OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

July 15, 2024

Via electronic mail
Ms. Gina Salamone
Attorney at Law
Huck Bouma
1755 South Naperville Road, Suite 200
Wheaton, Illinois 60189
gsalamone@huckbouma.com

RE: OMA and FOIA Request for Review – 2024 PAC 82071

Dear Ms. Salamone:

This letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2022)) and section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2022), as amended by Public Act 103-069, effective January 1, 2024). For the reasons explained below, the Public Access Bureau will take no further action with respect to the above-referenced Request for Review.

On July 8, 2024, you submitted this Request for Review to the Public Access Bureau alleging that Aurora Downtown is out of compliance with FOIA and OMA. You noted that you are a former member of Aurora Downtown's Board of Directors, for which you took OMA training and responded to FOIA requests directed to the organization. You further noted that because of your activity on behalf of Aurora Downtown, you are a party to a lawsuit alleging, among other things, that Aurora Downtown is a public body subject to FOIA.[1] In *River Breeze, LLC v. Granholm*, 2022 IL App (2d) 210704, ¶¶ 40-41, the Illinois Appellate Court vacated the lower court's dismissal of a complaint that Aurora Downtown must abide by FOIA as

[1]The Illinois Supreme Court has declared: "The definition of public body is substantially identical in both of those statutes. We find no reason to distinguish between the determination of a public body for purposes of the Open Meetings Act and the FOIA." *Better Government Ass'n v. Illinois High School Ass'n*, 2017 IL 121124, ¶ 25.

a public body, remanding the case for a factual analysis of whether Aurora Downtown indeed qualifies as a public body. You advised that the litigation remains pending on remand.

Both FOIA[2] and OMA[3] provide that when the requester files suit with respect to the same alleged violation that is the subject of a pending Request for Review, the Public Access Counselor shall take no further action on the matter. Although you did not file the lawsuit in question, your Request for Review calls upon the Public Access Bureau to perform precisely the same factual analysis that the courts are currently performing in *River Breeze, LLC v. Granholm*. As an exercise of discretion in deference to the court proceeding, the Public Access Bureau will take no further action in this matter.[4]

Accordingly, this letter serves to close this file. If you have questions, please contact me at joshua.jones@ilag.gov.

Very truly yours,

[redacted]

JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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cc: *Via electronic mail*
Mr. Brian Failing
Board Chair
Aurora Downtown
43 West Galena Boulevard
Aurora, Illinois 60506
info@auroradowntown.org

[2]5 ILCS 140/9.5(g) (West 2022), as amended by Public Act 103-069, effective January 1, 2024.

[3]5 ILCS 120/3.5(f) (West 2022).

[4]5 ILCS 140/9.5(f) (West 2022), as amended by Public Act 103-069, effective January 1, 2024 ("In responding to any request under this Section 9.5, the Attorney General may exercise his or her discretion and choose to resolve a request for review by mediation or by a means other than the issuance of a binding opinion."); 5 ILCS 120/3.5(e) (West 2022) ("In responding to any written request under this Section 3.5, the Attorney General may exercise his or her discretion and choose to resolve a request for review by mediation or by a means other than the issuance of a binding opinion.").