

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

February 8, 2018

Via electronic mail

[REDACTED]

Via electronic mail

Mr. Jeffrey Levine
Deputy Corporation Counsel
Legal Counsel Division
Department of Law
City of Chicago
121 North LaSalle Street, Room 600
Chicago, Illinois 60602
jeffrey.levine@cityofchicago.org

RE: OMA Request for Review – 2017 PAC 50479

Dear [REDACTED] and Mr. Levine:

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 explained below, the Public Access Bureau concludes that the City of Chicago City Council (Council) violated OMA by failing to post an agenda for its November 15, 2017, meeting on its website 48 hours in advance of the meeting.

BACKGROUND

On November 14, 2017, this office received [REDACTED] Request for Review alleging that the Council did not post an agenda on the Council's website or on the City Clerk's Legislative Information Center website 48 hours before the Council's November 15, 2017, meeting. On November 16, 2017, this office sent a copy of the Request for Review to the Council and requested that it provide a written response to [REDACTED] allegation. This office asked the Council to confirm whether it held a meeting on November 15, 2017, and, if so, to

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specify if and when notice was posted on the Council's website. This office also asked the Council whether its website was maintained by a full-time staff member. On November 27, 2017, the Council provided a written answer to the Request for Review. On November 29, 2017, this office forwarded a copy of the Council's letter to ██████████; she did not reply.

DETERMINATION

The intent of OMA is to "ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly" and to ensure that individuals are "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 2016); *see also Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989) ("the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly.").

To that end, section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016)) provides, in pertinent part:

An 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. A public body that has a website that the full-time staff of the public body maintains shall also post on its website the agenda of any regular meetings of the governing body of that public body.

In addition, section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2016)) requires that the public body conducting the meeting ensure that one copy of the agenda be continuously available for public review during the entire 48-hour period preceding the meeting. This office has previously determined that "the 48-hour time requirement for posting agendas at the principal office and the location of the meeting is also intended to apply to posting agendas on the website of a public body maintained by a full time staff member." Ill. Att'y Gen. PAC Rev. Ltr. 48494, issued October 5, 2017, at 4.

Section 2.02(c) of OMA also provides: "Any 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." 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 sufficiently descriptive advance notice of the matters upon which a public body anticipates taking final action:

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[T]here was just no real requirement as to how specific [public bodies] 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. Remarks of Sen. Dillard, May 16, 2012, Senate Debate on House Bill No. 4687, at 47.

The Council asserted that the agenda for its regular meetings is permanently posted on the Chicago City Clerk's (Clerk) website. It explained that meeting agendas are typically also posted on the "Meetings" page of the Clerk's website, but "as a result of a technical oversight,"¹ the agenda for the November 15, 2017, meeting was posted late to the Meetings page. The Council provided this office with copies of the "City Council Regular Meeting Structure & Agenda," which it contends is the permanently posted agenda, and a copy of the November 15, 2017, meeting agenda. Both records list eighteen categories of actions:

1. Call to order by the Mayor
2. Call of the roll
3. Determination of Quorum
4. Pledge of Allegiance
5. Invocation
6. Public Comment
7. Reports and Communications from the Mayor
8. Communications from the City Clerk
9. Reports of Standing Committees*
10. Reports of Special Committees*
11. Agreed Calendar
12. Presentation of petitions, communication, resolutions, orders and ordinances introduced by Aldermen
13. Correction and approval of the Journal of the Proceedings of the last preceding meeting or meetings
14. Unfinished Business
15. Miscellaneous Business
16. Ordinance setting the next regular meeting
17. Roll call on omnibus
18. Adjournment

¹Letter from Jeffrey Levine to Laura S. Harter, Assistant Attorney General, Public Access Bureau (November 27, 2017), at 1.

*The committee agendas/reports posted on the Chicago City Council Calendar list the items that may be called for a vote at the City Council meeting and are considered to be part of the City Council meeting agenda.^[2]

This office considered and rejected a similar argument in 2013 PAC 22987. In that matter, the requester alleged that the Chicago Park District Board of Commissioners took final action to raise fees at the Art Institute and the Museum of Science and Industry, although those matters were not on the meeting agenda. The Board argued that those matters had appeared on agendas of the committee meetings, which had taken place in the morning before the afternoon meeting of the full Board, therefore the Board had substantially complied with section 2.02(c). The Attorney General rejected the argument that notice of a final action on a separate committee meeting agenda was sufficient and concluded that the Board had violated OMA by taking final action on a matter without a general description of the subject matter of that action appearing on the meeting agenda. Ill. Att'y Gen. Pub. Acc. Op. No. 13-002, issued April 16, 2013, at 5.

The record that the Council considers to be its agenda does not include any description of the matters that were to be the subject of final action at the November 15, 2017, meeting. The record displays the order of business, or sequence of matters to be discussed at a typical meeting, but it does not inform the public of what specific actions were to be considered. See Black's Law Dictionary (10th ed. 2014), order, available at Westlaw BLACKS (defining "order of business" as "the sequence in which a meeting considers its business"). Indeed, Rule 3 of the City Council Rules of Order and Procedure, which is cited in the "City Council Regular Meeting Structure & Agenda," describes the items as the "Order of Business." Rules of Order and Procedure of the City Council, City of Chicago, Rule 3 (2015-2019). An agenda is more than a mere ordering of business items, it is "[a] list of things to be done, as items to be considered at a meeting, usu. arranged in order of consideration." Black's Law Dictionary (10th ed. 2014), agenda, available at Westlaw BLACKS. The Council's list does not reflect the specific items to be considered at the meeting, and therefore it is not an agenda. Therefore, even if the Council had timely published the standard order of business for the November 15, 2017, meeting on the "Meetings" page, it would not constitute an agenda as required by OMA to be posted.

The Council appears to argue that committee agendas are incorporated by reference into the record that the Council considers its agenda. The footnote on the November

²Chicago City Council, Regular Meeting, Agenda (November 15, 2017).

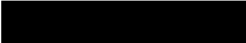
15, 2017, agenda provides that "committee agendas/reports posted on the Chicago City Council Calendar list the items that may be called for a vote at the City Council meeting and are considered to be part of the City Council meeting agenda."³ The Council provided this office with agendas for the November 13, 2017, meetings of the Committee on the Budget and Government Operations and the Committee on Finance. It explained in an e-mail to this office that those agendas constituted the "substantive component"⁴ of the November 15, 2017, Council meeting. This office reviewed the link to the November 15, 2017, agenda on the Meetings page of the City Clerk's website, and found that the link displays only the November 15, 2017, agenda; it does not include any committee agendas or reports.⁵ Although the Council informed this office of two committee agendas the Council intended to incorporate by reference, it would not be evident to the public that those agendas were considered part of the Council's agenda, especially because there were three committee agendas posted on the Clerk's Meetings website between the November 15, 2017, Council meeting and the preceding meeting held on November 8, 2017. Further, as previously noted, the Attorney General has concluded that a "[public body] must comply with OMA's agenda requirements, including providing sufficient notice of the general subject matter of any resolution or ordinance upon which final action may be taken at the [public body] meeting, without requiring reference to other documents to determine what matters the Board might address." Ill. Att'y Gen. Pub. Acc. Op. No. 13-002, at 5.

The Council's posting of its standard order of business did not provide sufficient notice to the public of the items it considered acting upon at its November 15, 2017, meeting. Accordingly, this office finds that the Council failed to post an agenda to its website at least 48 hours in advance of holding its November 15, 2017, meeting. This office requests that for future meetings, the Council post, in accordance with section 2.02(a) of OMA, an agenda specific to its meeting that sets forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting, as required by section 2.02(c) of OMA.

³Chicago City Council, Regular Meeting, Agenda (November 15, 2017).

⁴E-mail from Jeffrey Levine to Laura Harter (November 27, 2017).

⁵<https://chicago.legistar.com/Calendar.aspx> (last visited January 12, 2018).


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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 (217) 524-7958 or LHarter@atg.state.il.us. This letter serves to close this file.

Very truly yours,


LAURA S. HARTER
Assistant Attorney General
Public Access Bureau

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