

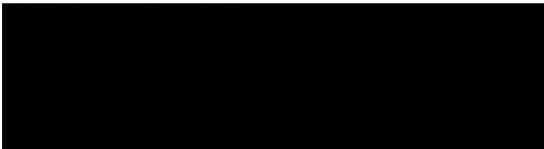


OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

June 3, 2022

*Via electronic mail*



*Via electronic mail*

The Honorable Vince Spaeth  
President  
Board of Park Commissioners  
Elmhurst Park District  
375 West First Street  
Elmhurst, Illinois 60126  
vspaeth@epd.org

RE: OMA Request for Review – 2021 PAC 69094/2021 PAC C-0034<sup>1</sup>

Dear [REDACTED] and Mr. Spaeth:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2020)).

On May 20, 2021, [REDACTED] submitted the above-captioned Request for Review alleging that during the Board's August 12, 2019, closed session meeting, it improperly discussed matters beyond the scope of section 2(c)(5) of OMA (5 ILCS 120/2(c)(5) (West 2020)), which the Board cited as the basis for entering the closed session. Specifically, [REDACTED] alleged that the Board discussed matters relating to the sale of a property owned by the District rather than the

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<sup>1</sup>Because of the breach to the Attorney General's Office's computer network, this office initially opened this Request for Review under a temporary file number. Please note the permanent file number as indicated.

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"purchase or lease of real property for the use of the District," which is the subject matter authorized by section 2(c)(5) of OMA.<sup>2</sup>

On May 26, 2021, this office forwarded a copy of the Request for Review to the Board and asked it to respond to ██████████ allegations and to provide copies of the minutes and the verbatim recording of the closed session in question. On June 7, 2021, the Board provided this office with a written response and copies of relevant meeting minutes. On June 8, 2021, this office sent a copy of the Board's response to ██████████ with an opportunity to reply; he did not reply.

## DETERMINATION

### Time Limits for Requests for Review

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2020)) 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 his Request for Review, which was postmarked on May 2, 2021, ██████████ asks that this office review the discussions held at an August 12, 2019, closed session meeting. Although this meeting was held more than 60 days before ██████████ submitted his Request for Review, because the alleged violations occurred during closed session, it does not appear that ██████████ could have learned material facts concerning the alleged violations until the District voted to release the meeting minutes from that closed session on April 12, 2021. ██████████

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<sup>2</sup>Letter from ██████████ to Sarah Pratt, Public Access Counselor, Office of the Attorney General, (May 2, 2021) at 1.

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submitted this Request for Review to this office within 60 days after the discovery of facts concerning the alleged violations, and less than two years after the alleged violations. 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 concerning the August 12, 2019, meeting.

### Closed Session Discussions

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 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 the meeting falls within one of the exceptions set out in section 2(c) of OMA.

In its response to this office, the Board's explained that at the closed session of the August 12, 2019, meeting, it discussed the District's potential purchase of real estate located at 123 East St. Charles, Road, commonly referred to as the Redeemer Lutheran Church Center (Redeemer property). The Board entered closed session pursuant to section 2(c)(5) of OMA, which permits closed session discussion of:

- (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.

In *Galena Gazette Publications Inc., v. County of Jo Daviess*, 375 Ill. App. 3d 338 (2d Dist. 2007), the Illinois Appellate Court considered 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. Specifically, the court noted that one of the topics the public body discussed was the racking of promotional brochures within the leased property, and concluded:

Even when participants discussed the racking of promotional brochures at the Old Train Depot—past, present, or future—they did so only 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

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separately from their consideration of the proposed subleasing arrangement \* \* \*. To abstract any such discussions from the larger context would ignore the participants' purposes in raising the issue of the display of promotional materials. *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, and because its consideration of the proposed lease was affected by related details that the Board also discussed, the court held that the entire closed session discussion was proper under section 2(c)(5). *Galena Gazette*, 375 Ill. App. 3d at 346. *See also* Ill. Att'y Gen. PAC Req. Rev. Ltr. 24866, issued February 10, 2020, at 3 (determining that the public body's entire discussion fell within the scope of section 2(c)(5) of OMA, because any "peripheral matters" discussed "were necessary considerations in the context of deliberating on the potential property acquisition"); Ill. Att'y Gen. PAC Req. Rev. Ltr. 35947, issued August 28, 2015, at 3 (finding that a city council's closed session was proper because all matters discussed were "clearly integral to the Council's consideration of whether to proceed with the purchase proposal"); Ill. Att'y Gen. PAC Req. Rev. Ltr. 59963, issued June 8, 2020, at 5 (public body's discussion of whether it needs a building, how it would use the building, and possible renovation costs associated with the building's purchase fall within the scope of a discussion of "whether a parcel should be acquired.")

In his Request for Review, [REDACTED] notes that the now-public meeting minutes of the August 12, 2019, closed session document that the Board discussed the potential sale of property it owned, commonly known as the Abbey. He contends that the "Board's consensus to *sell* the Park District's property at the Abbey was the exact opposite of a decision to *purchase*, and therefore falls outside the scope of section 2(c)(5) of OMA."<sup>3</sup> (Emphasis in original.). In its response to this office, the Board asserted that its discussion surrounding the potential sale of the Abbey was part of its discussion on how it would fund the purchase of the Redeemer property:

In this particular case, the [Board] was considering whether a portion of the purchase price could be eventually offset by the sale of certain [District] owned property commonly referred to as the Abbey \* \* \* [.] This was a critical component of the [Board's] eventual decision to commit to purchasing the Redeemer property \* \* \* and this particular aspect of the potential transaction could

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<sup>3</sup>Letter from [REDACTED] to Sarah Pratt, Public Access Counselor, Office of the Attorney General (May 2, 2021) at 1.

not be divorced from the remainder of the discussion regarding the [Board]s decision on whether to finalize its agreement to purchase the Redeemer property without the potential for jeopardizing the [District's] negotiating position. So before committing to the purchase of the Redeemer property, the [Board] briefly discussed a willingness to sell the Abbey and reached an informal consensus to move forward with the concept.<sup>[4]</sup>

The Board was unable to furnish a copy of the verbatim recording of the August 12, 2019, meeting for this office's review, as the Board destroyed the recording prior to this office requesting a copy. The Board explained that it voted on April 12, 2021, to approve the release of the minutes of the August 12, 2019, closed session meeting and to approve the destruction of the verbatim recording of that meeting, along with several other meeting recordings.<sup>5</sup>

The August 12, 2019, closed session meeting minutes indicate that the sale of the Abbey was discussed in the context of how the District would pay for the purchase of the Redeemer property: "As a component of the determination whether the Redeemer parcel should be acquired, the Board provided consensus to sell the property known as The Abbey[.]"<sup>6</sup> As explained by the *Galena Gazette* court, section 2(c)(5) of OMA permits closed session discussion of deliberations concerning whether to purchase or lease a property along with related details necessary to put the purchase or lease terms in context. However, the peripheral matter discussed in *Galena Gazette*—authority over the racking of promotional materials on the property that was the subject of a proposed lease agreement—is readily distinguishable from a discussion of whether to sell one property to help fund the purchase of another property. The arrangement for the racking of promotional materials was part of the lease agreement under consideration, not a separate but related agreement. In addition, another exception, section 2(c)(6) of OMA,<sup>7</sup> pertains to property sales and only permits closed session discussions of "[t]he setting of a price for sale or lease of property owned by the public body." The narrow scope of section 2(c)(6) indicates that the General Assembly intended for public bodies to openly discuss

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<sup>4</sup>Letter from Andrew S. Paine to Grace Angelos, Assistant Attorney General, Public Access Bureau (June 7, 2021) at 3.

<sup>5</sup>Section 2.06(c) of OMA (5 ILCS 120/2.06(c) (West 2020)) permits a public body to destroy the verbatim record of a meeting "no less than 18 months after the completion of the meeting recorded but only after: (1) the public body approves the destruction of a particular recording; and (2) the public body approves minutes of the closed meeting that meet the written minutes requirements of subsection (a) of this Section."

<sup>6</sup>Elmhurst Park District Board of Commissioners, Closed Session, August 12, 2019, Minutes 1.

<sup>7</sup>5 ILCS 120/2(c)(6) (West 2020).

  
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whether to sell property, while only authorizing closed session discussions for the limited purpose of determining a specific price.

The Board's response to this office included minutes of meetings on September 23, 2019, and December 14, 2020, where the sale of the Abbey was discussed in open session; the Board approved the sale on January 11, 2021. The extent to which this topic was discussed in closed session is unclear from the August 12, 2019, meeting minutes. In contrast, the plaintiff in *Galena Gazette* conceded that "in great measure, the closed session discussions were within section 2(c)(5) of the Act." *Galena Gazette*, 375 Ill. App. 3d at 345. Because the verbatim recording of the closed session is no longer available, this office is unable to discern the extent of the discussions surrounding the sale of the Abbey and how directly relevant they were to the purchase of the Redeemer property. Based on the limited information available for review, this office is unable to conclude that the Board's discussion at the August 12, 2019, meeting violated OMA. However, this office notes that discussions of complex matters often implicate numerous related topics, while the section 2(c) exceptions that authorize closed session discussions are to be "strictly construed, extending only to subjects clearly within their scope." 5 ILCS 120/2(b) (West 2020); *see also Galena Gazette*, 375 Ill. App. 3d at 346 ("We do not suggest that a public body may shelter deliberations that must be public merely by depositing them among discussions of exempt matters.").

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. Please contact me at (773) 590-7071 or the Chicago address listed on the first page of this letter if you have questions.

Very truly yours,

  
GRACE ANGELOS  
Assistant Attorney General  
Public Access Bureau

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cc: *Via electronic mail*  
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