



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

July 12, 2017

Via electronic mail

Mr. Kirk Allen
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Kirk@illinoisleaks.com

Via electronic mail

Mr. James A. Devine
Iroquois County State's Attorney
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RE: OMA Requests for Review – 2017 PAC 47483 & 47646
FOIA Request for Review – 2017 PAC 47744

Dear Mr. Allen and Mr. Devine:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the Iroquois County Board (County Board) violated OMA on April 19, 2017, when a majority of a quorum of the County Board participated in a meeting of the Iroquois County Emergency Telephone Systems Board (ETS Board) without complying with OMA's procedural requirements. This office further concludes that the ETS Board did not improperly discuss matters outside the scope of an exception in its closed session on April 19, 2017, except for a certain portion of the discussion which the ETS Board has already made public.

On April 19, 2017, Mr. Kirk Allen filed Requests for Review alleging violations of OMA by both the County Board and the ETS Board resulting from the ETS Board's April 18, 2017, meeting. Although presented in the same e-mail correspondence from Mr. Allen, the allegations were docketed as separate Requests for Review of actions by the County Board and the ETS Board (2017 PAC 47483 and 2017 PAC 47646). Mr. Allen alleged that a majority of a quorum of the County Board gathered and participated in the ETS Board's meeting and closed

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session on April 18, 2017, without following the procedural requirements of OMA. With respect to the ETS Board, Mr. Allen alleged that it discussed subjects during a closed session that were outside the scope of the exceptions to openness set forth in section 2(c) of OMA (5 ILCS 120/2(c) (West 2016)), namely "discussions pertaining to the Edgar County Watchdogs and their involvement in Iroquois County."¹ Lastly, Mr. Allen also alleged that the closed session discussion on April 18, 2017, may not have been recorded in compliance with section 2.06(a) of OMA (5 ILCS 120/2.06(a) (West 2016)).

Via letters dated April 27, 2017, and May 4, 2017, this office sent copies of the Requests for Review to the County Board and ETS Board, respectively. We requested that each Board provide a detailed response to the allegations, and, in the case of the ETS Board, requested that it provide copies of the April 18, 2017, meeting agenda, minutes of the open and closed session portions of the meeting (draft form if necessary), and the verbatim recording of the closed session and any existing recording of the open session. On May 26, 2017, the Iroquois County State's Attorney submitted a joint written response on behalf of the County Board and the ETS Board and furnished the requested records, including a copy of the verbatim recording of the closed session. This office forwarded a copy of the response to Mr. Allen on June 1, 2017; he replied later the same day.

In the meantime, on the same date that he had filed these Requests for Review (April 19, 2017), Mr. Allen had also submitted a FOIA request to the ETS Board seeking "[a] copy of all audio discussions that failed to meet the exceptions for closed meeting discussions from the closed session held by the Emergency Telephone System Board on April 18th, 2017."² On June 6, 2017, the ETS Board transmitted an electronic copy of a portion of the recorded April 18, 2017, closed session to Mr. Allen.³

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

¹E-mail from Kirk Allen to Public Access [Bureau] (April 19, 2017).

²E-mail from Kirk Allen to Amanda Longfellow (April 19, 2017).

³On May 5, 2017, Mr. Allen filed a Request for Review with this office alleging that the ETS Board had failed to respond to his April 19, 2017, FOIA request. The ETS Board's June 6, 2017, response resolves the allegation that it failed to respond to the request and concludes this office's review of 2017 PAC 47744. If Mr. Allen wishes to contest the ETS Board's June 6, 2017, response, he may file another Request for Review within 60 days of the response. This office notes, however, that this determination addresses the propriety of the closed session discussions at issue and that closed session recordings are otherwise confidential under section 2.06(e) of OMA (5 ILCS 120/2.06(e) (West 2016)).

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openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

Allegation of Improper County Board Meeting

Section 1.02 (5 ILCS 120/1.02 (West 2016)) defines a "public meeting" as:

[A]ny gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business or, for a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public business.

The County Board consists of 20 members. Therefore, a quorum of the County Board is 11 members, and a majority of that quorum is six members. According to the draft meeting minutes of the April 18, 2017, ETS Board meeting, eight members of the County Board attended the open and closed session portions of that meeting. The closed session recording of the ETS Board meeting reflects that the members of the County Board participated in discussions concerning public business of the County. In its response to this office, the County Board acknowledges that a majority of a quorum of the County Board appeared at the ETS Board's April 18, 2017, meeting without itself posting advance notice as required by OMA. Accordingly, the County Board violated OMA by conducting a public meeting without complying with any of the procedural requirements of OMA.

Ordinarily, if public body holds an improper meeting, this office would request that it publicly disclose any minutes or recordings relating to that meeting. However, in this matter, the County Board gathered at the public meeting of another public body, the ETS Board. Mr. Allen acknowledges that notice of the ETS Board meeting was properly posted, although he contends that certain subjects discussed during the closed session at that meeting were improper. Because the County Board, rather than the ETS Board, violated OMA by attending the ETS Board meeting without proper notice, disclosure of the closed session minutes or recording would be a proper remedy only if the ETS Board improperly discussed matters that did not fall within the scope of a section 2(c) exception. This office reminds the County Board, however, that whenever a majority of a quorum of its members gathers and discusses public business in a deliberative fashion, it must adhere to the requirements of OMA, including proper advance notice to the public, and opportunities for the public to attend and to address public officials.

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Closed Session Discussion by ETS Board

Section 2(a) of OMA (5 ILCS 120/2(a) (West 2016)) 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. The section 2(c) exceptions are to be "strictly construed, extending only to subjects clearly within their scope." 5 ILCS 120/2(b) (West 2016).

As reflected in the meeting agenda, as well as the draft minutes, the ETS Board entered closed session after a motion to "[D]iscuss the [] appointment, employment, compensation, discipline, performance, or dismissal of 911 Director,"⁴ which is the statutory language of section 2(c)(1) of OMA (5 ILCS 120/2(c)(1) (West 2016)).⁵ Section 2(c)(1) of OMA permits a public body to close a portion of a meeting to discuss "[t]he appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee of the public body or against legal counsel for the public body to determine its validity."

Mr. Allen contended that the ETS Board discussed his organization during closed session, and that those discussions exceeded the scope of permissible topics for a closed session. In response to Mr. Allen's FOIA request for recordings of the closed session, the ETS Board disclosed a portion of the closed session recording. The recorded discussion that was released did not include any mention of Mr. Allen's organization, but rather involved questions about the statutory authority of the ETS Board.

This office has reviewed the entire closed session recording. With the exception of the portion of the recording that the ETS Board has already disclosed to Mr. Allen, the closed session discussion focused on subjects within the scope of section 2(c)(1) of OMA. While the ETS Board did violate section 2(a) of OMA by discussing a subject outside the scope of the section 2(c)(1) exception, the remaining discussions during the closed session were authorized by that exception. Because the ETS Board has already disclosed the portion of the closed session discussion that violated OMA, no further remedial action is necessary.

⁴Iroquois County ETSB Meeting, Agenda Item VII.C. (April 18, 2017).

⁵Section 2a of OMA (5 ILCS 120/2a (West 2016)) provides that "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[.]" Although the ETS Board did not expressly cite section 2(c)(1) of OMA, and such an express citation would have been better practice, the ETS Board's recitation of specific language in the exception was sufficient. See *Wyman v. Schweighart*, 385 Ill. App. 3d 1099, 1105-07 (4th Dist. 2008).

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Recording of Closed Session

In his initial Request for Review, Mr. Allen alleged that the ETS Board may not have recorded the closed session. Section 2.06(a) of OMA (5 ILCS 120/2.06(a) (West 2016)) requires that public bodies create "a verbatim record of all their closed meetings in the form of an audio or video recording." The ETS Board furnished a recording of the entire April 18, 2017, closed session to this office, and a portion of that recording to Mr. Allen, thus demonstrating that the closed session was recorded. Accordingly, the ETS Board did not violate section 2.06(a) of OMA.

The Public Access Counselor has determined that resolution of this matter does not require issuance of a binding opinion. This letter serves to close this matter. Please contact me at (217) 782-9078 if you have any questions.

Very truly yours,



NEIL P. OLSON
Deputy Public Access Counselor
Assistant Attorney General, Public Access Bureau

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