



VILLAGE OF OAK PARK  
LAW DEPARTMENT

# Memo

To: President Anan Abu-Taleb and Board of Trustees

cc: Cara Pavlicek, Village Manager

From: Paul L. Stephanides, Village Attorney

Date: September 20, 2013

Re: E-Mail Communications between Board Members

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## INTRODUCTION:

This memo addresses the question raised by Trustee Peter Barber regarding whether Board members may transmit e-mail communications to the entire Board with the expectation of individual responses being made to an e-mail under the Illinois Open Meetings Act, 5 ILCS 120/1 *et seq.* ("Act").

## DISCUSSION:

As discussed below, the Board should exercise caution in using e-mail communications. The purpose of the Act is to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly. 5 ILCS 120/1. In general, to conduct deliberations on matters of public concern through e-mail is contrary to the intent of the Act.

Meetings of a public body are required to be "open to the public." 5 ILCS 120/2. For purposes of the Act, a "meeting" is defined as follows:

"Meeting" means any 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.

5 ILCS 120/1.02 (emphasis added). Thus, the Act includes “electronic mail” and the more contemporaneous an e-mail exchange is between a majority of a quorum of the Board (three or more Board members), the more likely it would be considered by a court to constitute a meeting for purposes of the Act.

Illinois case law has yet to provide any guidance on where to draw the line between appropriate and inappropriate e-mail communications among public body members, and there are no binding public opinions from the Illinois Attorney General’s Public Access Counselor on the issue. In a recent Illinois appellate court decision decided on July 16, 2013, the court held that texts and emails sent or received from a city council member’s personal electronic device during public meetings, concerning city council business, were public records subject to disclosure under the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.* *City of Champaign v. Lisa Madigan, in her official capacity as Attorney General of the State of Illinois*, 2013 IL App (4<sup>th</sup>) 120662. Although the case did not concern the issue of whether the communications constituted a meeting under the Open Meetings Act, the court’s decision does give some indication of what would be considered a public communication that would qualify as a prohibited “meeting” under the Act.

When e-mails or instant/text messages between Board members are used in place of letters and such e-mails or messages do not involve deliberations, debate, decision making, or consensus on a matter of public business, such communications will not amount to a violation of the Act. E-mails merely conveying information and not requiring or eliciting a response or other merely “one-way” messages is generally not a violation unless it is shown they were a subterfuge intended to circumvent the provisions of the Act, such as contemporaneous e-mail exchanges between Board members to reach a consensus on a matter.

The following scenarios elaborate on when a violation of the Act may or may not possibly occur:

- (1) If one Board member sends an e-mail to a distribution list of two or more other Board members and there are no replies, a discussion of public business has not occurred and there is no violation of Act. The e-mail is merely an electronic version of a “letter” to all Board members.
- (2) If a Board member sends an e-mail to a distribution list of two or more other Board members and individual Board members reply only to the sender, and the sender does not share or summarize those replies, no discussion of public business has occurred. Thus, there is no violation of the Act as each Board member communicated individually with the sender of the initial e-mail.
- (3) If a Board sends an e-mail to a distribution list of two or more other Board members and individual Board members reply only to the sender and the sender shares or summarizes those replies in an e-mail to the entire Board, a possible violation of the Act may occur. The test of whether a violation has occurred is

whether the use of e-mail communications was intended for the Board to reach a consensus on a particular topic.

(4) If a Board member sends an e-mail to a distribution list of two or more other Board members and one or more Board members reply to the distribution list (i.e., “reply all”), a discussion has ensued and a violation of the Act has occurred if the matter discussed was public business.

Of particular concern is the “reply all” function referenced above if it is used in response to an e-mail that was sent to two or more Board members. Such an email can be easily construed as instantaneous communication of public business. A way to avoid the “reply all” dilemma is for the initial sender of an e-mail to “blind copy” the intended recipients. Thus, even if a Board member hits reply all in response, the only recipient will be the sender of the initial e-mail and there is no violation of the Act.

In addition to the above, participation by a majority of a quorum (three or more) of Board members in a “chat room” or in an exchange of text messages for the purpose of discussing public business would constitute a meeting covered by the Act. No violation of the Act occurs when an email is exchanged between less than a majority of a quorum of the Board (two members), or two members participate in a chat room or exchange text messages.

#### **CONCLUSION:**

E-mail communications between Board members can result in a discussion of public business in violation of the Open Meetings Act. In order to avoid a violation, I recommend that caution be exercised in the exchange of e-mails as set forth above and, where appropriate, the blind copy function be used for emails sent to two or more other Board members. Please let me know if you have any questions.