



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 16, 2022

Via electronic mail

Via electronic mail

Ms. Alexandra B. Ruggie
Assistant City Attorney
Law Department
City of Evanston
2100 Ridge Avenue
Evanston, Illinois 60201
aruggie@cityofevanston.org

RE: OMA Request for Review – 2022 PAC 69228

Dear [REDACTED] and Ms. Ruggie:

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 explained below, the Public Access Bureau concludes that the City of Evanston Public Safety Civil Service Commission (Commission) violated OMA in connection with its November 11, 2021, meeting.

BACKGROUND

In a Request for Review received by this office on January 3, 2022, [REDACTED] alleged that the head of the Commission did not make a determination that an in-person open meeting on November 11, 2021, was not practical or prudent, as required by section 7(e)(2) of OMA (5 ILCS 120/7(e)(2) (West 2020)) and that the meeting agenda did not provide notice of the alternative meeting arrangements in a manner to allow any interested member of the public access, such as by offering a telephone number or a web-based link, as required by section 7(e)(4) of OMA (5 ILCS 120/7(e)(4) (West 2020)). Further, [REDACTED] alleged that the minutes for the Commission's November 11, 2021, meeting did not reflect the votes of each Commission member on the question of holding a meeting closed to the public or citations to the

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specific exception(s) contained in section 2 of OMA (5 ILCS 120/2 (West 2020)) authorizing the closing of that meeting, in violation of section 2a of OMA (5 ILCS 120/2a (West 2020)).

On January 7, 2022, this office sent a copy of the Request for Review to legal counsel for the Commission and requested that it provide a written response to ██████████ ██████████ allegations concerning the November 11, 2021, meeting. This office also requested copies of the November 11, 2021, meeting agenda, open and closed session minutes, and verbatim recording of the open session. On January 27, 2022, City of Evanston legal counsel provided a written response on behalf of the Commission and the meeting agenda and minutes. On January 31, 2022, this office forwarded the Commission's written response to ██████████ ██████████; he replied on February 7, 2022. On February 22, 2022, the Commission provided this office with recordings of the open and closed sessions of the November 11, 2021, meeting, and stated that there were no closed session minutes.

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 (5th Dist. 1989).

Remote Meeting Procedures

Section 7(e) of OMA permits public bodies to conduct meetings remotely when the Governor or the Director of the Illinois Department of Public Health has issued a disaster declaration related to public health concerns, as long as certain conditions are met.¹ Section 7(e)(2) of OMA states:

(e) Subject to the requirements of Section 2.06 but notwithstanding any other provision of law, an open or closed meeting subject to this Act may be conducted by audio or video conference, without the physical presence of a quorum of the members, so long as the following conditions are met:

* * *

¹Gubernatorial Disaster Proclamation issued October 15, 2022 was in effect at the time of the November 11, 2021, meeting.

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(2) the head of the public body as defined in subsection (e) of Section 2 of the Freedom of Information Act determines that an in-person meeting or a meeting conducted under this Act is not practical or prudent because of a disaster[.]

The Commission's response to this office confirmed that the Commission conducted its November 11, 2021, meeting remotely. The Commission stated that there was no indication that the head of the Commission made a determination that an in-person meeting was not practical or prudent. Therefore, this office concludes that the Commission violated section 7(e)(2) of OMA.

████████████████████ also alleged that the Commission did not include a link on the meeting agenda to permit members of the public to access its virtual meeting. Section 7(e)(4) of OMA contains specific notice requirements that a public body must meet to conduct a remote meeting pursuant to section 7(e), as follows:

(4) for open meetings, members of the public present at the regular meeting location of the body can hear all discussion and testimony and all votes of the members of the body, unless attendance at the regular meeting location is not feasible due to the disaster, including the issued disaster declaration, in which case the public body must make alternative arrangements **and provide notice pursuant to this Section of such alternative arrangements in a manner to allow any interested member of the public access to contemporaneously hear all discussion, testimony, and roll call votes, such as by offering a telephone number or a web-based link[.]** (Emphasis added.)

The Commission acknowledged that its November 11, 2021, meeting notice did not include a weblink or other instructions for how the public could access the videoconference. Accordingly, this office concludes that the Commission violated section 7(e)(4) of OMA.

This office reminds the Commission that if it chooses to hold a meeting remotely, it must adhere to all of the requirements listed in section 7(e) of OMA, including the requirements that the head of the Commission make a determination that an in-person meeting is not practical or prudent and that the meeting notice and agenda describe the Commission's alternative arrangements in a manner to allow any interested member of the public to access the meeting.

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Closed Session Procedure

Section 2a of OMA sets forth the procedure for a public body to enter closed session, including the requirement 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 the vote and shall be recorded and entered into the minutes of the meeting. (Emphasis added.)

In its response to this office, the Commission stated that the November 11, 2021, meeting minutes reflect the votes on the motion to hold a meeting closed to the public, but the Commission acknowledged that the minutes did not include a citation to the exception contained in section 2 of OMA authorizing it to close the meeting. This office's review of the recording of the open session of the meeting confirmed that the Commission did not publicly disclose the applicable citation to section 2 of OMA at the time of the vote.

To remedy these violations of section 2a of OMA, this office requests that the Commission vote to amend its November 11, 2021, meeting minutes to reflect the specific exception(s) that authorized its closed session. This office also reminds the Commission that if it wishes to close a portion of a meeting in the future, it must in open session either announce that it intends to close the meeting pursuant to the specific subsection in section 2 of OMA or recite language from section 2 that sufficiently identifies the relevant exception(s). Ill. Att'y Gen. Pub. Acc. Op. No. 15-007, issued September 16, 2015, at 4-5.

████████████████████ contended that the minutes should have reflected a roll call vote on the question of whether to go into closed session. This office has previously determined that section 2a of OMA does not set forth a specific procedure, such as a roll call vote, for entering closed session. Ill. Att'y Gen. PAC Req. Rev. Ltr. 59813, issued September 26, 2019, at 2. It only requires a citation to the exception that is the basis for closing the meeting and that the vote of each member be publicly disclosed. However, section 7(e)(6) of OMA (5 ILCS 120/7(e)(6) (West 2020)) requires that for remote meetings, "all votes are conducted by roll call, so each member's vote on each issue can be identified and recorded." This office's review of the November 11, 2021, open session recording revealed that the Commission Chairman moved to adjourn to closed session, another Commission member stated, "so move," and a third Commission member seconded the motion. The Commissioner then asked all members in favor to state "aye," which it appears that all members did almost simultaneously. Because the Commission members responded at the same time, it is impossible to hear or see each

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individual's affirmative vote, though there is no indication that anyone voted against going into closed session. Accordingly, although the Commission's vote did not violate the requirements of section 2a, it did violate the requirements of section 7(e)(6) because it was not a roll call vote.² This office reminds the Commission to take roll call votes whenever it conducts remote meetings.

The meeting minutes reflect that the votes to go into closed session were 4-0 in favor. Because the vote was unanimous and the minutes listed each member of the Commission who was present at the meeting, the vote tally information in the minutes complied with section 2a of OMA. There is no other provision of OMA that would require the meeting minutes of a remote meeting to contain any additional detail of the vote to enter closed session.

Closed Session Meeting Minutes

Section 2.06(a) of OMA (5 ILCS 120/2.06(a) (West 2020)) requires that:

(a) 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.

In a February 22, 2022, e-mail to this office, the Commission stated that it did not take minutes of its closed session meetings. In response to a previous Request for Review with this office, the Commission stated that it did not keep minutes of its closed sessions because the closed sessions consist of candidate interviews in a question and answer format.³

The language of section 2.06(a) clearly states that public bodies are required to keep written minutes and verbatim recordings of their closed session meetings. There are no exceptions for closed sessions in which interviews are conducted. This office requests that the

²This office also notes that the Commission failed to take a roll call vote when it approved the October 4, 2021, meeting minutes.

³2021 PAC 67096.

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Commission prepare minutes for the November 11, 2021, closed session and keep meeting minutes for all future closed sessions.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at the Springfield address on the first page of this letter. This letter serves to close this file.

Very truly yours,

[REDACTED]
LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

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