OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

February 15, 2018

Via electronic mail
[redacted]

Via electronic mail
The Honorable Derrick R. Appell
President, Board of Trustees
Village of Altona
302 South Depot Street
Altona, Illinois 61414
[redacted]

RE: OMA Request for Review – 2017 PAC 50632

Dear [redacted] and Mr. Appell:

This determination letter 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 Board of Trustees (Board) of the Village of Altona (Village) violated OMA by failing to keep adequate written minutes of its April 6, 2017, closed session.

On November 27, 2017 [redacted] submitted a Request for Review to the Public Access Bureau alleging that during the Board's monthly meetings from May 2017 through October 2017, Village President Derrick R. Appell indicated that he was looking into disclosing the closed session minutes from the April 6, 2017, meeting, but that in a letter dated November 22, 2017, the Village informed him that no written record of the April 6, 2017, closed session was found. The Village also stated that the closed session verbatim recording "was of poor quality[,]" and that the Board had elected to release the following: "On April 6th 2017 at the closed board meeting, there was discussion concerning all three bids for the purchase of the old Altona Grade School building. It was further discussed about what the bidder's future plans were

going to be for the building."[1] [redacted] alleged that the Board is required to document what transpired during its April 6, 2017, closed session.

On December 4, 2017, this office sent a copy of the Request for Review to the Board and asked it to provide this office with a copy of the closed session minutes from the April 6, 2017, meeting for this office's confidential review. If no such minutes existed, this office asked the Board to address the allegation that it violated OMA by failing to keep written minutes of the closed session, and to explain whether minutes can be generated from the closed session verbatim recording. On December 7, 2017, the Board responded that no minutes of the April 6, 2017, closed session had been prepared, and that the closed session verbatim recording was difficult to hear. Nonetheless, the Board stated, it asked the clerk to prepare minutes based on that recording, and then voted to approve and disclose those minutes on December 7, 2017. On December 13, 2017, [redacted] replied, questioning the level of detail provided in those minutes.

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).

Section 2.06(a) of OMA (5 ILCS 120/2.06(a) (West 2016)) provides:

> All public bodies shall keep written minutes of all their meetings, whether open or closed, and a verbatim record of all their closed meetings in the form of an audio or video recording. Minutes shall include, but need not be limited to:
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> (1) the date, time and place of the meeting;
>
> (2) the members of the public body recorded as either present or absent and whether the members were physically present or present by means of video or audio conference; and
>
> (3) a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken.

[1]Letter from Kelly Scott, Altona Village Clerk, to [redacted] (November 22, 2017).

OMA does not further address the degree of information that must be included in meeting minutes, and no Illinois reviewing court appears to have addressed the issue. The Public Access Bureau, on the other hand, has previously concluded that "brief, very general minutes are insufficient to satisfy the requirements of section 2.06(a) of OMA." Ill. Att'y Gen. PAC Req. Rev. Ltr. 40309, issued May 20, 2016, at 4.

Although the Board acknowledged, in its response to this office, that it had not prepared minutes of the closed session of its April 6, 2017, meeting prior to the submission of [redacted] Request for Review, the Board subsequently ordered minutes to be prepared from the closed session verbatim recording and then disclosed those minutes to the public. Under the plain language of section 2.06(a)(3) of OMA, the Board was required to include in the minutes a summary of all matters proposed, deliberated, or decided during that closed session. Yet, the closed session minutes contain just two general, vague sentences concerning the Board's closed session discussion. The closed session minutes indicate that the closed session, which pertained solely to the old Altona Grade School building, lasted for approximately 30 minutes; the brevity of the Board's closed session minutes is at odds with the apparent length of its closed session discussion. Minutes need not contain the level of detail of a transcript, but section 2.06(a) expressly requires a public body to keep minutes that summarize discussions of all matters proposed, deliberated, or decided. Rather than providing such a summary, the Board's April 6, 2017, minutes merely identify the topics of its closed session discussion. Because those minutes fail to provide a sufficient summary of all matters proposed, deliberated, or decided, this office concludes that the Board violated section 2.06(a) of OMA.

On December 8, 2017, Board President Appell indicated to this office by telephone that the sound quality of the closed session verbatim recording interfered with the ability to draft minutes of the closed session. He also stated that the Village was working on getting a new recording device. This office encourages the Board to do so promptly, and reminds the Board to otherwise adhere to all of the requirements of OMA in the future.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, please contact me at (312) 814-8413 or at the Chicago address on the bottom of the first page of this letter.

Very truly yours,

[redacted]

JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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