



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

August 5, 2019

Via electronic mail
Mr. John Kraft

[REDACTED]
john@illinoisleaks.com

RE: OMA Request for Review – 2019 PAC 59095

Dear Mr. Kraft:

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2018)). For the reasons that follow the Public Access Bureau has determined that this Request for Review is unfounded.

Your Request for Review alleged that the City Council of the City of Kankakee (Council) violated section 2(e) of the Open Meetings Act (OMA) (5 ILCS 120/2(e) (West 2018), as amended by Public Act 101-031, effective June 28, 2019) during a Council meeting held on July 15, 2019, "by their failure to provide any public recital."¹

Section 2(e) of OMA provides, in pertinent part, that "[f]inal 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." In support of your allegation that the Council violated this provision, you cite *Allen v. Clark County Park Dist. Bd. of Com'rs*, 2016 IL App (4th) 150963, 67 N.E.3d 536 (4th Dist 2016). In *Allen*, the court held that, although it was "unsure precisely what standard of specificity is required of a public recital," the public recital "approval of lease rates" and "approval for the revised covenants" was insufficient because the recital did not sufficiently inform the public of the nature of the matter being considered. *Allen*, 2016 IL App (4th) 150963, ¶¶ 29-30, 67 N.E.3d at 541. The court emphasized that "[t]he public was uninformed of what was being leased. Was it canoes? Was it

¹E-mail from John Kraft to AG PAC (July 26, 2019).

camping equipment? Was it real property being developed into a housing subdivision? Who knows?" *Allen*, 2016 IL App (4th) 150963, ¶30, 67 N.E.3d at 541.

Subsequently, in *Board of Education of Springfield School District No. 186 v. Attorney General of Illinois*, 2017 IL 120343, 77 N.E.3d 625 (2017), the Illinois Supreme Court established the type of information that is required for an adequate public recital. The Court held that "the recital must announce the nature of the matter under consideration, with sufficient detail to identify the particular transaction or issue, but need not provide an explanation of its terms or its significance." *Springfield School District*, 2017 IL 120343, ¶64, 77 N.E.3d at 636. In that case, a school board's recital of a separation agreement with its superintendent consisted of the school board president stating that the board was considering an agenda item for "approval of a resolution regarding the separation agreement[]" as well as reciting the text of the resolution itself: "The Board President recommends that the Board of Education of Springfield School District No. 186 vote to approve the separation agreement and release between Dr. Walter Milton, Jr., and the Board of Education." *Springfield School District*, 2017 IL 120343, ¶81, 77 N.E.3d at 638. The Court concluded that the school board's public recital sufficiently "recited the general nature of the matter under consideration—a separation agreement and release—and specific detail sufficient to identify the particular transaction—the separation agreement was between Dr. Milton and the Board." *Springfield School District*, 2017 IL 120343, ¶83, 77 N.E.3d at 638. The court also clarified: "Because we agree with the Board that identifying key terms would be time consuming and impractical, we reject any suggestion that a public recital of 'key terms' is required. A public body may choose to provide such information in its recital at the open meeting but is not compelled to do so by section 2(e)." *Springfield School District*, 2017 IL 120343, ¶61, 77 N.E.3d at 635-36

This office has reviewed the relevant portions of the video recordings of the July 15, 2019, Council meeting as well as the agenda for that meeting. The recording establishes that in announcing that the Council was entering executive session, Mayor Wells-Armstrong stated that "we will be addressing * * * pending and imminent litigation for the approval of a settlement regarding Fonder versus Martinez."² Agenda item 15(A) for the July 15, 2019, Council meeting listed, under action resulting from executive session, the "APPROVAL OF SETTLEMENT REGARDING FONDER VS.MARTINEZ."³ The post-executive session video of the meeting establishes that Mayor Wells-Armstrong informed the public after the closed session that "we do

²City Council of the City of Kankakee, Meeting, July 15, 2019, at 1:05:49 – 1:06:10 (Council Meeting 7-15-19 Kankakee City Council Meeting Broadcasted 7/15/19 6:58pm - 7/15/19 8:05pm), video available at <https://citykankakee-il.gov/chambervideo.php>.

³City Council of the City of Kankakee, Meeting, Agenda, item 15(A) (July 15, 2019), available at <https://citykankakee-il.gov/perch/resources/7-15-19-agenda.pdf>.

[REDACTED]
August 5, 2019

Page 3

have action resulting from the executive session under item A: approval of the settlement regarding Fonder versus Martinez."⁴ The Council then voted to approve the settlement.

As discussed above, to comply with the public recital requirements of section 2(e) of OMA, a public body only must recite the nature of the matter under consideration with sufficient detail to identify the particular transaction. A review of the video recording of the July 15, 2019, meeting establishes that the Council announced the nature of the matter under consideration— approval of a settlement. The Council also provided detail sufficient to identify the particular transaction— the settlement of *Fonder v. Martinez*. Although additional information concerning the terms of the settlement and the nature of the underlying dispute would have increased transparency and better informed the public of the nature of the action being taken, based on the standard articulated in *Springfield School District* this office is unable to conclude that the Council violated the requirements of section 2(e) of OMA.

Accordingly, this office has determined that no further action is warranted in this matter. This file is closed. Please contact me at (312) 814-5201 or the Chicago address listed on the first page of this letter if you have questions.

Very truly yours,

[REDACTED]
EDIE STEINBERG
Assistant Attorney General
Public Access Bureau

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cc: *Via electronic mail*
The Honorable Chasity Wells-Armstrong
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⁴City Council of the City of Kankakee, Meeting, July 15, 2019, at 00:00:27 – 00:01:16 (Council Meeting 7-15-19 Resume from Ex Session Broadcasted 7/15/19 8:23pm - 7/15/19 8:37pm) video available at <https://citykankakee-il.gov/chambervideo.php>.