16, 2018. Accordingly, this Request for Review was filed within the time limits set out in section 3.5(a) of OMA, and this office has authority to review ██████████ allegations.

Closed Sessions

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. 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.

The Board's response to this office explains that it held four closed session discussions "to evaluate options to possibly relocate the West Branch and to [sell] or lease the building owned by the Library which currently houses the West Branch."² Those closed session meetings occurred on January 24, 2018, March 28, 2018, July 25, 2018, and August 29, 2018. On January 24, 2018, the Board entered closed session pursuant to section 2(c)(5) of OMA (5 ILCS 120/2(c)(5) (West 2017 Supp.), as amended by Public Act 100-646, effective July 31, 2018),³ and on the other three dates, it entered closed session pursuant to sections 2(c)(5),

²Letter from John Savage, President, Board of Library Trustees, Aurora Public Library, to Leah Bartelt, Assistant Attorney General, Office of the Illinois Attorney General, Public Access Bureau (November 30, 2018), at 2.

³Board of Library Directors, Aurora (Illinois) Public Library, Meeting, January 24, 2018, Minutes

2(c)(6), and 2(c)(21) (West 2017 Supp.), as amended by Public Act 100-646, effective July 31, 2018).⁴ The Board argues that all discussions it held during those meetings relating to the potential move of the West Branch and were authorized by sections 2(c)(5) and 2(c)(6).⁵

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

- (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.

The Illinois Appellate Court addressed the scope of section 2(c)(5) of OMA in *Galena Gazette Publications Inc., v. County of Jo Daviess*, 375 Ill. App. 3d 338 (2d Dist. 2007), in which the public body held a closed session meeting held to discuss the possibility of leasing a specific property for its use. There, the plaintiff conceded that the public body could permissibly discuss the material terms of the lease in closed session, but argued that the scope of section 2(c)(5) did not extend to "peripheral matters" that were raised, such as how the public body would utilize the leased space. *Galena Gazette*, 375 Ill. App. 3d at 344. The court disagreed, finding that nothing in the language of section 2(c)(5) distinguishes "material" matters from peripheral ones. *Galena Gazette*, 375 Ill. App. 3d at 344. The court added that it would be impractical for the public body to have a meaningful discussion of the lease terms if it was precluded from discussing related details needed to put the terms in context. *Galena Gazette*, 375 Ill. App. 3d at 345. Because the public body's closed session discussion centered on considerations involving the potential lease, the court held that the discussion was proper under section 2(c)(5). *Galena Gazette*, 375 Ill. App. 3d at 346.

In contrast, the scope of section 2(c)(6) limits a public body to discussing "[t]he **setting of a price** for sale or lease" of property that it owns. (Emphasis added.) Unlike section 2(c)(5), the clear and unambiguous language of section 2(c)(6), which must be strictly construed, does not allow a public body to discuss the sale or lease of its property in closed session other

⁴Board of Library Directors, Aurora (Illinois) Public Library, Meeting, March 28, 2018, Minutes 5; Board of Library Directors, Aurora (Illinois) Public Library, Meeting, July 25, 2018, Minutes 5-6; Board of Library Directors, Aurora (Illinois) Public Library, Meeting, August 29, 2018, Minutes 5.

⁵Section 2(c)(21) of OMA permits closed session discussion of the minutes of meetings lawfully closed under OMA. At the three meetings at which it cited this exception, the Board held a short discussion that was authorized by this exception in addition to discussing the possibility of relocating the Library's West Branch.


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than to set a price. While section 2(c)(5) of OMA allows general closed session discussions concerning the purchase or lease of real property for the use of the public body, neither it, nor section 2(c)(6), authorizes general discussions regarding the sale or lease of its existing public property. *See* Ill. Att'y Gen. Pub. Acc. Op. No. 15-003, issued March 19, 2015, at 5 (Section 2(c)(6) of OMA does "not extend to the discussion of general issues concerning the disposal of publicly-owned property.").

In his reply, ██████████ noted that the minutes from the Board's January 24, 2018, closed session, which the Board recently made available to the public, fail to identify any particular property that was discussed at the meeting, and fail to show that a proposed lease or contract for purchase was presented to the Board. ██████████ further states that the Library is restricted from selling the West Branch without prior notice according to the terms of an intergovernmental agreement between the Library and the District. Therefore, he asserts, the Board cannot discuss the setting of a price for the sale or lease of the West Branch prior to deciding to terminate the intergovernmental agreement with the District, and closed session deliberation about the termination of that agreement would be outside the scope of the cited exemptions.

Based on this office's confidential review of the closed session recordings of each of the four meetings, the Board held lengthy discussions concerning the potential purchase or lease of real property for the use of the public body, including discussions as to whether specific parcels should be acquired or leased. These discussions were permissible under section 2(c)(5) of OMA. ██████████ argues that the information provided in the minutes of the Board's January 24, 2018, closed session and in response to a FOIA request he submitted indicated that the Board was not considering a specific lease or sale agreement during that meeting. However, nothing in the language of section 2(c)(5) limits a public body from discussing a potential purchase or lease of property if the public body has not presented its members with proposed terms for an agreement. Our review of the four closed session recordings indicates that a significant portion of each meeting was devoted to discussing specific parcels of property for use by the Library, including the pros and cons of different parcels, the Library's anticipated uses of those parcels, and the financial terms of the transactions under consideration.

Additionally, our confidential review of the recordings from the March, July, and August closed sessions indicates that the Board also discussed at those meetings the setting of a price for sale or lease of the building owned by the Library which currently houses the West Branch. These discussions were permissible under section 2(c)(6). Although ██████████ argues that the intergovernmental agreement between the Library and District restricts the Library's ability to sell or lease the West Branch property, the recordings of the closed session meeting do not document a deliberation over the possible termination of the intergovernmental agreement. Further, section 2(c)(6) does not require such an agreement to be terminated before a public body


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can enter closed session to discuss the setting of a price for sale or lease of property that the public body owns.


However, our review indicated that, for short portions of each of the four meetings at issue, the Board held discrete discussions concerning the property currently housing the West Branch that were not limited to the setting of a price for that property, along with some other matters related to the West Branch. We have thoroughly reviewed the arguments presented by the Board in the confidential portions of its written response to the Request for Review, and disagree that the entireties of the closed session discussions during these four meetings concerning the West Branch were authorized by either section 2(c)(5) or section 2(c)(6). Based on the timers on the copies of the recordings provided to this office, the unauthorized discussions occurred at:

- January 24, 2018, meeting: 3:16-4:32 and 6:57-8:54;
- March 28, 2018, meeting: 17:54-18:30, 20:03-22:10, 23:34-24:13, and 25:36-26:39;
- July 25, 2018, meeting: 6:03-7:31, 13:20-14:44, and 20:11-20:38;
- August 29, 2018, meeting: 16:15-17:25, 19:45-22:54, and 25:44-25:53.

Accordingly, this office concludes that the Board violated OMA by discussing certain unauthorized topics in closed session during its January 24, 2018, March 28, 2018, July 25, 2018, and August 29, 2018, meetings. To remedy these violations, this office asks that the Board vote to release to the public the limited portions of these closed session recordings as listed above. The remainder of the recordings may remain confidential unless the Board determines that the need for confidentiality no longer exists.

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) 814-6437 or the Chicago address listed on the first page of this letter if you have questions.

Very truly yours,


LEAH BARTELT
Assistant Attorney General
Public Access Bureau

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