



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

June 13, 2019

Via electronic mail



Via electronic mail

Mr. Scott D. Spears
City of Chicago – Department of Law
Legal Counsel Division
121 North LaSalle Street, 6th Floor
Chicago, Illinois 60602
scott.spears@cityofchicago.org

RE: OMA Request for Review – 2018 PAC 55795

Dear [REDACTED] and Mr. Spears:

This determination letter 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 that follow, the Public Access Bureau concludes that the City Council (Council) of the City of Chicago (City) violated the requirements of OMA because notice of its November 14, 2018, meeting was insufficient.

BACKGROUND

On November 20, 2018, [REDACTED] on behalf of the Community Mental Health Board of Chicago, submitted a Request for Review to the Public Access Bureau alleging that the Council violated OMA by failing to post a proper and timely meeting agenda for its November 14, 2018, meeting. According to [REDACTED], the Council typically posts its meeting agendas on both the City Clerk's website¹ and the City's Legislative Information Center (Center)

¹City of Chicago Office of the City Clerk, Council News Central,
<http://www.chicityclerk.com/city-council-news-central> (last visited May 14, 2019).

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website,² a separate online portal maintained by the City Clerk's Office that houses Council records. She alleged that the agenda for the November 14, 2018, meeting was not posted on the Center as of 24 hours in advance of the meeting, but that an incomplete agenda had been available on the City Clerk's website since at least November 11, 2018. ██████████ stated that the Council did not post a copy of the meeting agenda on the Center until November 13, 2018, shortly after she e-mailed a Request for Review (2018 PAC 55684)³ about that issue to this office and copied the City Clerk and a City attorney. ██████████ also alleged that the Council added an attachment to the agenda posted on the Center that had not been posted on the City Clerk's website, specifically "Rule 41 Notifications" listing five proposed budget and financial ordinances; she noted that the Council later updated the City Clerk's website. ██████████ contended that the Council violated sections 2.02(a) and 2.02(c) of OMA (5 ILCS 120/2.02(a), (c) (West 2016)). She summarized her allegations as follows:

The November 14, 2018, City Council meeting agenda has no date or time actually displayed on the agenda (although the date is included in the document file name and date and time are shown on the City Clerk and Council Legislative Information Center websites). The Meeting Agenda displays the general order of business but does not display the specific resolutions or ordinances under consideration for final action, although it does contain copies of various Committee agendas that display various resolutions and ordinances. It is not clear whether the attachments are sufficient to fulfill the requirements under section 2.02(c) of the OMA. The evidence indicates that on November 13, 2018, just 24 hours prior to its November 14, 2018 meeting, the Chicago City Council did amend its published agenda by adding five (5) proposed ordinances under the heading "Rule 41 Notifications." On November 14, 2018, the Chicago City Council took final action on these five (5) ordinances in violation of section 2.02 [of] the OMA. [Citation.]^[4]

²City of Chicago Office of the City Clerk, Legislative Information Center, <https://chicago.legistar.com/> (last visited May 14, 2019).

³On November 13, 2018, ██████████ submitted a Request for Review (2018 PAC 55684) alleging the Council failed to post a proper meeting agenda at least 48 hours in advance of its regular meeting that was scheduled for the next day. This office determined that no further action was warranted at that time because the allegation was premature in that it concerned a meeting that had not yet taken place. Ill. Att'y Gen. PAC Req. Rev. Ltr. 55684, issued November 15, 2018.

⁴Letter from ██████████, Community Mental Health Board of Chicago, to Sarah Pratt, Illinois Public Access Counselor (November 20, 2018).

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██████████ provided this office with copies of the agendas with attachments that were posted on the Center and City Clerk's website for this office's review. She also referenced this office's determination in 2017 PAC 50479, which concerned similar OMA allegations against the Council.⁵

On November 30, 2018, this office forwarded a copy of the Request for Review to the City Clerk and asked the Council or its representative to respond in writing to ██████████ allegations. In particular, this office asked the Council whether it had posted an amended agenda for its November 14, 2018, meeting and, if so, when it was posted. This office also asked the Council if its website was maintained by full-time staff. Additionally, this office asked the Council to provide copies of the meeting agenda (original and amended, if applicable) and minutes of the meeting in question. On December 21, 2018, this office received the requested materials. On that same date, this office forwarded a copy of the Council's response to ██████████. She submitted what she indicated was a partial reply on January 4, 2019,⁶ but on March 11, 2019, indicated that she would be adding nothing further.⁷

DETERMINATION

It is "the public policy of this State that its citizens shall be 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). "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 (5th Dist. 1989).

Section 2.02(a) of OMA 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

⁵Ill. Att'y Gen. PAC Req. Rev. Ltr. 50479, issued February 8, 2018 (concluding that the Chicago City Council failed to post a proper agenda 48 hours before its November 15, 2017, meeting).

⁶E-mail from ██████████ to AAG Lim, [Scott] Spears, [Jeffrey] Levine, and [Peter] Polacek (January 4, 2019) ("We will send our full reply on Monday.").

⁷E-mail from ██████████ to AAG Lim (March 11, 2019) ("Have you completed your review of this case?").

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the public body maintains shall also post on its website the agenda of any regular meetings of the governing body of that public body.

Section 2.02(c) of OMA adds:

The public body conducting a public meeting shall ensure that at least one copy of any requested notice and agenda for the meeting is continuously available for public review during the entire 48-hour period preceding the meeting. Posting of the notice and agenda on a website that is maintained by the public body satisfies the requirement for continuous posting under this subsection (c).

Section 2.02(c) of OMA further 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.

Even before the addition of section 2.02(c), however, it was clear that entirely generalized agenda items such as "New Business" (or "Unfinished Business") did not provide sufficient advance notice to take final action on any particular resolutions or ordinances. *Rice v. Board of Trustees of Adams County*, 326 Ill. App. 3d 1120, 1123 (4th Dist. 2002) (agenda item "NEW BUSINESS" did not provide sufficient advance notice of public body's vote on a resolution providing for an alternative benefit program for elected county officers). 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 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 (determining that voting to sign a

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new city administrator to a five year contract under the agenda item "Appointment of the City Administrator" did not violate section 2.02(c) of OMA).

In its response to this office, the Council denied ██████████ claim that it did not adhere to the notice and posting requirements of sections 2.02(a) and 2.02(c) of OMA, asserting that it had "complied with both sections by posting its agenda outside the City Council chambers, in the office of the City Clerk, and on the City Clerk's website more than 48 hours in advance of the November 14, 2018 meeting."⁸ The Council stated that it "does not have its own website. However, the City Clerk has a website upon which she posts meeting notices, agendas, minutes, and legislation."⁹ The Council confirmed that the City Clerk has full-time staff who share the task of maintaining the website. According to the Council, the meeting agenda was posted on the City Clerk's website on November 9, 2018.

Addressing the "Rule 41 Notifications," the Council noted that ██████████ had alleged in her previous Request for Review (2018 PAC 55684) that the Council's scheduled November 14, 2018, meeting agenda did not sufficiently identify all matters that were under consideration for final action on that date. Specifically, ██████████ had contended that items pertaining to the City's 2019 budget, which the Council had mentioned at its November 7, 2018, meeting, were not included in the November 14, 2018, meeting agenda. The Council argued that "these items were on the agenda for the November 14, 2018 meeting as 'Unfinished Business' and noticed up to be heard under Rule 41 of the City Council's Rules of Order and Procedure."¹⁰ In addition, the Council stated that "the Rule 41 notice" and the texts of the ordinances to be considered pursuant to that rule were posted on the City Clerk's website under the label "Rule 41 Notifications."¹¹ The Council provided what appears to be a screenshot from the City Clerk's website with the heading:

City Council

Date: November 14, 2018
City Council Meeting: 10:00 a.m.

⁸Letter from Scott D. Spears, Assistant Corporation Counsel, City of Chicago, Department of Law, to Teresa Lim, Assistant Attorney General, Public Access Bureau (December 21, 2018).

⁹Letter from Scott D. Spears, Assistant Corporation Counsel, City of Chicago, Department of Law, to Teresa Lim, Assistant Attorney General, Public Access Bureau (December 21, 2018).

¹⁰Letter from Scott D. Spears, Assistant Corporation Counsel, City of Chicago, Department of Law, to Teresa Lim, Assistant Attorney General, Public Access Bureau (December 21, 2018).

¹¹Letter from Scott D. Spears, Assistant Corporation Counsel, City of Chicago, Department of Law, to Teresa Lim, Assistant Attorney General, Public Access Bureau (December 21, 2018).

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Location: City Council Chambers
City Hall - 121 N LaSalle St.

Meeting Agenda^[12]

The term "Meeting Agenda" in this heading contains a hyperlink. Below, there are three separate sections for: "Rule 41 Notifications," "Find Legislation & Meeting Information," and "Proposed 2019 Chicago City Budget."¹³ In the following text of the "Rule 41 Notifications" section, the words "Notice" and "ordinances" contain hyperlinks:

Notice of intent to call up for consideration various action
deferred ordinances regarding 2019 Annual Appropriation
Ordinance, tax and revenue matters, and organization and
jurisdiction of various city departments.^[14]

The Council stated that after receiving notice of [REDACTED] previous Request for Review, it "opted to include the Rule 41 items with the remaining agendized items and re-publish the agenda, out of an abundance of caution and out of concern that [REDACTED] was not able to locate the Rule 41 items."¹⁵ The Council contended it "did not publish an agenda with new items less than 48 hours before the meeting, but instead reformatted the document entitled 'Meeting Agenda' to include the previously-published Rule 41 items."¹⁶ The Council stated that in the future, it would "include any Rule 41 items with other agendized matters, in addition to separately identifying the Rule 41 items on the City Clerk's website."¹⁷

¹²Letter from Scott D. Spears, Assistant Corporation Counsel, City of Chicago, Department of Law, to Teresa Lim, Assistant Attorney General, Public Access Bureau (December 21, 2018).

¹³Letter from Scott D. Spears, Assistant Corporation Counsel, City of Chicago, Department of Law, to Teresa Lim, Assistant Attorney General, Public Access Bureau (December 21, 2018).

¹⁴Letter from Scott D. Spears, Assistant Corporation Counsel, City of Chicago, Department of Law, to Teresa Lim, Assistant Attorney General, Public Access Bureau (December 21, 2018).

¹⁵Letter from Scott D. Spears, Assistant Corporation Counsel, City of Chicago, Department of Law, to Teresa Lim, Assistant Attorney General, Public Access Bureau (December 21, 2018).

¹⁶Letter from Scott D. Spears, Assistant Corporation Counsel, City of Chicago, Department of Law, to Teresa Lim, Assistant Attorney General, Public Access Bureau (December 21, 2018).

¹⁷Letter from Scott D. Spears, Assistant Corporation Counsel, City of Chicago, Department of Law, to Teresa Lim, Assistant Attorney General, Public Access Bureau (December 21, 2018).

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In reply to that answer, ██████████ maintained that the Council's November 14, 2018, meeting agenda did not sufficiently identify the subject matter of each ordinance and resolution that was the subject of final action at the meeting. She stated:

We did not recognize the "Rule 41 Notifications" link on the Clerk's "Attending/Watching City Council Meetings" [webpage] as part of the Meeting Agenda. We were looking for the Meeting Agenda. The "Attending/Watching City Council Meetings" page [the Council's attorney] excerpts in his response is not the meeting agenda.^{118]}

She contended that "[t]here is no reason to expect that someone looking to view the agenda would know to stop and check the link to 'Rule 41 Notifications' and automatically know that these are part of the Meeting Agenda."¹⁹ ██████████ argued that the 2019 Annual Appropriation Ordinance "should have been plainly listed" as an agenda item, "not merely listed in an attachment included 24 hours before the meeting."²⁰ Additionally, ██████████ disputed the Council's claim that it had properly posted the agenda at the City Clerk's office and outside the Council's chambers. She alleged that "the staff in the Clerk's Council Division Office in Room 107 said that they do not post the agenda there. Instead, a copy of the agenda and meeting notices are in a binder should someone ask to see them."²¹ She also alleged that the meeting agenda posted outside the City Council's chambers did not include the attachments, and stated that "City Hall staff consistently referenced the City Clerk's website as the go-to-place to locate complete Council meeting agendas, notices, etc."²²

As discussed above, section 2.02(a) of OMA provides that a public body that has a website maintained by full-time staff must post on its website the agendas of any regular meetings of its governing body. According to the City Clerk's website, "[t]he City Clerk is the

¹⁸E-mail from ██████████ to AAG Lim, [Scott] Spears, [Jeffrey] Levine, and [Peter] Polacek (January 4, 2019).

¹⁹E-mail from ██████████ to AAG Lim, [Scott] Spears, [Jeffrey] Levine, and [Peter] Polacek (January 4, 2019).

²⁰E-mail from ██████████ to AAG Lim, [Scott] Spears, [Jeffrey] Levine, and [Peter] Polacek (January 4, 2019).

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official record keeper for the City Council and the designated repository for city documents."²³ Although the Council contended that it "does not have its own website," it is clear that the City Clerk is the Council's record keeper and is responsible for maintaining the Council's meeting materials online, including the posting of the Council's meeting agendas and minutes. Because the Council is the governing body of the City, and the City Clerk has full-time staff who maintain the Council's meeting materials on a City website, this office concludes that the Council is subject to the online posting requirement of section 2.02(a).

This office has reviewed the meeting agenda that was posted on the City Clerk's website on November 9, 2018. The agenda lists 18 items reflecting the standard order of business for regular Council meetings. Item 9 of the agenda states:

9. Reports of Standing Committees.**

Standing committee chairmen report out to the full City Council the recommendations of the membership on matters under their consideration. Joint committees comprising two or more standing committees also report their recommendations at this time.

****The committee agendas/reports posted on the Chicago City Council Calendar(link is external) 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. (Emphasis in original.)^[24]**

Additionally, Item 14 of the agenda provides:

14. Unfinished Business.

Aldermen may request that the City Council call up for consideration previously deferred items. Notification of intentions to consider such matter(s) must be given to all aldermen and must clearly identify the item intended to be called up for a vote. (Emphasis in original.)^[25]

²³Office of the City Clerk Anna M. Valencia, City of Chicago, About City Government & the Chicago City Council, https://www.chicityclerk.com/city-council-news-central/council-agenda#city_clerk (last visited April 26, 2019).

²⁴Chicago City Council, Agenda Item 9, Reports of Standing Committees (undated).

²⁵Chicago City Council, Agenda Item 14, Unfinished Business (undated).

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Attached to the agenda are copies of seven meeting agendas from various committees of the Council. Those agendas list various resolutions and ordinances that were under consideration at those committee meetings, which were each held on either November 9, 2018, or November 13, 2018.

In 2017 PAC 50479, this office analyzed [REDACTED] similar allegation that the Council failed to provide adequate notice in its November 15, 2017, meeting agenda of the items it was considering acting upon at that meeting. The agenda listed 18 items reflecting the Council's standard order of business, like the agenda at issue here, but did not include copies of any committee agendas or reports; rather, it contained a footnote stating 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." Ill. Att'y Gen. PAC Req. Rev. Ltr. 50479, at 5. This office determined that the Council's posting of its standard order of business did not provide sufficient notice to the public of the specific ordinances and resolutions it was considering acting upon, and, thus, that the Council violated OMA. Ill. Att'y Gen. PAC Req. Rev. Ltr. 50479, at 5. This office explained that the footnote was insufficient to incorporate any items from committee agendas/reports, as the Attorney General had issued a binding opinion²⁶ concluding 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's] meeting, without requiring reference to other documents to determine what matters the [public body] might address." Ill. Att'y Gen. PAC Req. Rev. Ltr. 50479, at 5.

With respect to agenda attachments, in 2016 PAC 40305, this office considered whether a school district provided sufficient notice of its final action to hire a football coach where additional information about the actions under consideration was provided in an attachment to the meeting agenda rather than the agenda itself. In that matter, the school district had attached to its meeting agenda an "agenda packet" containing additional details about the personnel transactions to be reviewed at the meeting. Ill. Att'y Gen. PAC Req. Rev. Ltr. 40305, issued June 2, 2016, at 4. The agenda at issue contained the following item: "Seeking approval of the personnel reports provided and reviewed by the Board, which includes explanation for resignations, retirements, terminations, employment, contract revisions, and leave requests, as presented." Ill. Att'y Gen. PAC Req. Rev. Ltr. 40305, at 4. The agenda packet contained the referenced personnel reports, which provided certain specific details about the personnel transactions. Ill. Att'y Gen. PAC Req. Rev. Ltr. 40305, at 4. This office determined that the school district violated OMA because the personnel reports did not contain a reference to the hiring of the coach. Ill. Att'y Gen. PAC Req. Rev. Ltr. 40305, at 4-5; *see also* Ill. Att'y Gen. PAC Req. Rev. Ltr. 37503, issued April 8, 2016, at 5-6, ("A public body may not satisfy the

²⁶Ill. Att'y Gen. Pub. Acc. Op. No. 13-002, issued April 16, 2013, at 5.

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requirements of section 2.02(c) by providing detailed information in an agenda packet, which may consist of hundreds of pages from which the public is unable to readily discern final actions to be taken, when the agenda itself fails to identify the general subject matter of those final actions.").

In this matter, the Council posted an agenda that is nearly identical in format to the agenda examined in 2017 PAC 50479, but this time attached to it copies of certain committee meeting agendas. The agenda itself provides no explanation of why those agendas were attached. Indeed, item 9 of the agenda refers to the Council's calendar and states that committee agendas/reports posted on that calendar list the items that may be called for a vote at a Council meeting; it does not refer the public to the attachments. To the extent the committee agendas included "previously deferred items" that agenda item 14 indicated the Council intended to take up, the Council's agenda does not identify any items that were "previously deferred" or their general subject matters. As [REDACTED] highlighted, the agenda makes no mention of any "Rule 41 Notifications" or any other particular subject matters. Although the Council argued that agenda item 14 was to be heard pursuant to "Rule 41," it would not be evident to a member of the public who has no specific knowledge of the Council's rules of order and procedure that "Unfinished Business" pertains to matters considered under that rule. Moreover, a member of the public would have to refer to the "Rule 41 Notifications" published separately on the Clerk's website, at least prior to November 13, 2018. The Council acknowledged that it did not include a copy of the "Rule 41 Notifications" with the agenda until after it had received [REDACTED]'s November 13, 2018, e-mail containing her previous Request for Review.

This office's review of the agenda also confirmed that the agenda did not provide the actual date of the meeting. Although a member of the public clicking through to the agenda on the City Clerk's website or the Center would be reasonably able to identify the date of the meeting based on the meeting details provided in those locations, the available information suggests that a person viewing a hard copy of the agenda at the Council's chambers or at the City Clerk's office would not as easily be able to verify the date of the meeting by viewing the agenda alone.

Because the Council's November 14, 2018, meeting agenda did not sufficiently identify the general subject matter of each item it considered for final action during that meeting, this office has determined that the Council failed to post an adequate agenda, online or at the required physical locations, at least 48 hours in advance of holding the meeting.

This office has reviewed the "Meeting Details" pertaining to the November 14, 2018, meeting posted on the Center. The "Meeting Details" indicate that the Council took action on a considerable number of resolutions and ordinances. In order to ensure transparency and clarity regarding its meetings, this office suggests that the Council, at a minimum:


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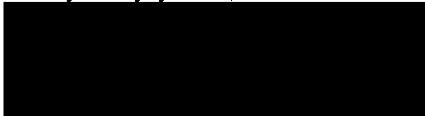
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- (1) Provide the actual date of the meeting at the top of the first page of the meeting agenda;
- (2) List the general subject matter of all subjects of final action in the body of the Council's agenda, rather than attaching agendas of committee meetings and "Rule 41 Notifications";
- (3) Ensure the meeting agenda and attachments are posted online, at the meeting location, and at the Clerk's Office (rather than in a binder) at least 48 hours before the meeting.

Lastly, it appears that the Council posts its meeting agendas on both the homepage of the City Clerk's website and on the Center. OMA does not specify where on a website, or on multiple websites, a public body must post its meeting agendas. Consequently, to avoid further public confusion regarding where to obtain a complete version of the Council's meeting agendas, this office advises the Council to post the same information on each website.

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,


TERESA LIM
Assistant Attorney General
Public Access Bureau

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