



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

November 9, 2021

Via electronic mail

Mr. William Thompson
UPI @ WIU Chapter Secretary
[REDACTED]

RE: OMA Request for Review – 2021-PAC-C-0480

Dear Mr. Thompson:

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2020)). For the reasons that follow, this office concludes that your Request for Review is unfounded.

On June 20, 2021, you e-mailed a Request for Review¹ to this office alleging that the Board of Trustees (Board) of Western Illinois University (University) violated the requirements of OMA by destroying closed session verbatim recordings before releasing the minutes from those closed sessions. Specifically, you stated that you obtained copies of certain closed session minutes from 2015 and 2016 that the Board voted to release on March 26, 2021. You alleged that "[u]pon review of the minutes, I noted that the previous Board had several times violated [OMA] in those years by discussing layoffs in closed session."² You alleged that these improper closed session discussions occurred on December 17, 2015, January 25, 2016, March 10, 2016, April 20, 2016, and June 9, 2016. You also alleged that "the current Board knowingly ordered the destruction of the verbatim recordings of these meetings[,] which you contend violates OMA because verbatim recordings "are not allowed to be destroyed until the closed session minutes are approved and released[.]"³ (Emphasis in original.) You argue that the Board

¹Due to a breach of the Attorney General's computer network, this office did not receive your Request for Review at or near the time you submitted it.

²Letter from William A. Thompson to Public Access Counselor (June 20, 2021), at 1.

³Letter from William A. Thompson to Public Access Counselor (June 20, 2021), at 1.

should not have approved the destruction of the recordings because they contained discussion that should have been released to the public.

On November 5, 2021, in response to an inquiry from this office, Elizabeth Duvall, General Counsel for the University, clarified when the Board approved the destruction of the verbatim recordings at issue. Ms. Duvall provided copies of Board meeting minutes to establish that on June 9, 2017, the Board approved the destruction of the verbatim recordings for the meetings held on December 17, 2015, January 25, 2016, and March 10, 2016, and on September 29, 2017, it approved the destruction of the verbatim recordings for the meetings held on April 20, 2016, and June 9, 2016. Ms. Duvall did not have records or knowledge of exactly when the verbatim recordings were destroyed, as the destruction occurred before her July 9, 2018, start date at the University. She noted that the former secretary informed her that if the Board voted to approve the destruction of the verbatim recordings during a meeting that occurred fewer than 18 months after the meetings at issue, the former secretary stated that she would wait to shred the disc containing the recordings until 18 months had passed.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2020)) provides, in pertinent part:

A person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation. If facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, by a person utilizing reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation.

Under the plain language of section 3.5(a), a person must submit a Request for Review within 60 days after an alleged violation unless the person did not discover facts concerning the alleged violation within those 60 days despite utilizing reasonable diligence. You acknowledge that you made your request "more than sixty days after the release of the [2015 and 2016] closed session minutes" and you have not established that you did not discover the alleged violation within 60-day period despite using reasonable diligence. Moreover, even if you had exercised reasonable diligence, the Board destroyed the verbatim recordings at issue more than two years before you submitted your Request for Review. Because an individual may not submit a Request for Review more than 2 years after the alleged violation, this office will take no further action in this matter.

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The Office of the Public Access Counselor, however, is also charged with providing advice and education to both the public and public officials. *See* 15 ILCS 205/7(a), (b), (c) (West 2020). This office notes that section 2.06(c) of OMA (5 ILCS 120/2.06(c) (West 2020)) states:

(c) The verbatim record may be destroyed without notification to or the approval of a records commission or the State Archivist under the Local Records Act or the State Records Act no less than 18 months after the completion of the meeting recorded but only after:

(1) the public body approves the destruction of a particular recording; and

(2) the public body approves minutes of the closed meeting that meet the written minutes requirements of subsection (a) of this Section.

The plain language of section 2.06(c) requires that prior to destruction of a closed session verbatim recording, a public body must vote to approve destruction of the recording and vote to approve the written minutes of that closed session. Neither section 2.06(c), nor any other section of OMA, requires that a public body vote to release to the public the minutes of a closed session meeting before approving the destruction of that meeting's verbatim recording.

This letter serves to close this file. If you have questions, please contact me at laura.harter@ilag.gov or the Springfield address on the bottom of the first page of this letter.

Very truly yours,



LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

C-0480 o 60 days univ

cc: *Via electronic mail*
Ms. Elizabeth Duvall
Western Illinois University
General Counsel
Freedom of Information Act Officer
el-duvall@wiu.edu