



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 1, 2017

Via electronic mail

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Mr. Dean Frieders
City Attorney
City of DeKalb
200 South Fourth Street
DeKalb, Illinois 60115
dean@frieders.com

RE: OMA Request for Review – 2016 PAC 45219

Dear [REDACTED] and Mr. Frieders:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2015 Supp.)). For the reasons stated below, the Public Access Bureau concludes that the City of DeKalb (City) City Council (City Council) did not violate OMA in connection with an employee's separation agreement.

On November 29, 2016, [REDACTED] submitted a Request for Review stating that the City entered into a separation agreement with a specific employee on October 27, 2016, but the City Council did not provide advance notice that it would take final action to approve that agreement at its October 10, 2016, or October 24, 2016, meetings. This office construed the Request for Review as alleging that the City Council either (1) took final action on the agreement outside of an open meeting, or (2) failed to provide advance notice if it approved the agreement at one of its October 2016 meetings.

On December 12, 2016, this office sent a copy of the Request for Review to the City and asked it to provide a written response clarifying whether the City Council approved the employee's separation agreement, or whether the matter was handled administratively without

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City Council approval. If the City Council did approve the agreement, we asked the City to furnish copies of any relevant meeting minutes or other documentation of that final action as well as any advance notice that was provided for it. On December 15, 2016, the City provided a response, which included confidential information that this office is prohibited from disclosing in this determination. See 5 ILCS 120/3.5(c) (West 2015 Supp.). On April 7, 2017, this office forwarded a copy of the City's non-confidential response to ██████████ she replied on April 17, 2017. On April 20, 2017, the City issued a supplemental response to which ██████████ replied on April 30, 2017.

DETERMINATION

OMA is intended "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2014). Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2014)) provides that "[a]n agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting." Section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2014)) further requires that the agenda "set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting." In addition, "[n]o final action may be taken at a closed meeting. Final action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted." 5 ILCS 120/2(e) (West 2015 Supp.), as amended by Public Acts 99-642, effective July 28, 2016; 99-646, effective July 28, 2016; 99-687).

The non-confidential portion of the City's response to this office acknowledged that on October 27, 2016, the City entered into a separation agreement with the employee identified in the Request for Review. The response stated that City Council approval was unnecessary because the "agreement and all expenditures contemplated therein were within budgeted expenses and staff spending authority[.] * * * As that action was taken within staff authority, no public recitation requirement is applicable and no violation of the Open Meetings Act occurred."¹ In her reply, ██████████ again asserted that the City Council violated OMA, citing as support this office's determination in 2015 PAC 34124. ██████████ also contended that the content of the separation agreement violated City policies and exceeded the city manager's spending authority.² The City then issued a supplemental response reiterating that the

¹Letter from Aaron Stevens, Management Analyst, City of DeKalb, to Steve Silverman, Bureau Chief, Public Access Bureau (December 15, 2016).

²The Public Access Counselor's authority is limited to resolving disputes concerning OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2014)). See 15 ILCS 205/7(c) (West 2014). To the extent that ██████████ alleges that the City's administrative staff exceeded its spending authority and/or that the City violated its internal policies in connection with the agreement, those allegations are not subject to review by the Public Access Counselor. This office's authority is limited to resolving disputes concerning OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2014)). See 15 ILCS 205/7(c) (West 2014).


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agreement did not require City Council approval and denying that the City violated its own policies, adding that this office does not have jurisdiction to review whether the City complied with its own policies. In her supplemental reply,  asserted that the City Council was required to approve the agreement under OMA because it involved an appropriation that had not been previously made and that created potential legal liability for the City.

As noted above, OMA generally requires public bodies to conduct public business openly and to take final action openly. *See* 5 ILCS 120/1 (West 2014); 5 ILCS 120/2(e) (West 2015 Supp.), as amended by Public Acts 99-642, effective July 28, 2016; 99-646, effective July 28, 2016; 99-687). OMA does not, however, require a public body to take final action on separation agreements or any other particular matters. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 25456, issued August 7, 2013, at 1 ("[T]he requirement that a public body take final action openly does not govern whether a public body takes final action or the type of final action that is taken."); Ill. Att'y Gen. PAC Req. Rev. Ltr. 13733, issued June 20, 2011, at 2 ("While OMA does not govern the types of matters subject to action by a public body, it does govern the procedure for a public body taking final action on any matter under its consideration.").

The determination cited by  in support of her allegation that the City Council violated OMA is distinguishable from the underlying facts of this Request for Review. In 2015 PAC 34124, the Public Access Bureau concluded that the City Council violated section 2(e) of OMA by approving, at least tacitly, a settlement agreement in closed session. Ill. Att'y Gen. PAC Req. Rev. Ltr. 34124, issued June 5, 2015, at 6. In this matter, there is no indication that the City Council voted to approve or otherwise took final action on the employee's separation agreement in closed session. Rather, the available information indicates that the City's administrative staff unilaterally entered into the separation agreement pursuant to its spending authority. Accordingly, the available information provides no basis for this office to conclude that the City Council violated OMA by failing to take final action openly or by failing to provide advance notice of final action concerning the separation agreement.

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 (312) 814-6756. This file is closed.

Very truly yours,


STEVE SILVERMAN
Bureau Chief
Public Access Bureau