OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 18, 2018

*Via electronic mail*
Mr. Kirk Allen
[redacted]
kirk@illinoisleaks.com

*Via electronic mail*
Mr. Randy Brooks, President
Board of Trustees of the
Atlanta Public Library District
100 Race Street
Atlanta, Illinois 61723
apldinformation@gmail.com

RE: OMA Request for Review – 2018 PAC 51623

Dear Mr. Allen and Mr. Brooks:

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 Atlanta Public Library District (District) did not violate section 2.06(g) of OMA during its December 14, 2017, meeting.

On February 7, 2018, Mr. Allen submitted a Request for Review alleging that the Board violated section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2016)) during the public comment portion of its December 14, 2017, meeting by interrupting his comments and signaling for the police. As part of his Request for Review, Mr. Allen provided a link to the video and audio recording of the December 14, 2017, meeting.[1] On February 15, 2018, this office forwarded a copy of the Request for Review to the Board and asked it to provide a detailed written response to Mr. Allen's allegations, along with a copy of the agenda, minutes, rules regarding public comment, and any recordings. On February 16, 2018, the Board president

[1]Atlanta Public Library District Board of Trustees, Meeting, December 14, 2017, available at https://www.youtube.com/watch?v=9UX1NHG3IRQ (last visited April 23, 2018).

responded on behalf of the Board and provided the requested agenda, minutes, and rules.[2] On February 28, 2018, this office forwarded a copy of the Board's response to Mr. Allen. On March 2, 2018, Mr. Allen submitted his reply.

## DETERMINATION

Section 2.06(g) of OMA provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." The Attorney General has concluded that section 2.06(g) of OMA "requires that all public bodies subject to the Act provide an opportunity for members of the public ***to address public officials at open meetings***." (Emphasis added.) Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 5; *see also* Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 4. Additionally, an interruption of a public speaker by a member of a public body such as a question or comment that does not preclude a speaker from completing his or her public comment does not constitute an improper restriction on public comment. *See* Ill. Att'y Gen. PAC Rev. Ltr. 37496, issued December 11, 2015, at 3.

In his Request for Review, Mr. Allen contends that during his public comment the Board's attorney interrupted him repeatedly, causing him to lose his train of thought and, as a result, preventing him from fully addressing the Board. Mr. Allen also states that the Board's attorney motioned to police officers in the back of the room as if to have him arrested when he did not agree with his presentation, and "attempted to tell me I was not allowed to ask questions."[3]

In its response, the Board asserts that (1) its "rules for public comment clearly state that the public comment period is reserved for comments and that the Board does not typically respond to questions at its meetings," and that its attorney reminded Mr. Allen of those rules in a calm and respectful manner; (2) Mr. Allen grew increasingly threatening and shouted at its attorney and Board, but went on to make "his points clearly and even vehemently, without becoming confused and without losing track of what he intended to say;" (3) the Board "remained calm at all times, and any disruption during Mr. Allen's comment time was caused by his own aggressiveness and the shouts of those who followed his lead in the meeting;" and (4) the Board did not move to have Mr. Allen arrested, but acknowledged that police officers have

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[2]The Board also informed an Assistant Attorney General in the Public Access Bureau that it had no recording of the December 14, 2017, meeting. E-mail from Cathy Maciariello , [Atlanta Public Library District] to Edie Steinberg, [Assistant Attorney General, Public Access Bureau] (February 20, 2018).

[3]E-mail from Kirk Allen to Public Access [Bureau] (February 7, 2018).

been present at its meetings since October because the public comment period has become increasingly disruptive and threatening towards the members of the Board.[4]

In his reply, Mr. Allen repeats four times that the Board's attorney told him that he cannot "ask questions," asserts that the Board's conduct was an "attempt to chill my right to speak," and states that "[t]he video speaks for itself."[5] This office has reviewed the portion of the video in which Mr. Allen comments. The video establishes that at no point during Mr. Allen's public comment did the Board's attorney tell him that he can't ask questions.

The video depicts the members of the Board and its attorney sitting at a table; the video does not depict Mr. Allen, the public, or police officers. The video establishes that Mr. Allen asked the Board a question and paused, as if waiting for an answer. The President shook his head from side to side and gestured with his hand. Mr. Allen then made a comment, proceeded to ask another question, and paused again, as if waiting for an answer. The Board's attorney who was seated next to the President said "it's your time to comment. The Board," but could not finish his sentence because Mr. Allen loudly stated that "it's my time to do anything I wish, verbalizing. It's not yours for interjection, you are not a Board member." The Board's attorney, the Board President and Mr. Allen made additional comments concerning public comment and how the meeting was being run, and another member of the public loudly interjected additional comments. After a pause, Mr. Allen asked another question, to which the President responded, "I don't think I have to answer the question."[6] The Board's attorney and Mr. Allen then had the following exchange:

> ATTORNEY: The Board does not have to answer questions. It is your time to comment.
> ALLEN: It's my time to ask questions and or comment.
> ATTORNEY: You can ask questions but the Board is not legally obligated to [inaudible, as Mr. Allen loudly spoke over him].[7]

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[4]Letter from Randy Brooks, President, Board of Trustees, Atlanta Public Library District to Edie Steinberg, Assistant Attorney General, Public Access Bureau (February 16, 2018).

[5]E-mail from Kirk Allen to Public Access [Bureau] (March 2, 2018).

[6]Atlanta Public Library District Board of Trustees, Meeting, December 14, 2017, available at https://www.youtube.com/watch?v=9UX1NHG3IRQ; Mr. Allen's comment time can be heard listened to between 5:54 and 10:25.

[7] Atlanta Public Library District Board of Trustees, Meeting, December 14, 2017, available at https://www.youtube.com/watch?v=9UX1NHG3IRQ at 6:58.

Speaking in a raised voice, Mr. Allen told the attorney "you can sit down." The attorney asked for civility, but members of the public and Mr. Allen kept yelling. Both the Board President and its attorney tried to regain order during this interlude. The meeting quieted down after a short period of time, and Mr. Allen completed his public comment.

The Board's rules for public comment provide that "[t]he public forum part of the agenda is not designed as a discussion or a question and answer session, but rather as a means for the APLD Board to receive comments from the public. The board typically does not respond to questions."[8] Indeed, section 2.06(g) does not mandate that public bodies conduct a question and answer session; rather, a public body must allow an opportunity during open meetings for "any person * * * to address" the public officials present. "Address" used as a verb is defined as "to speak or write directly to."[9] Thus, the plain language of section 2.06(g) of OMA contemplates the opportunity for citizens to express their views to members of a public body. OMA does not require any response by or answers from public officials. Ill. Att'y Gen. PAC Req. Rev. Ltr. 37391, issued January 11, 2016, at 7.

Mr. Allen cited "AG PAC Opinion 3703" to support his contention that the Board infringed on his right to address it by allowing its attorney to interrupt his public comment. Mr. Allen appears to be referring to this office's determination in Ill. Att'y Gen. PAC Rev. Ltr. 37503, issued April 8, 2016. That determination is inapposite. In that matter, the Board repeatedly interrupted the speaker to attempt to enforce an unreasonable rule that required speakers to limit their comments to topics listed on public comment forms submitted before the meeting. Ill. Att'y Gen. PAC Rev. Ltr. 37503 at 4. That is not the situation here. OMA does not require silence when speakers choose to pose questions to public bodies rather than making comments. When a speaker demands an answer to a question, the public body does not infringe on the speaker's statutory right to public comment by responding to the question or, as in this matter, by its attorney replying that the public body will not answer questions.

Based on our review of the recording that Mr. Allen provided, this office is unable to conclude that Mr. Allen was deprived of an opportunity to address the Board or prevented from commenting or asking questing pursuant to its established and recorded public comment rules. The recording demonstrates that Mr. Allen was recognized, and allowed to ask questions and comment. The interruptions by the Board's attorney, to explain the Board's rules and regain order, were not unreasonable under the circumstances. To the extent that members of the public interrupted Mr. Allen by interjecting comments, apparently in support of his position,

[8]Atlanta Public Library District, Rules Of Order for Public Comment (undated).

[9]Merriam-Webster Dictionary, http://www.merriam-webster.com/dictionary/address (last visited April 23, 2018).

the Board did not cause or encourage those comments and it permitted Mr. Allen to complete his public comment after the disruption subsided. In addition, the available information does not indicate that the police presence interfered with or caused a chilling effect on public comment. The recording established that the Board allowed Mr. Allen to finish his comments, and that he did so in a cohesive fashion. Accordingly, the Public Access Bureau concludes that the Board did not violate section 2.06(g) of OMA during its December 14, 2017, meeting.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, you may contact me at (312) 814-5201 or at the Chicago address on the bottom of the first page of this letter.

Very truly yours,

[redacted]

EDIE STEINBERG
Assistant Attorney General
Public Access Bureau

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