



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 3, 2016

Via electronic mail

The Honorable Judy Stearns, Alderwoman

The Honorable Tari Renner, Mayor
City of Bloomington
109 East Olive Street
Bloomington, Illinois 61701

RE: Open Meetings Act Request for Review – 2013 PAC 27199

Dear Ms. Stearns and Mayor Renner:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2014), as amended by Public Act 99-402, effective August 19, 2015). For the reasons that follow, the Public Access Bureau concludes that the Bloomington City Council (City Council) violated section 2(a) of OMA (5 ILCS 120/2(a) (West 2012), as amended by Public Acts 98-49, effective July 1, 2013; 98-63, effective July 9, 2013) during the closed session of its November 15, 2013, meeting.

On December 6, 2013, Ms. Judy Stearns, a former member of the City Council, submitted this Request for Review alleging that the City Council violated OMA during the closed session of its November 15, 2013, meeting by improperly discussing matters outside the scope of the exception in section 2(c)(1) of OMA (5 ILCS 120/2(c)(1) (West 2012), as amended by Public Acts 98-49, effective July 1, 2013; 98-63, effective July 9, 2013) that it cited to close the meeting. Section 2(c)(1) of OMA allows a public body to enter closed session to discuss "[t]he appointment, employment, compensation, discipline, performance, or dismissal of *specific employees* of the public body * * * including hearing testimony on a complaint lodged against an employee of the public body * * * to determine its validity." (Emphasis added.) Ms. Stearns, who was present for the first half of the closed session, specifically alleged that the City Council and City Manager David Hales improperly discussed general issues such as the City's financial

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condition, past hiring practices, organizational culture, and other unauthorized topics. Ms. Stearns stated that she left the closed session after about 30-40 minutes because she "was concerned that this discussion should be made public and that it did not meet the criteria for closed sessions."¹

On December 16, 2013, this office sent a copy of the Request for Review to the City Council and asked it to provide a written response to her allegations, as well as copies of the minutes and verbatim recording of the City Council's November 15, 2013, closed session discussion for our confidential review. On January 8, 2014, the City Council's attorney provided the requested materials and a written response asserting that the City Council "has complied with the procedure, policy and intent of the Open Meetings Act in terms of limiting discussion during a closed session to the performance of specific employees, which was the stated purpose for going into closed session pursuant to Section 2(c)(1) of the Act."² However, the response also acknowledged that the discussion included generalized comments about issues involved in organizational change. Because the City Council provided two pages of its response confidentially, this office is prohibited from discussing that information in this determination. *See* 5 ILCS 120/3.5(c) (West 2012) (permitting a public body to submit a redacted version of its response to be forwarded to the complainant).

On January 27, 2014, Ms. Stearns replied, reiterating her allegations and asserting that the City Council's response acknowledged that it discussed matters outside the scope of the section 2(c)(1) exception. Ms. Stearns also emphasized the importance of strict construction of OMA's exceptions to openness.

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 2012). Section 2(a) of OMA (5 ILCS 120/2(a) (West 2012), as amended by Public Acts 98-49, effective July 1, 2013; 98-63, effective July 9, 2013) provides that "[a]ll meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." These exceptions are to be "strictly construed, extending only to subjects clearly within their scope." 5 ILCS 120/2(b) (West 2012), as amended by Public Acts 98-49, effective July 1, 2013; 98-63, effective July 9, 2013. The applicability of the section 2(c)(1) exception is limited "to an individual and does not include a class of employees or officers." 1974 Ill. Att'y Gen. Op. No. S-726, issued March 22, 1974, at 9.

¹E-mail from Judy Stearns, Alderwoman, Ward 4, Bloomington, IL, to Public Access Counselor, Office of the Attorney General (December 6, 2013).

²Letter from Clark Baird Smith LLP, by Abigail C. Rogers, to Lindsay LaVine, Assistant Attorney General, Public Access Bureau, at 7.

The City Council's response to this office asserted that "the November 15, 2013 closed session can best be characterized as a discussion of specific employee performance, with periodic comments about how that performance reflected the need for broader organizational change."³ The City Council acknowledged that the discussion involved generalized comments about issues involved in organizational change, but asserted that "the emphasis of the closed session discussion always focused on specific employees[,]" and that "[t]he issues of individual employee performance and overarching policy of organizational change are so intertwined that it would have been virtually impossible to isolate consideration of one from the other." (Emphasis in original.)⁴ In support of its assertion that it properly discussed organizational change in closed session because that topic was intertwined with issues concerning individual employees, the City Council cited *Gosnell v. Hogan*, 179 Ill. App. 3d 161 (5th Dist. 1989). Additionally, the City Council contended that it did not violate OMA in connection with its November 15, 2013, closed session "because the open session discussion focused on broader policy and organizational considerations" (emphasis in original),⁵ citing a binding opinion previously issued by the Attorney General (Ill. Att'y Gen. Pub. Acc. Op. No. 13-016, issued September 24, 2013).

Ms. Stearns replied that "the subjects of discussion in open session are not relevant to this complaint of an alleged OMA violation during closed session."⁶ Additionally, Ms. Stearns asserted that "[t]he [section 2(c)(1)] exception is not intended to allow private discussions of fiscal matters, 'culture change', websites, council unity, union behavior, or any of the many things discussed in this session, notwithstanding that they may directly or indirectly impact specific employees of the public body."⁷

This office's review of the verbatim recording of the closed session revealed that the City Council's closed session discussion clearly centered on changing the culture within City government, rather than specific employees. The vast majority of City Manager Hales's approximately 30-minute introductory remarks involved a general overview of the City's

³Letter from Clark Baird Smith LLP, by Abigail C. Rogers, to Lindsay LaVine, Assistant Attorney General, Public Access Bureau, at 7.

⁴Letter from Clark Baird Smith LLP, by Abigail C. Rogers, to Lindsay LaVine, Assistant Attorney General, Public Access Bureau, at 7.

⁵Letter from Clark Baird Smith LLP, by Abigail C. Rogers, to Lindsay LaVine, Assistant Attorney General, Public Access Bureau, at 7.

⁶Letter from Judy Stearns, Alderman Ward 4, City of Bloomington, to Lindsay [LaVine], Assistant Attorney General, Public Access Bureau (January 27, 2014), at 1.

⁷Letter from Judy Stearns, Alderman Ward 4, City of Bloomington, to Lindsay [LaVine], Assistant Attorney General, Public Access Bureau (January 27, 2014), at 2.

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operations, with infrequent, anecdotal references to specific employees. The remainder of the City Council's discussion primarily pertained to macro-level organizational change, including problems with departmental performance and ways to restructure the government to improve operations. However, as noted above, the "language of [section 2(c)(1)] * * * limits its operation to an individual and does not include a class of employees or officers." 1974 Ill. Att'y Gen. Op. No. S-726, issued March 22, 1974, at 9.

Although comments about specific employees were intertwined in the City Council's discussion, *Gosnell* is distinguishable. In that case, the plaintiff alleged that the superintendent of a school district improperly discussed his goals with the school board in closed session; the plaintiff conceded that the superintendent's performance was properly discussed in closed session because he was an officer of the school district, but argued that the discussion about the superintendent's goals should have been separated from any complaint about his performance and held in open session. *Gosnell*, 179 Ill. App. 3d at 174-75. The court stated:

Common experience dictates that discussions of matters relating to complaints against an officer and goals developed in attempting to resolve the complaints can become one and the same. An attempt to discuss only the complaints in closed session and then the proposed goals in open session would be tedious and frustrating when the goals are in direct response to and interrelated with the complaints they are intended to resolve. In order to discuss the goals effectively, it is necessary to consider simultaneously the complaints which prompted the need for the goals. *Gosnell*, 179 Ill. App. 3d at 175-76.

Thus, the court concluded that the superintendent's goals for his performance were permissibly discussed in closed session because they were inextricably intertwined with the discussion concerning his performance. *Gosnell*, 179 Ill. App. 3d at 176. In contrast, here, the primary focus of the City Council's closed session discussion was organizational change, which is not among OMA's exceptions to the general requirement that public bodies openly discuss public business. Section 2(c)(1) does not authorize a city council to extensively discuss changes to the city's overall culture and structure in closed session under section 2(c)(1) merely because discrete portions of the discussion pertain to specific employees.

The City Council's reliance on Binding Opinion 13-016 is similarly misplaced. The issue in that matter was "whether it was permissible for [a school board] to take final action to dismiss a public employee without identifying that individual by name." *See* Ill. Att'y Gen. Pub. Acc. Op. No. 13-016, at 3. The Attorney General noted that "although a public body is permitted to discuss the performance or shortcomings of a specific employee in a meeting closed


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to the public, it must take any final action concerning that employee in an open meeting." *See* Ill. Att'y Gen. Pub. Acc. Op. No. 13-016, at 4. It is undisputed that the City Council took no final action during the closed session of its November 15, 2013, meeting, and it is clear from the verbatim recording that the City Council did not limit its closed session discussion to specific employees. Thus, Binding Opinion 13-016 is inapposite. The City Council's subsequent open session discussions are immaterial to whether its closed session was authorized by the section 2(c)(1) exception.

Accordingly, this office concludes that the City Council violated section 2(a) of OMA by improperly discussing matters that fall outside the scope of the section 2(c)(1) exception during closed session on November 15, 2013. The Public Access Counselor therefore requests that the City Council make available for public inspection the portions of the closed session minutes and verbatim recording that fall outside of the section 2(c)(1) exception. The portions of the discussion that pertained solely to individual employees may be redacted.⁸

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

Very truly yours,


CHRISTOPHER R. BOGGS
Assistant Attorney General
Public Access Bureau

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cc: *Via electronic mail*
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⁸This office has reviewed the entirety of the closed session verbatim recording and, to the best of its ability, demarcated the following portions wherein the City Council either identified a specific employee and/or discussed his or her performance: 9:44, 18:29, 22:03, 23:25, 38:01, 40:32, 41:44, 43:39, 43:47, 44:21, 46:01, 47:16, 47:42, 48:53, 50:20, 50:47, 52:09, 52:40, 54:06, 55:21, 56:14, 59:27, 1:03:14, 1:05:06, 1:06:28, 1:07:03.