



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 12, 2024

Via electronic mail

[REDACTED]
[REDACTED]

Via electronic mail

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Via electronic mail

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RE: OMA Requests for Review – 2021 PAC C-0342/71408; C-0343/71411;
2023 PAC 75756; 79504; 79539

Dear [REDACTED], Mr. Wesner, and Mr. Grosser:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2022)). This office has consolidated five Requests for Review in this determination because they concern the same parties and similar allegations.

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BACKGROUND

On September 9, 2021, the Public Access Bureau received a Request for Review (2021 PAC C-0343/71411) from [REDACTED] alleging that the City of Urbana (City) City Council (Council) violated section 2.06(b) of OMA (5 ILCS 120/2.06(b) (West 2020)) by failing to timely approve and post minutes of a series of meetings between May 17, 2021, and August 16, 2021.¹ On September 23, 2021, this office forwarded the Request for Review to the Council and asked it to provide a written response to the allegations in the Request for Review. On September 28, 2021, this office received the Council's response and forwarded a copy to [REDACTED]. On October 14, 2021, he replied.

On September 10, 2021, the Public Access Bureau received a second Request for Review (2021 PAC C-0342/71408) from [REDACTED] alleging that the Cunningham Township (Township) Board (Board) violated section 2.06(b) of OMA by failing to timely approve and post minutes of a series of meetings between April 5, 2021, and July 12, 2021.² [REDACTED] also stated that, although the Board appears to have its own website hosted via Township Officials of Illinois,³ Board meeting documents are regularly posted on the City's website.⁴ Following a September 21, 2021, telephone conversation between an Assistant Attorney General in the Public Access Bureau and a Township representative, the Township Supervisor sent an e-mail to this office stating that Phyllis Clark, the elected Clerk for both the City and the Township, would respond to the complaint. However, this office did not receive any further communication from Ms. Clark or the Township. On October 12, 2021, [REDACTED] clarified the allegations in this Request for Review and added two other meetings held on August 9, 2021, to the list of meetings he believed to be in violation of section 2.06(b) of OMA.

On March 7, 2023, the Public Access Bureau received a third Request for Review (2023 PAC 75756) from [REDACTED] alleging that the Council violated section 2.06(b) of OMA by failing to timely approve and post minutes of a series of meetings between December 12,

[REDACTED] alleged violations in connection with the Council's May 17, 2021, May 24, 2021, June 7, 2021, June 14, 2021, June 21, 2021, June 28, 2021, July 6, 2021, July 12, 2021, August 2, 2021, August 9, 2021, and August 16, 2021, meetings, which included six Committee of the Whole meetings and two public hearings.

[REDACTED] alleged violations in connection with the Board's April 5, 2021, April 12, 2021, April 13, 2021, April 19, 2021, May 10, 2021, June 14, 2021, June 21, 2021, June 28, 2021, and July 12, 2021, meetings and public hearings.

³<https://www.toi.org/township/champaign-county-cunningham-township>.

⁴<https://www.urbanailinois.us/boards/cunningham-township-board>.

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2022, and February 6, 2023.⁵ On March 16, 2023, this office forwarded the Request for Review to the Council and asked it to provide a written response to those allegations. On March 27, 2023, this office received the Council's response and forwarded a copy to ██████████. On April 10, 2023, he replied to this office, noting that some additional meetings held in February 2023, did not appear to be approved and/or posted.

On December 26, 2023, the Public Access Bureau received two Requests for Review (2023 PAC 79504 and 79539) from ██████████ alleging that the Council and the Board violated section 2.06(b) of OMA by failing to timely approve and post minutes of a series of meetings between July 31, 2023, and November 27, 2023.⁶ On January 5, 2024, this office forwarded copies of the Requests for Review to the Council and Board and asked each to provide this office with a written response to the allegations in the Request for Review. On January 12, 2024, and January 16, 2024, this office received responses from the Board and Council, respectively, and forwarded copies of both to ██████████. On February 16, 2024, ██████████ replied to each of those responses.

DETERMINATION

"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 (1989). Section 2.06(b) of OMA provides, in pertinent 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.**
* * * [A] public body that has a website that the **full-time staff of the public body maintains** shall post the minutes of a regular meeting of its governing body open to the public on the public body's website within 10 days after the approval of the minutes by the public body. (Emphasis added.)

██████████ alleged violations in connection with the Council's December 12, 2022, December 19, 2022, January 3, 2023, January 17, 2023, January 23, 2023, and February 6, 2023, meetings.

██████████ alleged violations in connection with the Council's July 31, 2023, August 14, 2023, August 21, 2023, August 28, 2023, September 5, 2023, September 11, 2023, September 18, 2023, September 25, 2023, October 16, 2023, October 23, 2023, November 6, 2023, November 13, 2023, November 20, 2023, and November 27, 2023, meetings, which included Committee of the Whole meetings and one joint meeting with the Board. ██████████ also alleged violations in connection with the Board's September 11, 2023, and October 16, 2023, meetings.

Timely Approval of Minutes

As an initial matter, the Council's responses stated that some of the meetings listed in ██████████ Requests for Review were Committee of the Whole meetings. The Council asserted that the minutes of the Committee of the Whole meetings identified in 2023 PAC 75756 were timely approved at the second subsequent meeting of the Committee of the Whole, as opposed to the second subsequent Council meeting. However, committees of the whole are not considered separate from a public body, but rather provide a different meeting format for the public body. *See* Black's Law Dictionary 341 (11th ed. 2019) (defining "committee of the whole" as "[a] deliberative assembly may resolve itself into a committee of the whole so that it can take advantage of the greater procedural flexibility that a committee enjoys, usu. presided over by some chair other than the assembly's regular chair." Because a public body and its committee of the whole are essentially the same entity, the Public Access Bureau has previously determined that a township board must approve minutes of its committee of the whole meeting by the latter of 30 days or at the township board's second subsequent regular meeting—regardless of the format in which those meetings were held. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 46954, issued May 23, 2017, at 3.

Beyond the Committee of the Whole meetings, both the Council and Board acknowledged in their responses to this office that the minutes of the meetings at issue were not approved by the later of 30 days or each of their second subsequent regular meetings. With respect to 2021 PAC C-0342/71408, the Board provided this office with no additional information disputing the allegation that the minutes of those meetings had not been approved on a timely basis. Accordingly, this office concludes that the Council and Board violated section 2.06(b) of OMA by failing to timely approve and make available to the public the minutes of the meetings as alleged,⁷ including the meetings of the Council's Committee of the Whole.

The Council and Board explained that the late approvals were due to staffing issues and the retirement of the then-City Clerk. Both also stated that they would approve and make available any minutes that had not been approved at the time of the Request for Review submissions. This office's review of the City's website confirms that all of the minutes at issue have since been approved and made available to the public on the City's website to the extent

⁷The Council noted that it held two meetings on December 12, 2022. With respect to the regular meeting held that day, the Council stated it approved the minutes of that meeting at its January 9, 2023, regular meeting. Because the Council approved its December 12, 2022, regular meeting minutes within 30 days after that meeting, the Council timely approved those minutes.

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required.⁸ Because the minutes have since been approved and made available, no further remedial action is necessary at this time.

Website Posting of Minutes by the Board

In its January 12, 2024, response to this office, the Board stated that the City posts copies of the Board's meeting agendas and minutes on its website and explained that "[t]he city clerk serves ex officio as the township clerk."⁹ As noted above, the Board may have also previously posted meeting minutes to a page hosted by the Township Officials of Illinois (TOI),¹⁰ but it does not appear to maintain that website.

Although OMA does not expressly address a public body's use of third-party websites in the posting of its meeting materials, this office has previously determined that the website posting requirements of section 2.06(b) do not apply to social media websites such as a public body's Facebook page. The plain language of section 2.06(b) only requires a public body to post meeting minutes if (1) it "has" a website, and (2) "the full-time staff of the public body maintains" that website. See Ill. Att'y Gen. PAC Req. Rev. Ltr. 21667, issued October 31, 2012; Ill. Att'y Gen. PAC Req. Rev. Ltr. 21343, issued September 20, 2012. Therefore, OMA does not require public bodies to post meeting minutes on websites maintained by third parties, such as the TOI.

Despite having overlapping boundaries and many of the same officials,¹¹ the City and the Township are separate entities governed by separate statutes. *Diversified Computer Services, Inc. v. York*, 104 Ill. App. 3d 852, 856 (1982) ("townships are not included as municipalities subject to the proscriptions of the Illinois Municipal Code."). The City's website

⁸As discussed further below, section 2.06(b) of OMA requires, in relevant part, only that regular meeting minutes of a governing body be posted to a public body's website. Accordingly, the failure of a public body to post on its website minutes from its special meetings is not a violation of section 2.06(b) of OMA.

⁹Letter from Frederic M. Grosser, Cunningham Township Attorney, to Benjamin J. Silver, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (January 12, 2024).

¹⁰The webpage specified in ██████████ September 10, 2021, Request for Review appears to no longer function as of the date of this determination. See, <https://www.toi.org/township/champaign-county-cunningham-township>. It appears that a similar page is now available at <https://vintage.toi.org/township/champaign-county-cunningham-township>.

¹¹City of Urbana, Cunningham Township Board, <https://urbanaillinois.us/boards/cunninghamtownship-board> (last visited March 23, 2024).

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contains a page about the Township Board, but that does not transform the City's website into a website of the Township. Because the Township does not have its own website, OMA did not require the Board to post copies of its meeting materials online. Nonetheless, this office encourages the Board to continue posting its meeting materials on the City's website as a matter of openness and transparency.

Website Posting of Minutes by the Council

The Council stated that the City Clerk is responsible for posting minutes to the City's website, but argued that it did not violate the posting requirements of section 2.06(b) because the Clerk is an elected official rather than a full-time staff member, and during some of the time periods under review, two staff members who worked in the Clerk's office resigned from their positions. Specifically, in its September 28, 2021, response to this office, the Council asserted that:

the City Clerk would be responsible for maintaining the City Clerk's portion of the website, including the posting of any material. The City Clerk is an independent elected official within the City. The City Clerk is responsible for the management of the office and all of the duties encompassed within that office. The City Clerk may have full time staff members. The City Clerk would be responsible for assigning any duties to any staff members of that office. Any duties not so assigned would be the responsibility of the elected City Clerk.^[12]

The Council further stated:

As long as the City maintains a full time staff person in the elected City Clerk's office who is assigned the task of maintaining the City Clerk's portion of the City website, the City will meet its obligations under Section 2.06(b) of the Open Meetings Act with regard to the posting of meeting minutes to the City website.^[13]

¹²Letter from David B. Wesner to Christopher Boggs, Assistant Attorney General, Public Access Bureau (September 28, 2021), at 2.

¹³Letter from David B. Wesner to Christopher Boggs, Assistant Attorney General, Public Access Bureau (September 28, 2021), at 3.

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In his replies, ██████████ disputed the City's claim that the website posting requirements only apply when the City Clerk's Office has full-time staff who maintain its portion of the website. He noted that City staff includes approximately 250 full-time employees, many of whom prepare materials and have the ability to post to the City's website. This argument is not disputed by the Council's September 28, 2021, response, which acknowledged that "[t]he City's Information Technology staff maintains security controls for the website," but also stated that "each Department is responsible for maintaining their own portion of the website, including posting appropriate items and material."¹⁴

Section 2.06(b) of OMA does not differentiate between portions of a public body's website, nor does it provide that the full-time staff member's duties must solely involve maintenance of the website. Rather, that provision provides that:

a public body that has a website that the full-time staff of the public body maintains shall post the minutes of a regular meeting of its governing body open to the public on the public body's website within 10 days after the approval of the minutes by the public body.

Adopting the Council's argument that the requirements apply to the "portion of the website" updated by the Clerk is contrary to the plain language of section 2.06(b), which expressly applies to "a public body that has a website that the full-time staff of the public body maintains[.]" *Hayashi v. Illinois Department of Financial and Professional Regulation*, 2014 IL 116023, ¶ 16, (Where the language of a statute is clear and unambiguous, a reviewing body "may not depart from the plain language by reading into the statute exceptions, limitations, or conditions that the legislature did not express."). Although the Clerk's office may not always have full-time staff, it is undisputed that other City departments have full-time staff whose job responsibilities include maintaining various aspects of the City website. Section 2.06(b) cannot be reasonably construed to permit a public body with a website maintained by full-time staff to avoid posting meeting minutes on its website by delegating to a part-time employee or elected official the task of updating the portion of the website that contains minutes. Because the Council has a website that full-time staff maintains as a part of its duties, this office concludes that the Council is subject to the section 2.06(b) website posting requirements and violated that section by failing to timely post the minutes of its various regular meetings.¹⁵

¹⁴Letter from David B. Wesner to Christopher Boggs, Assistant Attorney General, Public Access Bureau (September 28, 2021), at 2.

¹⁵The website posting requirements of section 2.06(b) of OMA apply to "the minutes of a regular meeting of" a public body's governing body. Because a committee of the whole meeting is a meeting with a format different from a regular meeting, the website posting requirements do not apply to the minutes of committee of the whole meetings. The website posting requirements also do not apply to the minutes of special meetings.

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Because the minutes have since been posted, no further remedial action is necessary at this time. However, the Public Access Bureau reminds the Council of its obligation to timely post the minutes of meetings after their approval, as long as full-time staff of the City maintain its website.

The Public Access Counselor has determined that resolution of these matters does not require the issuance of a binding opinion. These files are closed. If you have any questions, please contact me at benjamin.silver@ilag.gov or (773) 590-7878.

Very truly yours,

[REDACTED]

BENJAMIN J. SILVER
Assistant Attorney General
Public Access Bureau

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