

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 4, 2025

Via electronic mail



Via electronic mail

The Honorable Gary Grasso
Mayor
Village of Burr Ridge
7660 County Line Road
Burr Ridge, Illinois 60527
ggrasso@burr-ridge.gov

RE: OMA Request for Review – 2020 PAC 65149

Dear [REDACTED] and Mayor Grasso:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2022)).¹

On October 9, 2020, [REDACTED], who was then a trustee for the Village of Burr Ridge, submitted a Request for Review to this office alleging that the Village of Burr Ridge (Village) Board of Trustees (Board) violated OMA by refusing his request to listen to the recordings of certain closed sessions prior to the Board's October 12, 2020, meeting, in which the Board was expected vote on employment matters that were likely discussed in these closed sessions.² [REDACTED] also alleged that Board's refusal to provide him access to listen to the closed

¹In issuing this letter, we recognize that it is coming long after the allegations were raised and that [REDACTED] is no longer a trustee. Because the Request for Review raises a legal question that may reoccur, however, this letter is intended to provide guidance to the requester and public body.

²Based upon the materials provided, the closed session recordings requested were for the Board's September 14, 2020, and September 28, 2020, closed sessions, where [REDACTED] was not present, and from an

500 South 2nd Street
Springfield, Illinois 62701
(217) 782-1090 • Fax: (217) 782-7046

115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-3000 • Fax: (312) 814-3806

1745 Innovation Drive, Suite C
Carbondale, Illinois 62903
(618) 529-6400 • Fax: (618) 529-6416

Individuals with hearing or speech disabilities can reach us by using the 7-1-1 relay service.

www.IllinoisAttorneyGeneral.gov

██████████
The Honorable Gary Grasso

April 4, 2025

Page 2

meetings prior to the October 12, meeting was unreasonable. On October 14 and October 15, 2020, Mr. Mottl provided additional correspondence to this office in which ██████████ stated that although the October 12, 2020, meeting has passed he still wished to listen to the closed session recordings, and alleged that the Board violated OMA by failing to make reasonable accommodations for him to listen to the recordings. ██████████ Request for Review included e-mails between himself and Village administrative officials and Board officials. This office forwarded a copy of ██████████ Request for Review to the Board and asked it to provide a written response to the allegations.

On October 29, 2020, the Village's attorney, Mr. Michael K. Durkin, provided a response on the Board's behalf, which included affidavits from Mr. Gary Grasso, the Village Mayor, and Mr. Evan Walter, the Village's Assistant Administrator and Deputy Clerk, as well as a variety of e-mail correspondence.³ Subsequently, the Public Access Bureau forwarded the Board's written response to ██████████. He did not reply.

Section 2.06(e) of OMA (5 ILCS 120/2.06(e) (West 2018)) provides in pertinent part:

Access to verbatim recordings shall be provided to duly elected officials or appointed officials filling a vacancy of an elected office in a public body, and access shall be granted in the public body's main office or official storage location, in the presence of a records secretary, an administrative official of the public body, or any elected official of the public body. 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.

The plain language of section 2.06(e) of OMA allows elected members, or appointed members filling a vacancy of an elected office, to review verbatim recordings at specific locations in the presence of an elected official of the public body or certain other personnel. However, section 2.06(e) does not address the specific timing of access by a Board member, nor does it set forth a specific procedure for requesting access. In addition, section 2.06(e) does not require a public body to make each of the listed individuals available for oversight, nor does it require that a trustee be allowed to pick and choose which individual will provide oversight. Under section 2.06(e), arrangements must be made to accommodate the schedules of the person seeking access and the official that must be present. "Thus, section

additional closed session meeting immediately prior to those meetings, the date of which was never specifically provided.

³Mr. Walter is currently the Village Administrator but is referred to herein as Assistant Administrator.

██████████
The Honorable Gary Grasso

April 4, 2025

Page 3

2.06(e) necessarily contemplates that a closed session verbatim recording may not be immediately available to a Board member, as arrangements must be made for appropriate oversight." Ill. Att'y Gen. PAC Req. Rev. Ltr. 52345, issued February 19, 2019, at 5 (public body did not violate section 2.06(e) where there was no evidence that it refused a trustee's request to listen to a closed session recording or that the delay was so unreasonable that it effectively constituted a denial).

The Public Access Bureau has reviewed the materials ██████████ and the Board provided to this office. The materials submitted by the Board indicate that because the Village's senior staff had become apprehensive about interacting with ██████████ due to past conflicts, the Mayor directed senior staff that ██████████ should communicate only with the Mayor whenever he required information to perform his public duties. That directive was communicated via e-mail to the other trustees, including ██████████ on January 20, 2020, which is before the dispute at issue in this matter arose.

On September 30, 2020, ██████████ sent correspondence to the Assistant Administrator, using his personal e-mail address, stating that he wished to review the closed session recordings from the last three closed sessions, and asked that the recordings be prepared so he could come and listen next week. The Assistant Administrator responded that ██████████ should send any requests to his work e-mail address. On Wednesday, October 7, 2020, at 6:54 a.m., ██████████ e-mailed the Assistant Administrator, using both his personal and work e-mail addresses, asking "Are the recordings ready yet?"⁴ That same day at 7:54 a.m. Mayor Grasso responded:

Closed sessions recordings cannot be copied or remove[d] from the Village's main office. An elected official or administrative officer must be present. I will be present for the Village at the Village Hall if you want to listen to them. I'm available October 13 or 14 next week between 10am and Noon or 2:00pm to 4:00 pm. Choose one of those dates and time.⁵

██████████ and the Mayor continued their e-mail correspondence that morning without scheduling a mutually convenient time for ██████████ to listen to the recordings. The Board's response to this office stated that at approximately 10:45 a.m. on October 7, 2020, ██████████ appeared at Village Hall where the Assistant Administrator advised him that he needed to interact with the Mayor. Because ██████████ rang a bell located at the front counter for several minutes and would not leave after the Assistant Administrator spoke with him, the Assistant Administrator called the

⁴E-mail from ██████████ to Evan Walter, cc'd to David Giuliani, Patch, and Douglas Pollock, Burr Ridge (October 7, 2020).

⁵E-mail from Gary Grasso to ██████████ (October 7, 2020).

police to intervene. Thereafter, ██████████ and the Mayor continued their correspondence by e-mail, with ██████████ insisting that he be able to listen to the requested closed session recordings prior to the Board's October 12, 2020, meeting, with any administrative official present. On October 9, 2020, the Mayor advised ██████████ that if he could get another trustee to take his place to sit and listen to the closed session recordings with him he would "gladly pass the baton."⁶ While it is unclear whether ██████████ contacted any other trustee to do so, it is clear that ██████████ and the mayor did not agree to a time for ██████████ to listen to the recordings before the Monday, October 12, 2020, meeting.

After the October 12, 2020, meeting, ██████████ and the Mayor continued to communicate to find a convenient time for ██████████ to listen to the recordings, and on October 14, 2020, agreed that ██████████ would come to Village Hall in the morning of October 15, 2020, to listen to the recordings. The Mayor asked ██████████ to appear at 9:00 a.m. because he was only available until 10:30 a.m. and listening to the recordings would take about 90 minutes. ██████████ did not agree to that time, saying that he would be there sometime in the morning. ██████████ arrived at Village Hall on October 15, 2020, at 11:20 a.m. but was not allowed access to the recordings because the mayor was no longer present. The Mayor also informed ██████████ that he could meet him at Village Hall to listen to the recordings at specific times on October 21, 23, 26, and October 27, 2020.

In summary, on January 20, 2020, the Mayor informed ██████████ to communicate with him to obtain information from the Village. The Mayor, as an elected official, is one of the individuals allowed to be present when a trustee listens to a closed session recording. Instead of contacting the Mayor, on September 30, 2020, ██████████ sent correspondence to the Assistant Administrator at his personal e-mail address. Not until October 7, 2020, did ██████████ communicate with the Mayor regarding his request to listen to closed session recordings. On October 7, 2020, the Mayor offered ██████████ a couple of dates for him to come to Village Hall, one of which was on Tuesday October 13, 2020, four business days after ██████████ began corresponding with the Mayor. The Mayor also informed ██████████ that if he made arrangements with another trustee, he could review the recordings in that trustee's presence. In addition, the Mayor had offered ██████████ seven different dates for him to come and listen to the recordings. While none of the proffered times was before the October 12, 2020, meeting, the attempt to schedule a mutually convenient time was neither a refusal nor a delay so unreasonable that it effectively constituted a denial to listen to the recordings. Accordingly, given the specific circumstances present in this matter, this office is unable to conclude that the Board violated section 2.06(e) of OMA.

⁶E-mail from Gary Grasso to ██████████ (October 9, 2020).

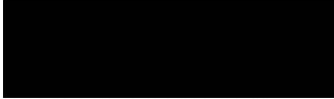

The Honorable Gary Grasso

April 4, 2025

Page 5

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, please contact me at 312-814-5201 or at edie.steinberg@ilag.gov.

Very truly yours,


EDIE STEINBERG
Senior Assistant Attorney General
Public Access Bureau

65149 o 206e proper mun

cc: *Via electronic mail*
Mr. Michael K. Durkin
Storino, Ramello & Durkin
9501 West Devon Avenue, Suite 800
Rosemont, Illinois 60018
mdurkin@srd-law.com