



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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August 6, 2025

Via electronic mail

Via electronic mail

The Honorable Joshua Merchant
President, Board of Education
Indian Creek CUSD #425
506 South Shabbona Road
Shabbona, Illinois 60550
josh.merchant@ictwolves.com

RE: OMA Request for Review – 2025 PAC 86632

Dear [REDACTED] and Mr. Merchant:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2024)).

BACKGROUND

On April 28, 2025, [REDACTED] submitted a Request for Review alleging that the Indian Creek Community Unit School District #425 Board of Education (Board) violated the requirements OMA at its April 21, 2025, meeting. Specifically, [REDACTED] alleged that the Board's vote to approve non-certified raises did not provide adequate information to inform the public of the business being conducted in violation of section 2(e) of OMA.¹ He also alleged that the Board improperly discussed two topics (across-the-board pay raises and a specific construction bid) in closed session. He contended that those topics did not fall within

¹5 ILCS 120/2(e) (West 2024).

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the scope of the exceptions in section 2(c) of OMA² to the requirement that public business be discussed openly.

On May 7, 2025, this office forwarded a copy of the Request for Review to the Board and asked it to provide this office with copies of the April 21, 2025, meeting agenda, open and closed session minutes, and closed session verbatim recording for this office's confidential review, together with a written response to [REDACTED]'s OMA allegations. On May 16, 2025, this office received the requested materials. On May 19, 2025, this office forwarded a copy of the Board's response to [REDACTED]; he replied that same day.

DETERMINATION

"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 (1989).

Public Recital Requirements

Section 2(e) of OMA effectuates the intent of OMA by providing: "No final action may be taken at a closed meeting. Final action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted."

In *Board of Education of Springfield School District No. 186 v. Attorney General*, 2017 IL 120343, ¶ 39, the Illinois Supreme Court ruled that final action must be preceded by a public recital during the same meeting at which action is taken. The Court explained that "[t]he language of section 2(e) does not mention an explanation, the significance of the action being considered, or the attendees' understanding. Rather, the plain meaning of the phrase 'public recital of the nature of the matter being considered' is that the public body must state the essence of the matter under consideration, its character, or its identity." *Springfield School District*, 2017 IL 120343, ¶ 46. The Court further advised that "while the 'nature of the matter' may be recited in nonspecific terms (the approval of a loan, a contract, a purchase, a policy, or a resolution), 'other information' is necessary to inform the public of the specific item of business (the purpose of the loan, the subject of the contract, the type of property being purchased, the title of the policy, or the purpose of the resolution)." *Springfield School District*, 2017 IL 120343, ¶ 50. The Court rejected as "time consuming and impractical[] * * * any suggestion that a public recital of 'key terms' is required[.]" stating that "[a] public body may choose to provide such information in its recital at the open meeting but is not compelled to do so by section 2(e)." *Springfield School District*, 2017 IL 120343, ¶ 61. Rather, the Court held, "the recital must

²⁵ ILCS 120/2(c) (West 2024).

announce the nature of the matter under consideration, with sufficient detail to identify the particular transaction or issue, but need not provide an explanation of its terms or its significance." *Springfield School District*, 2017 IL 120343, ¶ 64.

In its response to this office, the Board disputed [REDACTED] claim that its public recital prior to its vote on non-certified pay raises violated section 2(e). The Board stated that its "public recital relating to the approval of the non-certified staff was, 'to approve the non-certified raises as presented during executive session.'"³ The Board argued it was not required to explain the terms or significance of this vote and that it adequately described the final action: "The general nature of the matter under consideration was staff pay raises and the particular transaction was also identified as to 'non-certified staff.' There is no requirement that the Board read the amount of each non-certified staff member's salary increase."⁴

In reply to that answer, [REDACTED] maintained that the Board's public recital fell short of the requirements of section 2(e), even under the court's analysis in *Springfield School District*. He contended:

In our case, the "transaction" was a pay increase affecting an unspecified number of "non-certified" employees. Given that the District employs numerous non-certified staff in different roles, and given that pay raises can vary significantly, the recital here did not pinpoint a particular transaction in a way the average citizen could understand. It conveyed neither the *extent* of the action (e.g. "a 5% salary increase for all 20 non-certified staff positions effective next school year") nor the *rationale* ("to maintain competitive wages" etc.). While OMA 2(e) did not oblige the Board to justify or fully explain the raise, it did oblige the Board to clearly state what it was doing.^{5]}

Although the Board's public recital identified the general nature of the matter under consideration by referring to a pay raise, the Board did not adequately describe the particular employees who were the subject of final action. "Non-certified staff" is vague and can broadly include any number of employees ranging from paraprofessionals to bus drivers. Employees who are "non-certified" may refer to different positions in different schools. While

³Letter from Darcee C. Williams, Himes, Petrarca & Fester, CHTD, to Teresa Lim, Deputy Bureau Chief, Office of the Attorney General (May 16, 2025), at 3.

⁴Letter from Darcee C. Williams, Himes, Petrarca & Fester, CHTD, to Teresa Lim, Deputy Bureau Chief, Office of the Attorney General (May 16, 2025), at 3.

⁵Letter from [REDACTED] to Teresa Lim, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (May 19, 2025) at [4].

OMA did not require the Board to explain the key terms of the approval such as the extent of the pay raises or reasons for them, or to read the amount of each non-certified staff member's salary increase, it is unclear which employees fell under the umbrella of "non-certified staff[.]" To adequately inform the public, a public recital of an employment action such as a pay increase must identify the impacted employees by their job titles. *Compare* Ill. Att'y Gen. PAC Req. Rev. Ltr. 77687, issued November 2, 2023 (board's public recitals approving "Salary A" and "Salary B" did not identify the nature of the matters under consideration or the particular transactions at issue in violation of section 2(e)) *with* Ill. Att'y Gen. PAC Req. Rev. Ltr. 76897, issued November 2, 2023 (board's public recital to approve non-renewals of "non-tenured teachers who are within their first three years of service" satisfied the requirements of section 2(e)). Accordingly, this office concludes that the Board violated the public recital requirements of section 2(e).

Going forward, this office advises the Board that before voting on an employee matter such as a pay raise, it should describe the impacted employee or group of employees with sufficient detail to identify the nature of the matter under consideration and transaction at issue. The Board need not identify employees by name but should include some description of the job title or titles.

Closed Session Exceptions

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. 5 ILCS 120/2(a), (c) (West 2024). The section 2(c) exceptions are to be "strictly construed, extending only to subjects clearly within their scope." 5 ILCS 120/2(b) (West 2024).

In its response to this office, the Board identified that it entered closed session pursuant to section 2(c)(1) of OMA. Section 2(c)(1) permits a public body to hold closed session to discuss, in pertinent part:

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.

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, 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* Ill. Att'y Gen. PAC Req. Rev. Ltr. 12658, issued July 7, 2011, at 4 (concluding that "[t]he use of the term 'specific employees' in section 2(c)(1) significantly limits the scope of the exception" to "the hiring merits, performance, conduct or terms of employment of individual employees."). Thus, the 2(c)(1) exception does not authorize closed session discussions of salaries and insurance benefits that are broadly applicable to groups of employees. Ill. Att'y Gen. PAC Req. Rev. Ltr. 62955, issued October 29, 2020.

The Board asserted that it did not discuss in closed session the construction contract referenced in [REDACTED] Request for Review. Addressing the matter of employees, the Board asserted it "discussed non-certified employee raises during executive session and it is permissible to consider the compensation of employees in executive session."⁶

In reply to that answer, [REDACTED] asserted that "the Board appears to concede that its closed-session deliberations on April 21 centered on across-the-board raises for the non-certified staff as a group, rather than any individual's performance or specific compensation arrangement."⁷ Referencing this office's binding opinions concerning the section 2(c)(1) exception, [REDACTED] contended that those deliberations were improper and should have been discussed in open session.

This office's review of the verbatim recording of the closed session confirmed that the Board did not discuss the high school entrance project or the bid from Light Construction related to that project. With respect to the matter of employees, this office has also confirmed that most of this discussion related to the employment of specific individuals and covered topics such as their particular qualifications, performance, and salaries. However, in a couple instances, the Board strayed from discussing the relative merits or performance of specific individuals. In those instances, the Board discussed issues that applied more generally to a category of an employment position or did not concern the employment of specific individuals. Accordingly, this office concludes that the Board did not strictly limit the entirety of its discussion to the employment of specific individuals within the scope of section 2(c)(1) of OMA.

⁶Letter from Darcee C. Williams, Himes, Petrarca & Fester, CHTD, to Teresa Lim, Deputy Bureau Chief, Office of the Attorney General (May 16, 2025), at 3.

⁷Letter from [REDACTED] to Teresa Lim, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (May 19, 2025), at [2].

[REDACTED]
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To remedy this violation, this office requests that the Board vote to make publicly available the following portions of the verbatim recording of the closed session: 2:03:42-2:06:44; 2:08:55-2:10:05.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter closes 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,

[REDACTED]
TERESA LIM
Deputy Bureau Chief
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cc: *Via electronic mail*
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