



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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September 18, 2024

Via electronic mail



Via electronic mail

Mr. Richard Superfine
Legal Counsel
City of Chicago Board of Ethics
740 North Sedgwick
Chicago, Illinois 60654
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RE: OMA Request for Review – 2022 PAC 72604

Dear [REDACTED] and Mr. Superfine:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA).¹ For the reasons that follow, the Public Access Bureau concludes that the City of Chicago Board of Ethics (Board) violated OMA at its May 16, 2022, meeting.

BACKGROUND

On July 13, 2022, [REDACTED] submitted a Request for Review alleging that during the closed session portion of its May 16, 2022, meeting, the Board improperly discussed matters beyond the scope of the exceptions in sections 2(c)(1), 2(c)(4) and 2(c)(21) of OMA (5 ILCS 120/2(c)(1), (c)(4), (c)(21) (West2022)) which the Board cited to enter closed session. Specifically, [REDACTED] alleges that the Board improperly discussed the following three matters:

¹5 ILCS 120/3.5(e) (West 2022).

██████████
Mr. Richard Superfine
September 18, 2024
Page 2

"Procedures re amendments to Statements of Financial Interests[.]" "Mayor's Program to Make Prepaid Gas and Transit Cards Publicly Available[.]" and "Ward newsletters[.]"² ██████████ further alleges that these three items are outside the scope of the exceptions in sections 2(c)(1) and 2(c)(4) of OMA.³

On July 19, 2022, this office sent a copy of the Request for Review to the Board and asked it to provide a detailed written response to the allegation in the Request for Review. This office also requested copies of the closed session meeting minutes and the closed session verbatim recording of the May 16, 2022, meeting. The Board responded on September 13, 2022. On that date, this office forwarded a copy of the Board's response to ██████████; he did not reply. On November 15, 2022, the Board furnished us with a copy of the written closed session meeting minutes and the audio recording.

DETERMINATION

The intent of OMA is "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly."⁴ Section 2(a) of OMA⁵ provides that all meetings of a public body shall be open to the public unless the subject of discussion falls within one of the exceptions set out in subsection 2(c) of OMA.

Section 2(c)(1) of OMA

Section 2(c)(1) of OMA permits a public body to hold a closed session to discuss, "[t]he appointment, employment, compensation, discipline, performance, or dismissal of specific employees" as well as specified independent contractors or volunteers and legal counsel of the public body.

In its answer to this office, the Board asserted that section 2(c)(1) of OMA allows public bodies to engage in "discussions centered around specific individuals and allegations that

²Letter from ██████████ to Leah Bartelt, Public Access Counselor, Office of the Attorney General (July 13, 2022), at [1].

³In his Request for Review, ██████████ notes that section 2(c)(21), which applies to reviews of closed session minutes, is inapplicable to our analysis.

⁴5 ILCS 120/1 (West 2022).

⁵5 ILCS 120/2(a) (West 2022).

the individuals failed to properly disclose certain activity or engaged in prohibited activity."⁶ However, under section 2(b) of OMA,⁷ exceptions are to be "strictly construed, extending only to subjects clearly within their scope." The plain language of section 2(c)(1) of OMA is limited to "specific employees" and specified independent contractors or volunteers and legal counsel of a public body; it does not encompass elected officials. In a binding opinion, the Attorney General concluded that section 2(c)(1) does not apply to elected officials. Ill. Att'y Gen. Pub. Acc. Op. No. 17-023, issued November 21, 2017, at 4 ("Because elected members of a Village Board are occupants of a public office, not 'employees' of public bodies, section 2(c)(1) would not have provided a basis for the Board to close a meeting to discuss the conduct of a Board member."). Accordingly, the Board improperly relied on section 2(c)(1) to discuss the financial interest statements, pre-paid gas cards and ward newsletters during its May 16, 2022, closed session.

Section 2(c)(4) of OMA

As noted above, the Board also cited 2(c)(4) of OMA as a basis for entering closed session during its May 16, 2022, meeting. Section 2(c)(4) of OMA allows a public body to discuss in a closed meeting, "[e]vidence or testimony presented in open hearing, or in closed hearing **where specifically authorized by law**, to a quasi-adjudicative body, as defined in this Act, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning." (Emphasis added.) Section 2(d) of OMA⁸ defines quasi-adjudicative body as "an administrative body charged by law or ordinance with the responsibility to conduct hearings, receive evidence or testimony and make determinations based thereon, but does not include local electoral boards when such bodies are considering petition challenges."

The Municipal Code of the City of Chicago (Municipal Code) charges the Board with, among other things, the authority to conduct hearings, receive evidence, and issue opinions on whether certain conduct violated the City's ethics ordinances.⁹ When the inspector general asks the Board to make a probable cause finding, the Municipal Code authorizes the Board to hold a meeting to discuss the evidence and provide the subject an opportunity to respond;

⁶Letter from Matthew J. Walters, Chief Assistant Corporation Counsel, City of Chicago, to Grace Angelos, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General, (September 13, 2023), at 5.

⁷5 ILCS 120/2(b) (West 2022).

⁸5 ILCS 120/2(d) (West 2022).

⁹Chicago Municipal Code § 2-156-392 (2024).

"records of the meeting shall be kept confidential to the extent allowable under applicable law."¹⁰ If the Board chooses to pursue an action for a fine, "[a] hearing on the merits shall be held in a closed session, to the extent allowable under applicable law, before a hearing officer."¹¹ In performing those duties, the Board functions as a quasi-adjudicative body.

In its response, the Board asserts that the topics of the closed session discussion were "appropriately considered under [s]ection 2(c)(4) regarding information that was relayed to the [Board] through testimony versus through other means."¹² The Board argues that because it oversees financial statements has the authority to assess penalties against those who fail to comply, and to levy sanctions with respect to individuals engaging in prohibited political activity, its discussions regarding statements of financial interest, prepaid gas and transit cards, and ward newsletters, were proper.

In his Request for Review, [REDACTED] argues that section 2(c)(4) does not permit the Board to hold the particular discussions it had on those topics in closed session:

Since the Board is a quasi-adjudicative body, it may invoke the section 2(c)(4) exception to hold a closed session, but only when two conditions are met: (1) there is "evidence or testimony presented in open hearing, or in closed hearing where specifically authorized by law", and (2) the Board "prepares and makes available for public inspection a written decision setting forth its determinative reasoning".^[13]

[REDACTED] Request for Review asserts that the Board's May 16, 2022, meeting did not satisfy either of those conditions with respect to those topics.

Black's Law Dictionary defines an "adjudication" as "[t]he legal process of resolving a dispute; the process of judicially deciding a case."¹⁴ Black's Law Dictionary defines "evidence" as "something (including testimony, documents, and tangible objects) that tends to

¹⁰Chicago Municipal Code § 2-156-385(3) (2024).

¹¹Chicago Municipal Code § 2-156-392(a)(1) (2024).

¹²Letter from Matthew J. Walters, Chief Assistant Corporation Counsel, City of Chicago, to Grace Angelos, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General, (September 13, 2023), at 5.

¹³Letter from [REDACTED] to Leah Bartelt, Public Access Counselor, Office of the Attorney General (July 13, 2022), at [3].

¹⁴Black's Law Dictionary 52 (11th ed. 2019).

Mr. Richard Superfine
September 18, 2024
Page 5

prove or disprove the existence of an alleged fact; anything presented to the senses and offered to prove the existence or nonexistence of a fact[.]”¹⁵

This office's review of the closed session recording and minutes does indicate that evidence was presented to the Board with regard to the ward newsletters and the statement of financial interests. The Board did not, however, consider an inspector general's request for a probable cause finding or hold a hearing on the merits while pursuing a fine, nor was there any indication that the Board intended to prepare or make "available for public inspection a written decision setting forth its determinative reasoning." The brief discussion about prepaid gas cards did not involve the Board receiving evidence in the course of pursuing an action for a fine or otherwise functioning as a quasi-adjudicative body that would issue a written explanation describing its reasoning. Instead, the discussions on all three topics consisted of the Board's and staff's general opinions and recommendations about how to address those issues in a non-adjudicatory manner and absent specific request to determine whether specific individuals violated the City's ethics ordinance. Accordingly, the Board's discussion of the financial interest statements, the pre-paid gas cards, and the ward newsletters were beyond the scope of the section 2(c)(4) exception. To remedy this violation, this office requests the Board disclose the portions of the minutes and verbatim recording of its May 16, 2022, closed session that pertained to financial statements, gas cards and ward newsletters

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at Matthew.Rogina@ilag.gov.

Very truly yours,

MATTHEW C. ROGINA
Senior Assistant Attorney General
Public Access Bureau

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Cc: *Via electronic mail*
Mr. Steven I. Berlin
Executive Director

¹⁵Black's Law Dictionary 697 (11th ed. 2019).


Mr. Richard Superfine

September 18, 2024

Page 6

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