



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

May 5, 2022

Via electronic mail
Ms. Erica Chiang



Via electronic mail
Mr. Brian Miller
Attorney at Law
Del Galdo Law Group, LLC
1441 South Harlem Avenue
Berwyn, Illinois 60402
miller@dlglawgroup.com

RE: OMA Request for Review – 2022 PAC 69765

Dear Ms. Chiang and Mr. Miller:

This determination letter 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 that follow, the Public Access Bureau concludes that the Village of Robbins Board of Trustees (Board) violated OMA.

In her Request for Review, submitted February 5, 2022, Ms. Erica Chiang alleged that the Board must have held an improper closed session discussion in connection with recent events involving a property development dispute. She claimed that when she entered Village Hall on January 25, 2022, to file a permit application for a building that she and her husband had commissioned from a developer, the Village's building inspector informed her that Mayor Darren E. Bryant had told him to stop issuing permits for that developer yesterday. Ms. Chiang stated that in a meeting with Mayor Bryant, he referenced only unspecified legal issues as the reason for the ban. Ms. Chiang explained that she attended the Board meeting that evening and asked for a formal denial letter; the next morning, Mayor Bryant posted a letter on Facebook stating: "The Mayor and Council have decided that until we come to remedy and resolution with that

Ms. Erica Chiang
Mr. Brian Miller
May 5, 2022
Page 2

developer, any future projects submitted by that specific developer will not proceed."¹ Because this statement indicated to her that the Board discussed and voted on the topic, Ms. Chiang submitted a Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2020)) request seeking the meeting minutes of that discussion and decision. The Village denied the request under section 7(1)(l) of FOIA,² signaling that its discussion and decision occurred in closed session. Ms. Chiang alleged that the Board improperly discussed the topic of the developer in closed session because the subject does not fall within the scope of any of the exceptions set out in section 2(c) of OMA.³ Ms. Chiang also alleged that the Board had not conducted the requisite semi-annual review of its closed session minutes under section 2.06(d) of OMA.⁴

On February 8, 2022, the Public Access Bureau sent a copy of the Request for Review to Mayor Bryant and asked the Board to provide, for this office's confidential review, a copy of the closed session verbatim recording and closed session minutes from any meeting in which the Board discussed the decision to stop issuing permits for the developer. This office also asked the Board to respond in writing to both of Ms. Chiang's OMA allegations, explaining whether the closed session discussions and decision to stop issuing permits for the developer met the requirements of sections 2(c) and 2(e) of OMA,⁵ and whether the Board had reviewed and voted on whether to keep its past closed session minutes confidential within the past year. Further, this office requested a copy of the minutes from the most recent meeting where the Board voted on the confidentiality of its closed session minutes after reviewing them under section 2.06(d).

On February 25, 2022, the Board's attorney at that time, Ms. Lauren DaValle, provided two versions of its written response: a complete version for this office's confidential review, and a redacted version for forwarding to Ms. Chiang. Ms. DaValle also supplied an affidavit from Mayor Bryant, but no meeting minutes reflecting the last time the Board reviewed its past closed session minutes, nor any closed session materials. On that same date, this office

¹Darren E. Bryant, Mayor, 7 Statements from the Mayor, Village of Robbins (undated).

²5 ILCS 140/7(1)(l) (West 2020), as amended by Public Acts 102-038, effective June 25, 2021; 102-558, effective August 20, 2021 (exempting from disclosure "[m]inutes of meetings of public bodies closed to the public as provided in the Open Meetings Act until the public body makes the minutes available to the public under Section 2.06 of the Open Meetings Act.").

³5 ILCS 120/2(c) (West 2020), as amended by Public Act 102-558, effective August 20, 2021; 102-237, effective January 1, 2022.

⁴5 ILCS 120/2.06(d) (West 2020), as amended by Public Act 102-653, effective January 1, 2022.

⁵5 ILCS 120/2(e) (West 2020), as amended by Public Act 102-558, effective August 20, 2021; 102-237, effective January 1, 2022.

Ms. Erica Chiang
Mr. Brian Miller
May 5, 2022
Page 3

asked Ms. DaValle to provide a copy of the Board's January 25, 2022, closed session verbatim recording for this office's confidential review. On February 28, 2022, she instead provided this office with a copy of the closed session verbatim recording from the Board's October 26, 2021, meeting; this was the meeting for which the Village denied Ms. Chiang's FOIA request pursuant to section 7(1)(l) of FOIA. On that same date, this office forwarded a copy of the Board's non-confidential answer to Ms. Chiang. She did not submit a reply, but she notified this office by telephone that she still had concerns about the Board's discussions and actions concerning the developer.

On April 21, 2022, Ms. DaValle notified this office that she no longer represented the Village, and its new attorney in this matter is Mr. Brian Miller of Del Galdo Law Group, LLC. On May 2, 2022, in response to a follow up request from this office, Mr. Miller provided a copy of the January 25, 2022, open session minutes and video recording. Mr. Miller confirmed that the Board did not hold a closed session during that meeting.

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).

Closed Session Discussion

Section 2(a) of OMA⁶ 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." Section 1.02 of OMA⁷ defines "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[.] (Emphasis added.)

⁶5 ILCS 120/2(a) (West 2020), as amended by Public Act 102-558, effective August 20, 2021; 102-237, effective January 1, 2022.

⁷5 ILCS 120/1.02 (West 2020).

Ms. Erica Chiang
Mr. Brian Miller
May 5, 2022
Page 4

The exceptions allowing closed session discussions in section 2(c) of OMA "are in derogation of the requirement that public bodies meet in the open, and therefore, the exceptions are to be strictly construed, extending only to subjects clearly within their scope."⁸

In the Board's non-confidential answer in this matter, Ms. DaValle stated that the denial of Ms. Chiang's FOIA request under section 7(1)(l) was in error, as the Board did not discuss stopping permits for the developer in closed session. Rather, Ms. DaValle asserted, the Board held a different closed session discussion concerning Village property on October 26, 2021; Ms. DaValle provided the details about what the Board discussed in her confidential submission to his office. Ms. DaValle also explained that the Board consists of six trustees and the mayor. Therefore, at least three members of the Board must participate for a gathering to constitute a "meeting" subject to all of the requirements of OMA. According to Ms. DaValle, "the mayor reserves the executive authority to deny permits without a meeting or a vote[.]" and "[t]he Mayor reserves the right to seek advice of the Council when decision making."⁹ Ms. DaValle further asserted:

No meetings as defined by the Act were held by the Village of Robbins to discuss whether future projects of a certain developer would proceed. [Citation.] Rather, the Mayor spoke to the individual Trustees about the issue one on one. [Citation.] The Mayor never spoke to more than one Trustee at a time regarding this issue. * * * At no time did a majority of a quorum of the Village engage in contemporaneous, interactive communication about denying this developer permits.^[10]

Ms. DaValle argued that the facts of this matter are similar to the facts at issue in a previous determination letter this office issued, Ill. Att'y Gen. PAC Req. Rev. Ltr. C-0386 C-0387, issued December 2, 2021. In that matter, this office was unable to sustain the allegation that a township board held an improper private meeting because the township supervisor supplied an affidavit attesting that he held only one-on-one conversations with the other township board members, and this office did not receive evidence that a majority of a quorum of the Board engaged in contemporaneous, interactive communication about the matter. Ill. Att'y Gen. PAC Req. Rev.

⁸5 ILCS 120/2(b) (West 2020), as amended by Public Act 102-558, effective August 20, 2021; 102-237, effective January 1, 2022.

⁹Letter from Lauren M. DaValle to Joshua Jones, Deputy Bureau Chief, Illinois Attorney General (February 25, 2022), at 2.

¹⁰Letter from Lauren M. DaValle to Joshua Jones, Deputy Bureau Chief, Illinois Attorney General (February 25, 2022), at 2-3.

Ms. Erica Chiang
Mr. Brian Miller
May 5, 2022
Page 5

Ltr. C-0386 C-0387, at 3. Here, Mr. Bryant's affidavit similarly attested that he held only one-on-one conversations with the trustees concerning his decision regarding future projects involving the developer.

This office's review of the October 26, 2021, closed session verbatim recording confirmed that the Board did not expressly discuss and decide to stop issuing permits to the developer. This office also verified that the Board did not hold a closed session discussion on January 25, 2022. This office did not receive evidence that at least a majority of the Board gathered in person or engaged in contemporaneous, interactive electronic communication concerning halting the developer from developing properties. Mayor Bryant's statement that "[t]he Mayor and Council have decided" that projects involving the developer would not proceed certainly suggested that the Board had deliberated and made a collective decision, which should only occur in open session under the plain language of section 2(e).¹¹ Nonetheless, this office has not received facts sufficient to refute Mayor Bryant's affidavit attesting to one-on-one conversations. Therefore, this office is unable to conclude that the Board held an improper private meeting in which it expressly discussed issuing no further permits the developer.

This office's review of the closed session verbatim recording also confirmed, however, that the Board extensively discussed issues involving the developer and properties he sought to develop. The Board's closed session discussion clearly fell outside the scope of the exceptions on which the Board relied to enter closed session: subsections 2(c)(5) and 2(c)(6).¹² Those exceptions permit closed session discussion of:

(5) The purchase or lease of real property for the use of the public body, including meetings held for the purpose of discussing whether a particular parcel should be acquired.

(6) The setting of a price for sale or lease of property owned by the public body.

While the closed session discussion did relate to the sale of Village-owned property, it was not about the restrictive authorized topic of setting a price for the sale. Further, there is no other exception in section 2(c) of OMA that authorizes the closed session discussion the Board held. Because the closed session discussion was plainly improper, this office asks the Board to take

¹¹Section 2(e) of OMA provides: "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."

¹²5 ILCS 120/2(c)(5), (c)(6) (West 2020), as amended by Public Act 102-558, effective August 20, 2021; 102-237, effective January 1, 2022.

Ms. Erica Chiang
Mr. Brian Miller
May 5, 2022
Page 6

appropriate remedial action by voting to release the October 26, 2021, closed session verbatim recording to the public at its next regular meeting.

Review of Closed Session Minutes

Section 2.06(d) of OMA sets forth the requirement for a public body to periodically review its closed session minutes and determine the continued need for confidentiality:

Each public body shall periodically meet to review minutes of all closed meetings. Meetings to review minutes shall occur every 6 months, or as soon thereafter as is practicable, taking into account the nature and meeting schedule of the public body. * * * At such meetings a determination shall be made, and reported in an open session that (1) the need for confidentiality still exists as to all or part of those minutes or (2) that the minutes or portions thereof no longer require confidential treatment and are available for public inspection. The failure of a public body to strictly comply with the semi-annual review of closed session written minutes * * * shall not cause the written minutes or related verbatim record to become public or available for inspection in any judicial proceeding, other than a proceeding involving an alleged violation of this Act, if the public body, within 60 days of discovering its failure to strictly comply with the technical requirements of this subsection, reviews the closed session minutes and determines and thereafter reports in open session that either (1) the need for confidentiality still exists as to all or part of the minutes or verbatim record, or (2) that the minutes or recordings or portions thereof no longer require confidential treatment and are available for public inspection.

In the Board's answer to this office, Ms. DaValle implicitly acknowledged that the Board failed to conduct an appropriate review of its closed session minutes. Labeling this misstep a "technical violation," Ms. DaValle stated that "the Village of Robbins plans to review prior closed session minutes to determine whether the need for confidentiality still exists within the next sixty (60) days."¹³ If the Board has not since conducted a review of all its past closed

¹³Letter from Lauren M. DaValle to Joshua Jones, Deputy Bureau Chief, Illinois Attorney General (February 25, 2022), at 3.

Ms. Erica Chiang
Mr. Brian Miller
May 5, 2022
Page 7

session minutes and reported in closed session about the extent to which it needs to continue to keep those minutes confidential, this office reminds the Board to do so promptly.

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 joshua.jones@ilag.gov. This file is closed.

Very truly yours,



JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

69765 o 2a meeting proper 2c5 improper 2c6 improper 206d improper mun