



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

April 22, 2020

*Via electronic mail*  
Mr. John Kraft

Mr. George P. Cuonzo  
Razzano Law Offices  
115 East Walnut Street  
P.O. Box 300  
Watseka, Illinois 60970

RE: OMA Request for Review – 2019 PAC 61066

Dear Mr. Kraft and Mr. Cuonzo:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2018)). For the reasons explained below, the Public Access Bureau concludes that the Onarga Community Public Library District Board of Trustees (Board) violated OMA at its December 16, 2019, meeting by improperly discussing in closed session the compensation of all of its employees. This office also concludes that the Board impermissibly took final action in closed session concerning its employees' compensation but acknowledges that the Board has already taken remedial action.

On December 17, 2019, Mr. John Kraft submitted the above-captioned Request for Review to the Public Access Bureau alleging that during the Board's December 16, 2019, meeting, the Board discussed the compensation of all of its employees during closed session, instead of discussing the compensation of a specific employee, and asserted the Board took final action on that matter during closed session.

On December 26, 2019, this office sent a copy of the Request for Review to the Board and requested it provide copies of the agenda and minutes of both the open and closed portions of the December 16, 2019, meeting and a verbatim recording of the closed session

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portion of that meeting together with a written response to the allegations in the Request for Review. On January 30, 2020, counsel for the Board submitted a written response, which this office forwarded to Mr. Kraft. He did not submit a reply.

## DETERMINATION

### Section 2(c)(1) of OMA

Section 2(a) of OMA (5 ILCS 120/2(a) (West 2018), as amended by Public Acts 101-031, effective June 28, 2019; 101-459, effective August 23, 2019) 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 (5 ILCS 120/2(c) (West 2018), as amended by Public Acts 101-031, effective June 28, 2019; 101-459, effective August 23, 2019). Section 2(c)(1) of OMA (5 ILCS 120/2(c)(1) (West 2018), as amended by Public Acts 101-031, effective June 28, 2019; 101-459, effective August 23, 2019), the exception on which the Board relied to close the December 16, 2019, meeting, permits 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 or legal counsel for the public body."

In construing section 2(c)(1) of OMA, 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). The Public Access Bureau has previously determined 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." Ill. Att'y Gen. PAC Req. Rev. Ltr. 12658, issued July 7, 2011, at 4.

In its response to this office, counsel for the Board acknowledged that the Board improperly discussed compensation increases for all of its employees in closed session during its December 16, 2019, meeting. Accordingly, this office concludes that the Board violated section 2(a) of OMA by discussing that topic in closed session during its December 16, 2019, meeting.

To remedy this violation, this office asks that the Board vote to release to Mr. Kraft, and make publicly available, the closed session verbatim recording from the December 16, 2019, meeting. Although counsel for the Board indicated in its response to this office that he no longer considers the verbatim recording of the closed session portion of the December 16, 2019,

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meeting to be confidential "[b]ecause the matter addressed in the closed meeting was subsequently addressed in regular open meeting"<sup>1</sup> there is no indication that the Board has voted to release the recording to the public.<sup>2</sup>

### Section 2(e) of OMA

Section 2(e) of OMA (5 ILCS 120/2(e) (West 2018), as amended by Public Acts 101-031, effective June 28, 2019; 101-459, effective August 23, 2019) provides that "[n]o 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 its response to this office, counsel for the Board acknowledged that the Board violated section 2(e) of OMA during its December 16, 2019, meeting by voting in closed session on the matter of compensation for all of its employees. The Board's response stated "[t]his was done on the Board's mistaken premise that all matters regarding compensation, including members' votes, are confidential and that a closed session is, therefore, appropriate."<sup>3</sup>

However, the Board's response to this office also stated that on January 21, 2020, the Board held a properly noticed meeting at which the Board re-considered and voted on the employees' compensation during open session. Because the Board discussed the matter and held a vote in open session during its January 21, 2020, meeting with proper notice on its agenda, no further remedial action is necessary. *Lindsey v. Board of Education of City of Chicago*, 127 Ill. App. 3d 413, 422 (1st Dist. 1984) ("Any prior violation of the Open Meetings Act by defendants cannot prevent the Board from calling a subsequent meeting, noticed in full compliance with the requirements of the Act, and there taking identical action."). Still, this office cautions the Board to refrain from taking action outside of open meetings, and to otherwise comply with all of the requirements of OMA.

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<sup>1</sup>Letter from George P. Cuonzo to Shannon Barnaby, Assistant Attorney General, [Public Access Bureau] (January 30, 2020).

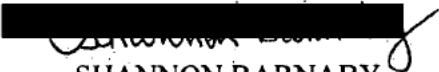
<sup>2</sup>Section 2.06(e) of OMA (2.06(e) (5 ILCS 120/2.06(e) (West 2018)), provides, in pertinent part, "[u]nless the public body has made a determination that the verbatim recording no longer requires confidential treatment or otherwise consents to disclosure, the verbatim record of a meeting closed to the public shall not be open for public inspection."

<sup>3</sup>Letter from George P. Cuonzo to Shannon Barnaby, Assistant Attorney General, [Public Access Bureau] (January 30, 2020).

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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 file. If you have questions, please contact me at [sbarnaby@atg.state.il.us](mailto:sbarnaby@atg.state.il.us) or (312) 550-4480.

Very truly yours,

  
SHANNON BARNABY  
Assistant Attorney General  
Public Access Bureau

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