



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

February 23, 2024

Via electronic mail

The Honorable Joshua M. Dyer
4th Ward Alderman
City of Silvis
[REDACTED]

Via electronic mail

Ms. Keri-Lyn J. Krafthefer
Ancel Glink
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Naperville, Illinois 60563
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RE: OMA Request for Review – 2023 PAC 77429

Dear Mr. Dyer and Ms. Krafthefer:

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

BACKGROUND

In a Request for Review received by this office on July 21, 2023, Mr. Joshua Dyer, an alderman on the Silvis City Council (Council), alleged that the Council's July 18, 2023, meeting agenda item, "Discussion and possible action on censure," did not adequately describe a matter on which the Council took final action.¹ He alleged that the Council should have included names in the agenda item. Mr. Dyer also alleged that five Council members held secret meetings to discuss committee assignments.

¹E-mail from Joshua M. Dyer, 4th Ward Alderman, to Public Access Counselor (July 21, 2023).

On July 26, 2023, this office asked the Council or its representative to provide a written response to this office in which it addressed Mr. Dyer's allegations. On August 2, 2023, the Council responded. On August 4, 2023, this office forwarded the Council's answer to Mr. Dyer; he replied on August 9, 2023, and September 1, 2023. On August 29, 2023, this office requested additional information from the Council. On October 2, 2023, the Council submitted a supplemental answer, which this office then forwarded to Mr. Dyer. On October 11, 2023, Mr. Dyer submitted a reply to the Council's supplemental answer.

DETERMINATION

It is the "public policy of this State that its citizens shall be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 2022). "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 (1989).

Sufficiency of Agenda: Section 2.02(c) of OMA

Section 2.02(c) of OMA provides that "[a]ny agenda required under this Section shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting."² OMA does not contain a definition of "general subject matter." However, the Senate debate on House Bill No. 4687, which, as Public Act 97-827, effective January 1, 2013, added section 2.02(c) of OMA, indicates that the General Assembly intended this provision to ensure that agendas provide general notice of all matters upon which a public body would be taking final action:

[T]here was just no real requirement as to how specific they needed to be to the public of what they were going to discuss that would be final action. And this just says that you have to have a *
* **general notice** if you're going to have and take final action, **as to generally what's going to be discussed so that – that people who follow their units of local government know what they're going to be acting upon.** (Emphasis added.) Remarks of Sen. Dillard, May 16, 2012, Senate Debate on House Bill No. 4687, at 47.

The Public Access Bureau has determined that "the General Assembly's use of the term 'general subject matter' signifies that a meeting agenda must set forth the main element(s), rather than the specific details, of an item on which the public body intends to take final action." Ill. Att'y Gen.

²5 ILCS 120/2.02(c) (West 2022).

PAC Req. Rev. Ltr. 45667, issued February 16, 2017, at 4-5 (determining that voting to sign a new city administrator to a five year contract under the agenda item "Appointment of the City Administrator" did not violate section 2.02(c) of OMA).

The agenda for the Council's July 18, 2023, meeting stated, in relevant part "Discussion and possible action on censure[.]"³ The minutes for the July 18, 2023, meeting state that the Council voted on a motion to approve resolution 2023-22, which would censure Mr. Dyer and two other aldermen.⁴ Resolution 2023-22 indicates that the censure was for the aldermen's previous vote of "no confidence" in the Mayor for alleged harassment at a time before there had been any investigations conducted to confirm the veracity of the allegations. The resolution stated that an independent counsel's investigation concluded that the Mayor's alleged conduct did not rise to the level of harassment. The resolution further stated that "the failure to investigate the allegations against the Mayor prior to taking any vote has resulted in tens of thousands of dollars of legal fees which could have been avoided if the allegations had been properly investigated prior to any such vote[.]"⁵

The minutes also reflect that Mr. Dyer made a motion to censure Mayor Matt Carter.⁶ In his Request for Review, Mr. Dyer explained that his intention in making the motion "was to demonstrate that the agenda item was not sufficiently specific to satisfy the requirements of OMA" and he "stated during the meeting that this demonstrated that the agenda was not specific enough[.]"⁷

In its response to this office, the Council argued that the agenda item quoted above was sufficient to put the public on notice that someone was probably going to be the subject of a censure vote. The Council contended that it was not feasible to be more specific on the agenda because it did not yet know who would be the subject of the vote, arguing that "[u]ntil the Council meeting, at which this topic was discussed, the Council did not know who would be censured because the Council could only discuss the topic collectively at an open meeting."⁸ It argued that at the time it prepared the agenda, there were still attempts underway to persuade

³Silvis City Council, Agenda Item I (July 18, 2023).

⁴Silvis City Council, Meeting, July 18, 2023, Minutes [5-6].

⁵Resolution No. 2023-22, A Resolution to Censure Alderman Joshua Dyer, Richard Lohse, and Tony Trulson, at [2].

⁶Silvis City Council, Meeting, July 18, 2023, Minutes [5].

⁷E-mail from Joshua M. Dyer, 4th Ward Alderman, to Public Access Counselor (July 21, 2023).

⁸Letter from Keri-Lyn J. Krafthefer, Ancel Glink, to Laura S. Harter, Deputy Bureau Chief, Office of the Attorney General (August 2, 2023), at 2.

"certain aldermen [to] acknowledge their actions against the Mayor were predicated upon incomplete information."⁹ The Council asserted that if those aldermen made such an acknowledgement they would not have been the subject of a censure vote.

Mr. Dyer maintained that the agenda item was overly generic and did not inform the public "who generically (i.e. an outside entity, a class of city employee, a member of the council, etc.)" would be subject to a censure vote.¹⁰

In a related context, the Public Access Bureau has previously determined that overly-generic agenda items pertaining to personnel do not meet the requirements of section 2.02(c) of OMA. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 50745, issued January 17, 2018, at 2-3 (agenda item "Discussion of Personnel Matters (Possible Action Items)" did not provide general subject matter of vote to remove treasurer); Ill. Att'y Gen. PAC Req. Rev. Ltr. 48630, issued August 31, 2017, at 3-4 (agenda items "Action Regarding Executive Session Issues" and "Personnel- Section 2 (c) (1)" did not provide general subject matter of vote to appoint village administrator); Ill. Att'y Gen. PAC Req. Rev. Ltr. 42948, 42969, issued May 25, 2017, at 4-5 (agenda item "Employment of Personnel" did not provide general subject matter of vote to approve administrators' salaries). This office has also noted, however, that section 2.02(c) of OMA generally does not require names to be listed on an agenda in connection with personnel transactions. Further, this office has explained that

to comply with section 2.02(c), an agenda item for personnel actions must at least reference the category or categories of employees at issue, such as teachers, bus drivers, social workers, etc. Absent such general information concerning the positions subject to Board actions, members of the public who follow the activities of the Board will have little knowledge of what it will be acting upon. Ill. Att'y Gen. PAC Req. Rev. Ltr. 53265, issued August 28, 2018, at 5.

This office has previously concluded that an agenda item stating "Approval of Board Resolution for Censure of Board Trustee" contained the details necessary to inform the public of the general subject matter of the resolution. Ill. Att'y Gen. PAC Req. Rev. Ltr. 30969, issued October 25, 2018, at 2. In that agenda item, the public body did not name the specific individual who would be censured, but identified that it would be a trustee.

⁹Letter from Keri-Lyn J. Krafthefer, Ancel Glink, to Laura S. Harter, Deputy Bureau Chief, Office of the Attorney General (August 2, 2023), at 2.

¹⁰E-mail from Joshua M. Dyer, 4th Ward Alderman, to Public Access Counselor (July 21, 2023).

Here, the Council's July 18, 2023, meeting agenda gave notice of the type of action it was considering, but it did not provide any general indication of who might be subject to censure. As explained above, this office has previously concluded that in most instances, a public body is not required to include in its agendas the names of individuals who are the subjects of final actions; identifying general categories of individuals satisfies the requirements of section 2.02(c) of OMA. The agenda in question did not identify the category of individuals who were potentially subject to censure, nor was it apparent from use of the term "censure." Black's Law Dictionary defines "censure" as "[a]n official reprimand or condemnation; an authoritative expression of disapproval or blame; reproach."¹¹ It defines a "censure motion" as "[a]n application calling for an official reprimand or condemnation of an official, esp. a government official."¹² Based on the common understanding of the terms "censure" and "censure motion," it could be reasonably inferred that the Council intended to reprimand a government official rather than a member of the public, but even the category of "government official" is overly broad. Although the Council argued that it was not certain at the time it prepared the agenda who would be censured, it is clear from the resolution that it was considering censuring its own members. Therefore, the Council's agenda could have specified the general category of government officials—aldermen or Council members—who might have been the subject of the censure. Accordingly, this office concludes that the Council's July 18, 2023, agenda item "[d]iscussion and possible action on censure" did not adequately notify the public of the general subject matter of the censure resolution that was the subject of final action at that meeting, in violation of section 2.02(c) of OMA. Although there does not appear to be an appropriate remedy at this time, this office reminds the Council that for future meetings, when it intends to take action affecting an individual or individuals, to provide notice to the public of at least the category of individuals that will be affected by the Council's action.

Secret Meeting

The requirements of OMA apply to each "meeting" of a public body. 5 ILCS 120/1 (West 2022). Section 1.02 of OMA (5 ILCS 120/1.02 (West 2022)) defines "meeting" as:

[A]ny gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business[.]

¹¹Black's Law Dictionary 277 (11th ed. 2019).

¹²Black's Law Dictionary 277 (11th ed. 2019).

Pursuant to Section 2-31 of the City Code,¹³ the Council is comprised of a mayor and two aldermen from each ward. The City has four wards; therefore, the Council has nine members. Accordingly, five members constitute a quorum, and a majority of the quorum is three members. Therefore, contemporaneous, interactive communications involving at least three aldermen exchanged for "the purpose of discussing public business" would ordinarily constitute a meeting of the Council which would be subject to the procedural safeguards and requirements of OMA.

The basis for Mr. Dyer's allegation of a secret meeting was an exchange at the July 18, 2023, Council meeting during which the Council discussed removing Mr. Dyer and the two other aldermen who were the subject of the censure resolution from their committee assignments. One of the censured aldermen criticized the committee assignment process. When questioned about the committee assignments, Alderman Craig Pirmann, who made the motion for the assignments, stated, "Just to clarify, it was the other five aldermen. We all talked about it. You can ask any one of them." Mr. Dyer is then heard stating, "that sounds like an illegal meeting." Mr. Pirmann responds, "No. Not at the same time. Each one had an opportunity to submit what they wanted. That's it. There was no O-M-A violation. They were all—and me—they were all offered the opportunity to submit their ideas."¹⁴

In its August 2, 2023 response to this office, the Council argued that there was no improper discussion among a majority of a quorum of Council members, only a series of one-on-one conversations, as Mr. Pirmann stated during the meeting. Upon reviewing the Council's August 2, 2023, response, this office asked for more information about the one-on-one conversations, including a description of how the conversations were conducted, when each conversation was held, and the nature of the conversations. This office also requested any records documenting the conversations, such as text messages or e-mails.

In its October 2, 2023, response to this office's follow-up questions, legal counsel for the Council offered a different explanation for Mr. Pirmann's comments during the July 18, 2023, meeting. The response stated that "[t]o the extent the City wrote in its August 2, 2023 correspondence to the PAC that Alderman Pirmann contacted the other alderpersons individually

¹³Silvis, Illinois Code of Ordinances, § 2-31, https://library.municode.com/il/silvis/codes/code_of_ordinances?nodeId=COOR_CH2AD_ARTIICICO_DIV1GE_S2-31CO.

¹⁴City of Silvis, Meeting, July 18, 2023, https://soundcloud.com/user-625882465/230718_1816a?utm_source=clipboard&utm_medium=text&utm_campaign=social_sharing, at approximately 1:11:00 - 1:11:45.

to discuss committee assignments, that was a misunderstanding."¹⁵ Legal counsel for the Council stated:

based on my subsequent conversations with Alderman Pirmann concerning the City's August 2, 2023 response to the PAC, * * * Alderman Pirmann has clarified that he only had a brief in-person conversation with one other alderperson to discuss whether that alderperson has a preference concerning committee assignments. During that conversation, the alderperson responded that he did not have a preference, and would serve wherever needed. That was the full extent of the conversation.^[16]

In his reply to the Council's October 2, 2023, response, Mr. Dyer pointed out the discrepancy between Mr. Pirmann's July 18, 2023, statement at the meeting and the statement he provided legal counsel and questioned the veracity of the statements.

Although the Council's explanation for Mr. Pirmann's comments has changed from a series of one-on-one conversations to just one one-on-one conversation, neither scenario constitutes a "meeting" as defined by OMA. We have not received any evidence to support a conclusion that at least three Council members gathered to discuss the committee assignments outside of an open meeting. Accordingly, this office is unable to conclude that the Council held an improper meeting to discuss the committee assignments.

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 laura.harter@ilag.gov. This letter serves to close this file.

Very truly yours,



LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

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¹⁵Letter from Yevgeniy Bolotnikov, Ancel Glink, to Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (October 2, 2023), at [1].

¹⁶Letter from Yevgeniy Bolotnikov, Ancel Glink, to Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (October 2, 2023), at [1].