



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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ATTORNEY GENERAL

April 14, 2022

Via electronic mail

[REDACTED]
[REDACTED]
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Via electronic mail

The Honorable Kim Aulenbacher
President, Board of Education
Prairie Hill School District #133
6605 Prairie Hill Road
South Beloit, Illinois 61080
aulenbacherk@prairiehill.org

RE: OMA Request for Review – 2021-PAC-C-0472

Dear [REDACTED] and Ms. Aulenbacher:

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 the Prairie Hill School District #133 (School District) violated the requirements of OMA.

BACKGROUND

On June 22, 2021, [REDACTED] submitted a Request for Review to the Public Access Bureau alleging that the Board violated section 2(c) of OMA (5 ILCS 120/2(c) (West 2020)) at its May 25, 2021, February 23, 2021, September 29, 2020, and July 28, 2020, meetings by failing to adequately identify its bases for entering closed session and for discussing topics in closed session that did not fall within the scope of the exceptions it publicly recited as the bases for closing those meetings. [REDACTED] also alleged that the Board's committees have not complied with OMA's requirements related to the preparation and posting of meeting agendas

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and minutes, as set forth in sections 2.02 and 2.06 of OMA (5 ILCS 120/2.02 (West 2020); 5 ILCS 120/2.06 (West 2020)). Additionally, ██████████ contended that the Board had not performed a semi-annual review of its closed session minutes in the past year.

On October 20, 2021, this office forwarded a copy of the Request for Review to the Board and asked it to provide a written response addressing ██████████ allegations regarding the May 25, 2021, meeting, any committee meetings held in May or June 2021, and its review of closed session minutes. This office also asked the Board to provide copies of: (1) the Board's May 25, 2021, meeting agenda, open and closed session minutes, and verbatim recording of the closed session; (2) the agendas for any Board committee meetings held in May 2021 and June 2021, with clarification of when and where those agendas were physically posted; and (3) copies of the minutes for those May 2021 and June 2021 committee meetings. On October 29, 2021, 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 ██████████.¹ On November 2, 2021, this office forwarded a copy of the Board's redacted response to ██████████; he did not reply.

DETERMINATION

It is "the public policy of this State that its citizens shall be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 2020). "The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business and that the intent of the Act is 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).

February 23, 2021, September 29, 2020, and July 28, 2020 Meetings

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2020)) provides:

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 than 60 days after the alleged 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**

¹See 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.").

for review may be made within 60 days of the discovery of the alleged violation. (Emphasis added.)

Under the plain language of section 3.5(a), a person must submit a Request for Review within 60 days after an alleged violation occurred unless the person did not discover facts concerning the alleged violation within those 60 days despite utilizing reasonable diligence. If a person exercising reasonable diligence discovers an alleged violation more than 60 days after it occurred, that individual must submit his or her Request for Review within 60 days of that discovery.

██████████ alleged that the Board violated OMA at its February 23, 2021, September 29, 2020, and July 28, 2020, meetings by holding improper closed sessions. Specifically, he alleged that the Board's motions to go into closed sessions were too general to adequately identify the reasons for closing the meetings. He also alleged that a vote taken at the February 23, 2021, meeting was vague. He further alleged that, based on agendas and open session discussions, the Board had improper discussions during the closed sessions of its September 29, 2020, and July 28, 2020, meetings.

There is no indication that ██████████ did not learn of the alleged OMA violations at the time of the February 23, 2021, September 29, 2020, and July 28, 2020, meetings or within 60 days of those meetings despite exercising reasonable diligence. Indeed, ██████████ stated he attended the February 23, 2021, and September 29, 2020, meetings. Further, the minutes for the July 28, 2020, meeting were approved on August 25, 2020,² and would have been available for review 10 days later.³ Because ██████████ did not submit his Request for Review before the statutory period for doing so expired and because he did not provide facts indicating that he did not learn of the alleged violations within 60 days of their occurrences despite using reasonable diligence, section 3.5(a) of OMA precludes this office from reviewing those allegations.

Committee Meeting Agendas and Minutes

Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2020)) provides that "[a]n agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of

²Prairie Hill Community Consolidated School District No. 133 Board of Education, Meeting, August 25, 2020, Minutes 2.

³Section 2.06(b) of OMA (5 ILCS 120/2.06(b) (West 2020)) states that "[a] public body shall approve the minutes of its open meeting within 30 days after that meeting or at the public body's second subsequent regular meeting, whichever is later. The minutes of meetings open to the public shall be available for public inspection within 10 days after the approval of such minutes by the public body."

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the meeting." That provision further states that "[a] public body that has a website that the full-time staff of the public body maintains shall also post on its website the agenda of any regular meetings of the **governing body** of that public body." (Emphasis added.) Additionally, section 2.06(b) of OMA (5 ILCS 120/2.06(b) (West 2020)) provides that "a public body that has a website that the full-time staff of the public body maintains shall post the minutes of a regular meeting of its **governing body** open to the public on the public body's website within 10 days after the approval of the minutes by the public body." (Emphasis added.) Based on the plain language of sections 2.02(a) and 2.06(b), the Public Access Bureau has previously determined that OMA only requires meeting agendas and minutes of the governing body of a public body to be posted on a public body's website. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 38000, issued January 11, 2016, at 3 (school district's local school council not required by OMA to post its meeting agendas and minutes online because the board of education constituted the "governing body" of the school district).

Section 2.06(a) of OMA (5 ILCS 120/2.06(a) (West 2020)) provides that "[a]ll public bodies shall keep written minutes of all their meetings, whether open or closed, and a verbatim record of all their closed meetings[.]" Section 2.06(b) of OMA requires that a public body approve the meeting minutes "within 30 days after that meeting or at the public body's second subsequent regular meeting, whichever is later. The minutes of meetings open to the public shall be available for public inspection within 10 days after the approval of such minutes by the public body."

In his Request for Review, ██████████ stated that the Finance Committee has posted meeting notices to the School District website, but that "[a]ll agendas are the same and very sparsely worded as to what will be discussed."⁴ He stated that the Board's Negotiations, Policy, and Education/Transportation Committees do not post agendas to the website. He also indicated that no committee minutes are available on the website.

In its response to this office, the Board stated that the Finance Committee held meetings in May 2021 and June 2021, and that the Board posted copies of that committee's meeting notices on the School District website and at the School District Office more than 48 hours in advance of holding the meetings. Although the Board posted Finance Committee meeting notices, it does not appear that agendas were prepared for those meetings. The Board stated that it held Education and Transportation Committee meetings "in May (May 20) and June

⁴Letter from ██████████ to Sarah Pratt, Public Access Counselor, Illinois State Attorney General's Office (undated).

(June 16), with one board member in attendance at each meeting."⁵ It acknowledged that it did not prepare agendas for those meetings.

It does not appear that the Board has prepared meeting minutes for any of its committee meetings. In its response, the Board stated "there are minutes for these particular Finance meetings and no agendas or minutes for the Education and Transportation Committee meetings,"⁶ but the Board did not provide this office with copies of the Finance Committee minutes, nor are they posted to the School District website. It is not clear whether the Board prepared any Finance Committee meeting minutes for the May or June meetings.

Although OMA does not require the committees to post copies of their meeting agendas or minutes on the School District website because they are not the governing body of the School District, the committees must still create and post copies of their meeting agendas at the School District's principal office and meeting location at least 48 hours in advance of holding the meetings. The committees must also prepare minutes and make them available to the public within 10 days of approval.

The Board stated in its response that it has taken steps since August 2021 to ensure that it prepares, posts, and approves agendas and minutes for all of its committee meetings. Those steps included providing additional OMA training to Board members and additional content to the meeting agendas. Although this office does not recommend any additional remedial action, we remind the Board's committees to adhere to all of the requirements under sections 2.02 and 2.06 of OMA when holding meetings, including posting agendas at least 48 hours in advance and preparing minutes of those meetings.

Closed Session Procedure

Section 2a of OMA (5 ILCS 120/2a (West 2020)) sets forth the procedure for a public body to enter closed session. Among those requirements, section 2a provides that:

The vote of each member on the question of holding a meeting closed to the public and a citation to the **specific exception contained in Section 2 of this Act** which authorizes the closing of the meeting to the public shall be publicly disclosed at the time of

⁵Letter from Catherine R. Locallo, Robbins Schwartz, to Teresa Lim, Assistant Attorney General, Office of the Illinois Attorney General, Public Access Bureau (October 29, 2021), at 3.

⁶Letter from Catherine R. Locallo, Robbins Schwartz, to Teresa Lim, Assistant Attorney General, Office of the Illinois Attorney General, Public Access Bureau (October 29, 2021), at 3.

the vote and shall be recorded and entered into the minutes of the meeting. (Emphasis added.)

Section 2(c) of OMA (5 ILCS 120/2(c) (West 2020)) lists the exceptions to the general requirement that public bodies conduct public business openly. A public body does not need to provide a citation to the statutory section number before going into closed session, but it must "adequately identif[y] the exception" in section 2(c) on which it relies to close the meeting. *Wyman v. Schweighart*, 385 Ill. App. 3d 1099, 1105 (4th Dist. 2008).

In his Request for Review, ██████████ alleged that at the May 25, 2021, meeting, the Board's motion to enter closed session referenced only a "personnel report" and did not include a citation to any specific exception. The Board confirmed that it entered closed session at its May 25, 2021, meeting to discuss personnel-related matters pursuant to section 2(c)(1) of OMA, as well as student matters pursuant to section 2(c)(9) of OMA. Although the Board stated that its agenda for the May 25, 2021, meeting agenda referenced the topics it intended to discuss in closed session,⁷ the Board did not assert that it provided a citation to the specific exception contained in section 2 of OMA before voting to go into closed session.

A general reference to "personnel" is insufficient to identify a particular exception. The Attorney General has issued a binding opinion explaining that referencing "personnel" before voting to enter closed session does not adequately identify any specific exception in section 2(a) of OMA. Ill. Att'y Gen. Pub. Acc. Op. No. 15-007, issued September 16, 2015, at 4. This is because two other OMA exceptions (5 ILCS 120/2(c)(8), (c)(14) (West 2020)) that permit public bodies to enter closed session contain the word "personnel," whereas the section 2(c)(1) exception for "[t]he appointment, employment, compensation, discipline, performance, or dismissal of specific employees[.]" does not. The meeting minutes document that the Board held an executive session for "Employment/Appointment Matters"⁸ and list sections 2(c)(1) and 2(c)(9) of OMA, among other exceptions under section 2(c). Although the meeting minutes provide more detail regarding the particular exceptions that the Board appeared to have relied on to hold the executive session, the Board did not illustrate that it adequately identified those exceptions when it moved to close the meeting. Indeed, the minutes simply

⁷Prairie Hill Community Consolidated School District No. 133 Board of Education, Agenda Item 9, Executive Session (May 25, 2021) ("Employment/Appointment Matters/Negotiations").

⁸Prairie Hill Community Consolidated School District No. 133 Board of Education, Meeting, May 25, 2021, Minutes 3.

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state: "Motion to move into closed session."⁹ Under these circumstances, this office is unable to conclude that the Board met the public recital requirements of section 2a.

The Board stated that, starting with its October 26, 2021, meeting, it "will include the citation to the applicable exception(s) in the motion to enter closed session."¹⁰ Therefore, no remedial action is required. This office reminds the Board to adhere to the procedure for entering closed session, as set forth in section 2a. If the Board wishes to close a portion of a meeting to discuss specific employees in the future, it must in open session either announce that it intends to close the meeting pursuant to "section 2(c)(1)" or recite language from section 2(c)(1) that sufficiently identifies that exception. Ill. Att'y Gen. Pub. Acc. Op. No. 15-007, issued September 16, 2015, at 4-5. Similarly, if it plans to discuss student disciplinary matters, it must make a public recital sufficient to identify the 2(c)(9) exception.

Closed Session Exceptions

As noted above, OMA requires that all meetings of a public body remain open to the public unless the public body properly invokes an exception in section 2(c) of OMA that authorizes it to close the meeting. 5 ILCS 120/2(a), (c) (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).

The Board contended that its closed session discussion was proper pursuant to sections 2(c)(1) and 2(c)(9) of OMA (5 ILCS 120/2(c)(1), 2(c)(9) (West 2020)), which permit a public body to hold closed session to discuss, in pertinent part:

(1) The appointment, employment, compensation, discipline, performance, or dismissal of specific employees, specific individuals who serve as independent contractors in a park, 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. * * * [and]

⁹Prairie Hill Community Consolidated School District No. 133 Board of Education, Meeting, May 25, 2021, Minutes 3.

¹⁰Letter from Catherine R. Locallo, Robbins Schwartz, to Teresa Lim, Assistant Attorney General, Office of the Illinois Attorney General, Public Access Bureau (October 29, 2021), at 2.

* * *

(9) Student disciplinary cases.

The Attorney General has previously examined the purpose of section 2(c)(1) and 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, issued December 23, 2016, at 4. Rather, "section 2(c)(1) of OMA '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, at 5 (quoting Ill. Att'y Gen. Pub. Acc. Op. No. 12-011, issued July 11, 2012, at 3); *see also* 1974 Ill. Att'y Gen. Op. No. S-726, issued March 22, 1974, at 128 (the "purpose of the [2(c)(1)] exception is to protect the identity and reputation of a person").

In his Request for Review, ██████████ stated that at the May 25, 2021, meeting, the Board President "was asking the board if they had other items or questions before going into closed session to discuss 'resealing the parking lots, discuss the door replacement project, and garden club proposal[,]'" but that the motion to enter closed session stated only that the Board would discuss a "personnel report."¹¹ Based on the Board President's statements, ██████████ alleged that the Board did not limit its closed session discussion to the "personnel report."

In its response to this office, the Board denied that it discussed the resealing of parking lots and a door replacement project in closed session but acknowledged that it discussed the garden club. It contended that its discussion surrounding the garden club fell within the scope of section 2(c)(1). Additionally, the Board asserted that it discussed specific employee resignations and "discipline issued to several specific students following incidents of student misconduct[.]"¹² Because the Board submitted the portion of its response concerning the applicability of sections 2(c)(1) and 2(c)(9) under a claim of confidentiality, this office is restricted from disclosing that information other than to note that the Board further explained its discussion regarding the employee and student matters.

This office's review of the closed session materials and complete Board response confirmed that the Board discussed disciplinary issues related to specific students within the scope of section 2(c)(9). The Board also discussed individual employee resignations and certain

¹¹Letter from ██████████ to Sarah Pratt, Public Access Counselor, Illinois State Attorney General's Office (undated).

¹²Letter from Catherine R. Locallo, Robbins Schwartz, to Teresa Lim, Assistant Attorney General, Office of the Illinois Attorney General, Public Access Bureau (October 29, 2021), at 3.

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other matters concerning the employment or appointment of specific employees, including a matter involving the garden club; the Board did not discuss the resealing of parking lots or a door replacement project. However, the Board did not limit its discussion of personnel matters to specific employees. In particular, portions of the discussion pertained to broader employee concerns or issues affecting categories of employees, as opposed to particular individuals. Such discussions did not involve the merits, performance, or conduct of specific employees and therefore did not fall within the scope of section 2(c)(1). *See, for example*, Ill. Att'y Gen. Pub. Acc. Op. No. 18-012, issued October 2, 2018 (closed session budgetary discussions that did not center on the merits or conduct of specific employees or prospective employees were not authorized by section 2(c)(1)); Ill. Att'y Gen. PAC Req. Rev. Ltr. 62386, issued July 2, 2020 (closed session discussions concerning the hiring and retaining of general categories of employees, a school district's organizational structure, and educational issues fell outside the scope of section 2(c)(1)). Accordingly, this office concludes that the Board improperly discussed certain topics outside of the exceptions it relied upon to close its May 25, 2021, meeting.


To remedy this violation, this office asks that the Board vote to release to ██████████ and make publicly available the portions of the closed session verbatim recording that did not concern student disciplinary cases or particular employees. Specifically, this office requests that the Board vote to make publicly available the portions of the verbatim recording at the following time marks: 13:40-16:40 and 21:15-42:15.

Semi-Annual Review of Closed Session Minutes


At the time of ██████████ Request for Review submission, section 2.06(d) of OMA (5 ILCS 140/2.06(d) (West 2020)) provided, in pertinent part:

Each public body shall periodically, but no less than semi-annually, meet to review minutes of all closed meetings. At such meetings a determination shall be made, and reported in an open session that (1) the need for confidentiality still exists as to all or part of those minutes or (2) that the minutes or portions thereof no longer require confidential treatment and are available for public inspection.

The Board stated that at its October 26, 2021, meeting, it performed a semi-annual of its closed session minutes covering the time period of July 2018 through July 2021. The


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Board explained that "[i]t was an oversight that this review had not been conducted previously"¹³ and that for 2022, it intended to conduct semi-annual reviews in January and June.

It is undisputed that the Board had not performed a semi-annual review of its closed session minutes within six months of  Request for Review submission. Accordingly, this office concludes that the Board violated section 2.06(d). Because the Board has since taken action to perform a semi-annual review of its closed session minutes and set a plan for 2022 to perform semi-annual reviews, no remedial action is required. This office advises the Board that section 2.06(d) of OMA (5 ILCS 120/2.06(d) (West 2020), as amended by Public Act 102-653, effective January 1, 2022) has been amended. Although similar to the provision effective at the time of the Request for Review submission, section 2.06(d) now provides, in relevant part:

Each public body shall periodically meet to review minutes of all closed meetings. Meetings to review minutes shall occur every 6 months, or as soon thereafter as is practicable, taking into account the nature and meeting schedule of the public body. Committees which are ad hoc in nature shall review closed session minutes at the later of (1) 6 months from the date of the last review of closed session minutes or (2) at the next scheduled meeting of the ad hoc committee.

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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¹³Letter from Catherine R. Locallo, Robbins Schwartz, to Teresa Lim, Assistant Attorney General, Office of the Illinois Attorney General, Public Access Bureau (October 29, 2021), at 4.


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