OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 28, 2018

Via electronic mail
[redacted]

Via electronic mail
Mr. Josef Kurlinkus, Esq.
Kurlinkus Law Office, LLC
13333 White School Road
Roscoe, Illinois 61073
josef@kurlinkuslaw.com

RE: OMA Request for Review – 2017 PAC 50424

Dear [redacted] and Mr. Kurlinkus:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the Veterans Assistance Commission of Winnebago County (Commission) kept minutes of its July 12, 2017, meeting in accordance with OMA, but failed to keep meetings of its August 9, 2017, Executive Board meeting and improperly removed closed session materials from its main office.

On November 7, 2017, [redacted] submitted a Request for Review to the Public Access Bureau alleging that the Commission potentially violated OMA in connection with various meetings in 2017. [redacted] noted that he was on paid administrative leave from his position as Superintendent of the Commission. This office determined that further action was warranted as to his allegations that the Commission had not prepared open session minutes for meetings held on July 12, 2017, and August 9, 2017, and that the closed session minutes and closed session verbatim recording from the July 24, 2017, meeting had been removed from the Commission's main office. On November 22, 2017, this office sent a copy of the Request for Review to the Commission and asked it to provide this office with copies of the open session minutes of those three meetings and the closed session minutes and closed session verbatim

recording from the July 24, 2017, meeting, to the extent that those materials existed. This office also requested a written explanation as to whether the Committee prepared the minutes and closed session verbatim recording in question and whether closed session materials from the July 24, 2017, meeting have been removed from the Commission's main office. On December 22, 2017, the Commission provided this office with those materials. On January 4, 2018, [redacted] submitted a reply.

ANALYSIS

"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).

As an initial matter, the Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2016)). *See* 15 ILCS 205/7(c)(3) (West 2016). Accordingly, this office lacked the authority to review the claims [redacted] raised that are outside the scope of those statutes, such as alleged violations of the Commission's Personnel Policy and its fiduciary duties.

Additionally, [redacted] raised various alleged violations from before the 60 days preceding his Request for Review. Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) 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. (Emphasis added.)

Under the plain language of section 3.5(a), a person must submit a Request for Review within 60 days after an alleged violation occurred unless the person did not discover facts concerning the alleged violation within those 60 days despite utilizing reasonable diligence. In this instance, [redacted] provided no indication that he did not learn about the alleged violations from prior to the 60 days before he submitted his Request for Review at the time that they occurred or that he did not discover them within 60 days of their occurrence despite using

reasonable diligence. Therefore, his allegations from prior to the 60 days before he submitted this Request for Review were untimely, and, as a result, this office lacked the authority to take further action on them.

[redacted] timely allegations concerned meeting materials for meetings of the Commission and its Executive Board. Section 2.06(a) of OMA (5 ILCS 120/2.06(a) (West 2016)) provides, in pertinent part: "All public bodies shall keep written minutes of all their meetings, whether open or closed[.]" Additionally, section 2.06(e) of OMA (5 ILCS 120/2.06(e) (West 2016)) provides, in pertinent part: "No verbatim recordings shall be recorded or removed from the public body's main office or official storage location, except by vote of the public body or by court order." Likewise, section 2.06(f) of OMA (5 ILCS 120/2.06(f) (West 2016)) provides, in pertinent part: "No minutes of meetings closed to the public shall be removed from the public body's main office or official storage location, except by vote of the public body or by court order."

In its response to this office, the Commission stated that it had approved the open session minutes of its July 12, 2017, meeting on September 13, 2017. This office has reviewed the copy of the minutes that the Commission provided, confirming that the minutes exist. Therefore, the Commission did not fail to keep minutes of its July 12, 2017, meeting as [redacted] alleged. On the other hand, the Commission acknowledged that there are no minutes of the August 9, 2017, Executive Board meeting. The failure to keep minutes of this meeting violated OMA. This office cautions the Commission and Executive Board that minutes of all meetings, whether open or closed, must be kept.

As to whether closed session materials had been removed from the Commission's main office, the Commission's attorney asserted:

> a. Closed session materials for the months of March through Present were removed from the [Commission's] administrative office in August 2017. All prior closed minutes remain in the office. Due to the structure of the Commission, the ongoing personnel issues (specifically those involving the complainant), and lack of secured storage at the [Commission] the closed session materials remained in the possession of the Commission Secretary.
>
> b. I have made the [Commission] aware of the need to maintain the minutes in a secured location on the [Commission]

> premises, and they are taking the necessary steps to remedy the situation, so that they are in full compliance with the [Act].[1]

[redacted]replied that he did not recall a Commission vote to permit off-site storage of minutes.

The Commission has acknowledged that certain closed session materials have been removed from the Commission's main office, and the Commission has not asserted that it voted to remove those minutes or verbatim recordings. Under the plain language of sections 2.06(e) and 2.06(f) of OMA, the Commission is required to maintain all of its closed session minutes and verbatim recordings at its principal office or official storage location unless it votes to remove them or a court order dictates otherwise. Therefore, the Commission violated sections 2.06(e) and 2.06(f) of OMA by failing to maintain closed session materials at its main office. This office advises the Commission to follow through on its attorney's guidance to implement a plan to maintain its closed session materials in a secure location at its principal office.

Because the Office of the Public Access Counselor is also charged with providing education to both the public and public officials (15 ILCS 205/7(a), (b), (c) (West 2016)), this office further notes that the Commission appears to have acknowledged an additional improper practice. In confirming that the Commission did still possess the verbatim recording of its July 24, 2017, meeting, the Commission's attorney stated that "[v]erbatim recordings are generally not kept after approval of the closed session minutes[.]"[2] Section 2.06(c) of OMA (5 ILCS 120/2.06(c) (West 2016)) provides:

> 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

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[1]Letter from Josef R. Kurlinkus, Attorney for the Commission, to Joshua M. Jones, Assistant Attorney General, Office of the Illinois Attorney General (November 29, 2017), at 2.

[2]Letter from Josef R. Kurlinkus, Attorney for the Commission, to Joshua M. Jones, Assistant Attorney General, Office of the Illinois Attorney General (November 29, 2017), at 2.

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

Under the plain language of this provision, at least 18 months must pass before a public body can take steps to dispose of a verbatim recording of a closed session. This office reminds the Commission that it must adhere to this provision and all of the other requirements of OMA.

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 the Chicago address on the first page of this letter. This letter serves to close this matter.

Very truly yours,

[redacted]

JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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