OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

June 16, 2020

Via electronic mail
[redacted]

Via electronic mail
The Honorable Herb Roach
Mayor
City of O'Fallon
255 South Lincoln
O'Fallon, Illinois 62269
hroach@ofallon.org

RE: OMA Request for Review – 2020 PAC 63099

Dear [redacted] and Mr. Roach:

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2018)). For the reasons that follow, the Public Access Bureau has determined that this Request for Review is unfounded.

On May 22, 2020, [redacted] submitted a Request for Review alleging that the City Council (Council) of the City of O'Fallon (City) violated OMA during its May 18, 2020, meeting by (1) prematurely terminating the time for public comment by [redacted] and [redacted] when they wished to cede a portion of their comment period to [redacted]; and (2) terminating [redacted] comments before he had spoken for the full five minutes allowed by Council rules.

Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2018)) provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." This office has previously determined that in order to warrant further action, a Request for Review concerning public comment must set forth facts indicating

that a member of the public attempted to address public officials during an open meeting but was improperly restricted by the public body from doing so. *See, e.g.*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 42017, issued June 1, 2016, at 1-2 (determining that a Request for Review alleging that a board's public comment rules violated section 2.06(g) of OMA did not warrant further inquiry because the Request for Review did not allege that anyone who attempted to address the board during an open meeting was improperly denied an opportunity to speak).

[redacted] included an internet link to the May 18, 2020, Council meeting. This office has reviewed those portions of the initial comment period where [redacted], [redacted], and [redacted] spoke, as well as those portions of the second comment period where [redacted] spoke. The video recording establishes that the Mayor and two other individuals attended the meeting in Council chambers, while other Council members and members of the public attended remotely.[1] The video shows that during the initial public comment period, [redacted] addressed the Council for five minutes.[2] After [redacted] spoke, [redacted] addressed the Council for almost two minutes and at the end of his comment said "I am going to yield the rest of my time to [redacted]."[3] [redacted] began speaking but his remarks were muted and the Council proceeded to the next person to give public comment. Next, [redacted] addressed the Council for approximately three and a half minutes. At the end of her comments, [redacted] stated "I am going to end my time. * * * I am going to attempt to give the rest of my time to [redacted]."[4] [redacted] began speaking but his remarks were muted again and the Council proceeded to the next person to give public comment.

The video establishes that the Council did not interrupt or end [redacted] or [redacted] public comment time. Rather [redacted] and [redacted] ended their own public

[1]Due to the rapid spread of COVID-19 throughout the State of Illinois, the Governor issued executive orders allowing meeting of public bodies to be held remotely. *See* Executive Order 2020-07, §6, issued March 16, 2020, at 3. This order has been extended. *See, e.g.*, Executive Order No. 2020-32, issued April 30, 2020 (extending the remote participation allowance through May 31, 2020).

[2]City of O'Fallon City Council, Meeting, May 18, 2020, available at https://view.earthchannel.com/PlayerController.aspx?&PGD=ofallonil&eID=213; [redacted] comment time occurs between 7:35 and 12:35.

[3]City of O'Fallon City Council, Meeting, May 18, 2020, available at https://view.earthchannel.com/PlayerController.aspx?&PGD=ofallonil&eID=213; [redacted] comment time occurs between 17:25 and 19:05.

[4]City of O'Fallon City Council, Meeting, May 18, 2020, available at https://view.earthchannel.com/PlayerController.aspx?&PGD=ofallonil&eID=213; [redacted] comment time occurs between 19:30 and 23:06.

comments when they expressed the desire to cede the rest of their time to speak to [redacted]. The plain language of section 2.06(g) of OMA provides an opportunity for people to address public officials under the rules established and recorded by the public body. A public body may prescribe reasonable rules to govern meeting decorum and procedure, including time limits for public comment. *See Wright v. Anthony*, 733 F.2d 575, 576-77 (8th Cir. 1984) (five minute time limit served a significant governmental interest in conserving time and in ensuring that others had an opportunity to speak). The City's established and recorded rules for public comment, which are available on its website, provide that "[a] speaker shall speak no longer than five minutes on any subject[.]"[5] The rules do not provide that speakers may donate their time or portions of their time to other speakers. [redacted], [redacted], and [redacted] each were allowed an opportunity to address the Council. [redacted] had already addressed the Council for five minutes at the time [redacted] and [redacted] attempted to yield their time to him. [redacted] and [redacted] chose not to speak for the full five minutes allotted. Accordingly, this office is unable to conclude that [redacted] or [redacted] were deprived of an opportunity to address the Council. Therefore, this office has determined that this allegation is unfounded.

The video also shows that the Council held a second period of public comment toward the end of the meeting during which [redacted] again addressed the Council.[6] [redacted] alleges he asked why he was not allowed to speak during the remaining portions of [redacted] and [redacted]' time and when the Council did not answer, he called for a point of order and then received a response from the Council. He alleges that that the Council did not provide him a full five minutes to speak because this initial exchange was counted towards his allotted five minutes. 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."[7] 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. Further, OMA does not require silence when speakers choose to pose questions to public bodies rather than making comments. When a speaker

---

[5]City of O'Fallon, Code of O'Fallon, Title III, §30.07(D)(1)(d) (2016), available at http://library.amlegal.com/nxt/gateway.dll/Illinois/ofallon/cityofo%E2%80%99fallonillinoiscodeofordinances?f=templates$fn=default.htm$3.0$vid=amlegal:ofallon_il.

[6]City of O'Fallon City Council, Meeting, May 18, 2020, available at https://view.earthchannel.com/PlayerController.aspx?&PGD=ofallonil&eID=213; [redacted] comment time occurs between 39:08 and 44:11.

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

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. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 51623, issued May 18, 2018, at 4-5 (concluding public body did not violate OMA when it interrupted speaker to explain it would not answer questions). Based on our review of the recording of the meeting, this office is unable to conclude that [redacted] was deprived of an opportunity to address the Council. Therefore, this office has determined that this allegation is also unfounded.

This file is closed. Please contact me at (312) 814-5201 or the Chicago address listed on the first page of this letter if you have questions.

Very truly yours,

[redacted]

EDIE STEINBERG
Senior Assistant Attorney General
Public Access Bureau

63099 o unf mun