OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

September 10, 2024

Via electronic mail
[redacted]

Via electronic mail
The Honorable George Van Dusen
Mayor
Village of Skokie
5127 Oakton Street
Skokie, Illinois 60077
George.VanDusen@skokie.org

RE: OMA Request for Review – 2023 PAC 79466

Dear [redacted] and Mr. Van Dusen:

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

On December 21, 2023, [redacted] submitted a Request for Review to the Public Access Bureau alleging that the Board of Trustees (Board) of the Village of Skokie (Village) violated the requirements of OMA at its December 18, 2023, meeting. Specifically, [redacted] alleged that: (1) the Board did not follow the rules of order, as laid out in the Village's Code of Ordinances; (2) the meeting's livestream stopped for a period of time, making it difficult for the public to follow the meeting; (3) the Board ended the meeting before a trustee had a chance to call a motion to bring back an agenda item; and (4) the Board ended the meeting before she and two other members of the public could provide public comment. With respect to the last allegation, [redacted] stated that the Board provided time for public comments after it discussed agenda item 12B, but that "[i]mmediately following the last comment on the specific

agenda item discussion," a trustee moved to adjourn.[1] She contended that the Board ended the meeting "prematurely, before the last three items on the agenda: 13. Unfinished Business; 14. New Business and 15. Public Comment."[2] [redacted] asserted that at that point:

> One person in attendance calls out asking "what just happened?" she was there to make a public comment. Another gentleman was confused and stated he had also sat through the entire meeting to make a public comment unrelated to specific agenda items and I also had a public comment that was unrelated to the agenda items already addressed.[3]

[redacted] further stated that the Village Manager ultimately "came over apologetically and offered to take written comments to the board[,]" but noted that she did not have written comments to provide.[4]

As a threshold matter, section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2022)) provides, in relevant part:

> A person who believes that a **violation of this Act** by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation. If facts concerning the violation are not discovered within the 60–day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, by a person utilizing reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation**.** (Emphasis added.)

Further, the Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2022)). *See* 15 ILCS 205/7(c)(3) (West 2022). OMA governs the transparency with which public bodies

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[1]Letter from [redacted] to Leah Bartelt, Public Access Counselor, Office of the Attorney General (December 21, 2023), at 1.

[2]Letter from [redacted] to Leah Bartelt, Public Access Counselor, Office of the Attorney General (December 21, 2023), at 1.

[3]Letter from [redacted] to Leah Bartelt, Public Access Counselor, Office of the Attorney General (December 21, 2023), at 1.

[4]Letter from [redacted] to Leah Bartelt, Public Access Counselor, Office of the Attorney General (December 21, 2023), at 1.

meet and conduct public business; it generally does not govern other aspects of meetings, such as a meeting's order of business and procedures for entertaining motions by a public body's members. OMA also does not require public bodies to livestream in-person meetings. A public body may livestream in-person meeting in the interests of transparency, but no provision of OMA requires it to do so. Because the Public Access Counselor does not have the authority to review alleged violations of a municipal code, and because the allegation concerning the livestream does not implicate OMA's requirements, this office took no further action on the first three claims in [redacted] Request for Review.[5]

On January 3, 2024, this office forwarded a copy of the Request for Review to the Board and asked it to provide this office with copies of its December 18, 2023, meeting agenda and minutes, any rules or policies governing public comment, and a written response to the allegation that the Board did not provide members of the public an opportunity to address its members in violation of section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2022)). On January 17, 2024, this office received the requested materials. On January 18, 2024, this office forwarded a copy of the Board's response to [redacted]; she replied the next day.

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 (1989).

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." This provision "requires that all public bodies subject to the Act provide an opportunity for members of the public to address public officials at open meetings." Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 5. A public body may restrict public comment only pursuant to its established and recorded rules, which must tend to accommodate, rather than unreasonably restrict, the right to address public officials. Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, at 6.

In its response to this office, the Board denied that it failed to provide an opportunity for members of the public to address its members. Directing this office to a posted recording[6] of the meeting, the Board asserted that during the meeting, a Village resident asked to

[5] [redacted] submission also alleged that the Board improperly discussed certain issues in closed session at its October 2021 meeting. That allegation was addressed separately in 2023 PAC 79467.

[6] Village of Skokie, *December 18, 2023 Village Board Meeting*, YouTube, (December 18, 2023), https://www.youtube.com/watch?v=5SzRJ_fjWHo.

provide public comment and was given a chance to do so after several trustees finished a discussion. The Board asserted that [redacted] then "approached the podium and gave her public comment about an attempted referendum from a Board Meeting held a year earlier[,]" and that another individual also commented on the attempted referendum.[7] The Board contended:

> Following the last comment, no one was waiting at the podium to make an additional comment. Also, no one from the audience stood up and approached the podium to address the Board. Additionally, no one in the audience raised their hand and asked to be heard. Finally, despite the requester's allegation, no one in the audience verbalized that they wanted to address the Board. If anyone had done so, [the mayor] would have allowed them the opportunity to speak.[8]

In reply to that answer, [redacted] maintained that the Board ended the meeting "before *general* Public Comments, Item 15 on the Agenda, which again is *the only opportunity* for the public to speak on items unrelated to specific agenda items."[9] (Emphasis in original.) She acknowledged that she provided comments but argued that her comments were specifically related to the discussion of agenda 12B. [redacted] also disputed the Board's claim that no one else expressed a desire to address the Board, reiterating that an individual spoke out at the adjournment:

> I am not sure if the mayor simply did not notice, but the Village Manager did and approached her. If the mayor truly didn't notice it doesn't mean it didn't happen – there were several people in the room who did notice in addition to the village manager and me, including a member of the public who provided his notes to the manager.[10]

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[7]Letter from Mayor George Van Dusen, Village of Skokie, to Teresa Lim, Supervising Attorney, Public Access Bureau (January 11, 2024), at 2.

[8]Letter from Mayor George Van Dusen, Village of Skokie, to Teresa Lim, Supervising Attorney, Public Access Bureau (January 11, 2024), at 2.

[9]Letter from [redacted] to Teresa Lim, Supervising Attorney, Public Access Bureau, Office of the Illinois Attorney General (January 19, 2024), at 2.

[10]Letter from [redacted] to Teresa Lim, Supervising Attorney, Public Access Bureau, Office of the Illinois Attorney General (January 19, 2024), at 2.

Additionally, [redacted] stated that "it is typical for the members of the public who wish to make a public comment to remain seated through the agenda until there is a call for public comments since it is the mayor who moves through the agenda. That call never came on December 18th."[11]

This office has reviewed the posted recording of the December 18, 2023, meeting, specifically the portion that started with the Board's consideration of Agenda Item 12B: "An ordinance to establish the compensation for appointed officials for FY2024. Items B is on the agenda for first reading. The second reading will be on January 2, 2024."[12] The Village's Corporation Counsel provided an overview of this ordinance. One of the trustees expressed his concerns regarding the ordinance, which included concerns related to conflicts of interest, partisanship, voter suppression, and misconduct. A Board discussion then ensued regarding those concerns. During this discussion, a member of the public spoke up and asked if she could make a public comment. The mayor asked her to hold on, and the Board wrapped up its discussion. The individual then stepped up to a podium, introduced herself, and stated she wished to focus on the agenda item, indicating her comments pertained to the issue of partisanship/non-partisanship. She then commented on the Board's discussion and the introduced ordinance. [redacted] next stepped up to the podium and explained that she was going to talk on the matter of voter suppression, as referenced by the trustee in his concerns. [redacted] expressed her thoughts and concerns about an attempted referendum and a petition she and other residents had been preparing. Another member of the public then stepped up to the podium and similarly expressed her thoughts related to the attempted referendum. After the latter individual concluded her remarks, a trustee moved to adjourn the meeting.

The Board provided this office with a copy of "Welcome" handout describing its meeting procedures for members of the public. The handout states, in relevant part:

> If there is a specific item that is listed on the Agenda about which you seek to comment, after a motion or resolution is presented AND after the Trustees have an opportunity to discuss the item, the Mayor will ask if anyone wishes to speak to the item. At that time, you may raise your hand to be recognized. Please approach the lectern, identify yourself and speak to the Village Board.
>
> If you seek to comment on a matter that is not on the Agenda, after the Village Board addresses scheduled matters for which people are specifically in attendance, there is an Agenda

[11]Letter from [redacted] to Teresa Lim, Supervising Attorney, Public Access Bureau, Office of the Illinois Attorney General (January 19, 2024), at 2.

[12]Village of Skokie, Agenda Item 12, Report of the Corporation Counsel (December 18, 2023).

> Item entitled "Public Comment" during which you may address the Village Board. For matters attracting large numbers of public comment, there may be other requirements to enable a large number of participants. Such requirements will be posted in advance on the Village website. **All comments are limited to 3 minutes per person**.[13] (Emphasis in original.)

Even if the above-described participant procedures in the "Welcome" handout could be considered "rules established and recorded by the public body," the Board did not appear to adhere to those procedures. It is undisputed that Item 15 of the agenda listed "Public Comment,"[14] but that the Board adjourned the meeting shortly after its consideration of Item 12B. The Public Access Bureau has previously determined that "[n]o provision of OMA requires a public body to adhere to the chronological order of an agenda." Ill. Att'y Gen. PAC Req. Rev. Ltr. 55279, issued October 24, 2018, at 2. While OMA did not prohibit the Board from changing the order of its agenda, the agenda nonetheless suggested that the Board planned to consider two other agenda items before hearing public comments on non-agenda items, and the Board did not indicate during the meeting any changes to its public participation procedure. The recording reflects that the Board allowed three individuals to complete their comments without interruption. The individuals appeared at times to speak broadly on issues that did not directly pertain to the compensation ordinance that was the subject of Item 12B. On the other hand, the Board did not make clear that it would hear any other comments, not limited to agenda items, after the third person spoke, such as by making a last call for public comments on any matters. Therefore, members of the public could have reasonably believed from reviewing the agenda and handout that they should wait to comment on non-agenda issues rather than raise their hands to be recognized at the time that comment on the agenda item was occurring. [redacted] illustrated that several members of the public expressed a desire to comment but were unable to do so because of the early adjournment of the meeting. Under these circumstances, this office concludes that the Board violated section 2.06(g) of OMA during its December 18, 2023, meeting.

Although there are no means by which the Board can remedy its violation of section 2.06(g) in this instance, the Board and its members should be mindful of the public's statutory right to address the Board before it adjourns its meetings.

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[13]Village of Skokie, Welcome Handout.

[14]Village of Skokie, Agenda Item 15, Public Comment (December 18, 2023).

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,

[redacted]
TERESA LIM
Supervising Attorney
Public Access Bureau

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