OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 17, 2018

Via electronic mail
[redacted]

Via electronic mail
Mr. Blinn Bates
Woods & Bates
306 Clinton Street
Lincoln, Illinois 62656
blinn@woodsandbates.com

Re: OMA Request for Review – 2017 PAC 50418

Dear [redacted] and Mr. Bates:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons discussed below, this office concludes that the City Council (Council) of the City of Lincoln (City)'s agendas for its regular meetings on October 2, 2017 and November 6, 2017 contained adequate notice of a final action taken at those meetings, but that prior meeting minutes approved at the October 2, 2017, meeting were approved late and did not include the content required by OMA.

On November 13, 2017, [redacted] submitted a Request for Review alleging that the item "Payment of Bills" which appears on agendas of the Council does not provide adequate notice of the final action to be taken. He attached the meeting agendas for the October 2, 2017, and November 6, 2017, meetings as examples. [redacted] also alleged that meeting minutes for Council meetings that had occurred on March 28, 2017, June 27, 2017, July 31, 2017, August 28, 2017, August 29, 2017, and September 5, 2017 were approved at the October

2, 2017, regular Council meeting, thus were approved outside of the time limits provided by OMA. [redacted] further alleged that the content of the minutes did not comply with OMA.[1]

DETERMINATION

Agenda Item "Payment of Bills"

Section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2016)) 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." (Emphasis added.) OMA does not define the term "general subject matter." However, the Senate debate on House Bill No. 4687, which added section 2.02(c) to OMA as part of Public Act 97-827, effective January 1, 2013, 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.

In interpreting statutes such as OMA, undefined statutory terms must be afforded their "plain, ordinary, and popular meanings[,]" which may be gleaned from dictionaries. *See, e.g., Valley Forge Insurance Co. v. Swiderski Electronics*, 223 Ill. 2d 352, 366 (2006). "General" is defined, in relevant part, as "relating to, determined by, or concerned with main elements rather than limited details." Merriam-Webster Online Dictionary, http://www.merriam-webster.com/dictionary/general (last visited April 17, 2018). Additionally, Black's Law Dictionary defines "subject matter" as "[t]he issue presented for consideration; the thing in which a right or duty has been asserted; the thing in dispute." Black's Law Dictionary (10th ed. 2014), available at Westlaw BLACKS. Accordingly, in light of these definitions and the legislative history behind section 2.02(c), the Public Access Bureau has previously determined that "the General Assembly's use of the term 'general subject matter' signifies that a meeting agenda must

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[redacted] also alleged that the requirement of a "speaker's card" for public comment violated OMA, but did not allege that he or any other person was specifically prohibited from providing public comment. Lastly, [redacted] alleged that the City Attorney acted inappropriately at an October 16, 2017, meeting. For reasons further explained above, this office did not request that the Council respond to these additional allegations.

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. PAC Req. Rev. Ltr. 45667, issued February 16, 2017, at 4-5.

This office has previously determined with respect to this Council's agendas that the agenda item "Payment of Bills" sufficiently identified the general subject matter of the final action taken on invoices at its meetings. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 49515, issued October 30, 2017, at 6. The language and legislative history of section 2.02(c) of OMA do not provide this office with a basis upon which to conclude that the Council was required to specifically identify on the agenda each bill it approved or otherwise set forth details about those bills. Accordingly, this office concludes that the Council did not violate the advance notice requirement of section 2.02(c) of OMA by listing "Payment of Bills" on the agendas of the October 2, 2017, and November 6, 2017, Council meetings.

Approval of Meeting Minutes

Section 2.06(b) of OMA (5 ILCS 120/2.06(b) (West 2016)) provides, in relevant part:

> A public body shall approve the minutes of its open meeting within 30 days after that meeting or at the public body's second subsequent regular meeting, whichever is later. The minutes of meetings open to the public shall be available for public inspection within 10 days after the approval of such minutes by the public body.

At its October 2, 2017, meeting, the Council approved minutes from prior meetings held on March 28, 2017, June 27, 2017, July 31, 2017, August 28, 2017, August 29, 2017, and September 5, 2017. In its answer to this office, the Council acknowledged that "there is no doubt that the approval of some of the Council's prior meeting minutes was not done timely."[2] It is apparent that more than 30 days had elapsed and two regular meetings had occurred since some of these meetings. Accordingly, this office concludes that the Council violated section 2.06(b) of OMA by not approving meeting minutes in a timely manner.

[2]E-mail from Blinn Bates, Woods & Bates, to Neil Olson, [Deputy Public Access Counselor], [Public Access Bureau] (November 27, 2017).

Content of Minutes

In addition to the timeliness of the approval of those minutes, [redacted] objected to the content of the minutes:

> Not only are the minutes late, they leave out key details of the meetings. I cannot make heads or tails the majority of what Risa Riggs (recording secretary) is saying. The minutes are to be clear, precise, where the general public could understand and know what is said and what is going on. That simply is not the situation.[3]

In its answer to this office, the Council asserted that the minutes comply with the requirements of OMA.

Section 2.06(a) of OMA (5 ILCS 120/2.06(a) (West 2016)) provides:

> (a) All public bodies shall keep written minutes of all their meetings, whether open or closed, and a verbatim record of all their closed meetings in the form of an audio or video recording. Minutes shall include, but need not be limited to:
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> (1) the date, time and place of the meeting;
>
> (2) the members of the public body recorded as either present or absent and whether the members were physically present or present by means of video or audio conference; and
>
> (3) a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken.

[3]Letter from [redacted] (undated).

[redacted] does not appear to dispute that the minutes approved at the October 2, 2017, meeting contain the information required by subsections 2.06(a)(1) and 2.06(a)(2).[4] Therefore, this review is limited to whether the minutes contain the information required by subsection 2.06(a)(3), namely, "a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken."

OMA does not further address how detailed the summaries of discussion in meeting minutes should be, and no Illinois reviewing court appears to have addressed that issue. However, the Public Access Bureau has consistently concluded that one-sentence general statements purporting to summarize discussion are insufficient. *See, e.g.,* Ill. Att'y Gen. PAC Req. Rev. Ltr. 26700, issued April 9, 2015, at 5 (statement that staff member "spoke about the pump house floors" insufficiently described discussion).

This office has reviewed the approved minutes in concert with the recordings for open sessions provided by the Council.[5] Our review reflects that the summary of discussion in the meetings and record of votes taken did not satisfy the requirements of section 2.06(a)(3), and provides two examples.

March 28, 2017, Meeting Minutes

The minutes of the March 28, 2017, Council Committee of the Whole meeting contain the following summary of the discussion on the agenda item "Logan County Electric Consortium Consulting Agreement":

> Mayor Neitzel said there were three businesses that made presentations. One company did not have [*sic*] and left two businesses that were approved. It was decided to go with Illinois

[4]In an e-mail dated December 20, 2017 to this office, the City Clerk stated that the July 31, 2017, meeting occurred at Lincoln College, and the agenda provided by the Council also states the meeting was held at Lincoln College. However, the July 31, 2017, minutes reflect that the meeting was held in the Council Chambers. As part of the remedial action further discussed in this determination, the Council should address this discrepancy.

[5]OMA does not require the recording of open sessions (as opposed to closed sessions). This office requested recordings for any open sessions that were recorded. In response, the City Clerk provided audio files for the recordings of the March 28, 2017, Council Committee of the Whole meeting, the June 27, 2017, Council Committee of the Whole meeting, the August 28, 2017, special Council meeting, the August 28, 2017, Council Committee of the Whole meeting, and the September 5, 2017, regular Council meeting; the Clerk stated that the July 31, 2017 special Committee of the Whole meeting was not recorded. The Clerk further stated that some of the recordings may not have been properly recorded; this office was unable to review the recording of the June 27, 2017, meeting.

> Choice which is going with ICCAN. Alderman Welch said they should have looked at all three. ICCAN gave the best cost.
>
> This will be discussed again on April 25, 2017.[6]

This section summarized a nearly 19-minute long deliberation among the Council about the process for selecting an electricity aggregation consultant for the City. The Mayor reported that the Logan County Electric Consortium, on which she served as a member, considered three applications, had eliminated one applicant from contention, and of the remaining two (the Illinois Community Choice Aggregation Network [ICCAN] and "Good Energy"), had selected ICCAN. A member of the Council questioned why one applicant (then identified as "Stone River") had been eliminated, and thereafter other members of the Council questioned the selection process and whether the Consortium's decision was binding. The Mayor described that the one applicant had been disqualified based on the manner in which it made its cost projections, and that the Council ultimately was the body to vote to approve the contract for the City. In the end, the Mayor agreed to provide the application materials to the Council for its review, and the matter was tabled until April 25, 2017. The summary does not identify all three businesses making "presentations," to what body those presentations were made, and what one business "did not have." In addition, it does not sufficiently reflect the substance of the discussion among the Council members or the final conclusion of the discussion.

September 5, 2017, Meeting Minutes

As another example, the minutes of the September 5, 2017, Council meeting contain the following summary under the agenda item "Exclusive Franchise Municipal Solid Waste and Recycling Collection Proposal":

> Alderman Bauer moved to approve the Exclusive Franchise Municipal Solid Waste agreement and Alderman Keller seconded it. Clerk Mrs. Bateman called the roll call. There were five ayes (Alderman Bauer, Alderman Browne, Alderman Hoinacki, Alderman Keller and ***Alderman Parrott***, and Alderman Welch), three nays (Alderman Hoefle, Alderman Horn and ***Alderman Parrott***), and none absent; motion carried. (Emphasis added.)
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> Alderman Bauer moved to approve Recycling Collection Proposal and Alderman Browne seconded it. City Clerk Mrs. Bateman called the roll call. There were eight ayes (Alderman

[6]Lincoln, Illinois, City Council Committee of the Whole Meeting, March 28, 2017, Minutes 2.

Bauer, Alderman Browne, Alderman Hoefle, Alderman Hoinacki, Alderman Horn, Alderman Keller, Alderman Parrott, and Alderman Welch), zero nays, and none absent; motion carried.[7]

With respect to the first motion, as indicated above, the approved minutes reflect that an alderman cast ***both*** an aye and a nay vote on the first proposed motion. The recording of the meeting reflects that this alderman voted against the motion. In addition, the summary does not reflect key parts of the proposed motion, such as the party to be awarded the contract or the contract's term. The summary also does not reflect in any respect the nearly 20-minute deliberation among the Council members prior to the vote, in which certain members expressed objections to the proposal.

With respect to the second motion summarized in this part of the minutes, our review of the recording reflects that the minutes inaccurately reflect the motion. Rather than a motion to approve a recycling collection agreement apart from a solid waste collection agreement, the motion was to direct the City Attorney to draft an ordinance regarding the mandatory collection of solid waste and recycling.

The descriptions above are not an exhaustive listing of all the deficiencies of the minutes at issue. However, these examples illustrate that the minutes do not comply with the minimum requirements of section 2.06(a) of OMA because they do not sufficiently and accurately summarize the Council's discussions and votes.

In accordance with the conclusions of this letter, this office requests that the Council review the minutes approved at the October 2, 2017, regular meeting with the available resources such as recordings and notes, and revise them to comply with the requirements of section 2.06(a) of OMA.

Public Comment

In addition, [redacted] alleged that the Council required a "speaker's card" to be filled out for a member of the public to provide public comment. [redacted] did not allege that he or another member of the public were prevented from providing public comment because of the failure to complete this card, therefore this statement does not set forth facts sufficient to allege that a violation of OMA has occurred. The Public Access Bureau, however, is also charged with providing advice and education with respect to OMA. *See* 15 ILCS 205/7 *et seq.* (West 2016). The "speaker's card" requires a person's name, address, e-mail address, and the subject of the public comment. In binding opinion 14-009, the Attorney General concluded that

[7]City of Lincoln, Illinois, September 5, 2017, Minutes 2.

requiring speakers to state their home addresses prior to addressing public bodies violates section 2.06(g) of OMA (Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 7). This office suggests that the Council re-examine its rules for public comment, keeping in mind that although OMA does not specifically address the types of rules that a public body may adopt, generally, public bodies may only adopt those reasonable "time, place and manner" regulations that are necessary to further a significant governmental interest. *See, e.g., I. A. Rana Enterprises, Inc. v. City of Aurora,* 630 F. Supp. 2d 912, 922 (N.D. Ill. 2009).

Lastly, [redacted] raised additional issues related to the conduct of the City Attorney. The Public Access Counselor's authority is limited to resolving disputes concerning the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2016)) and OMA. 15 ILCS 205/7(c) (West 2016). Therefore, these allegations are not subject to review by this office.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, please contact me at (217) 782-9078.

Very truly yours,

[redacted]

NEIL P. OLSON
Deputy Public Access Counselor
Public Access Bureau

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cc: *Via electronic mail*
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