OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

September 20, 2022

Via electronic mail
[redacted]

Via electronic mail
Ms. Jennifer Solum
Assistant Superintendent
Veterans Assistance Commission of Will County
2400 Glenwood Avenue, Suite 110
Joliet, Illinois 60435
jsolum@willcountyillinois.com

RE: OMA Request for Review – 2022 PAC 71528

Dear [redacted] and Ms. Solum:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2020)).

On April 28, 2022, the Public Access Bureau received [redacted] Request for Review alleging that the Veterans Assistance Commission (Commission) of Will County (County) violated OMA by failing to post meeting agendas and minutes on its website.[1] [redacted] also asserted that the Commission, or the Commission's Executive Board (Board), held a meeting on March 30, 2022, during which the resignation of the Commission's superintendent was accepted and an interim superintendent was appointed. He alleged that "[n]o agenda, or even date, for this meeting was posted."[2]

[1]The Public Access Bureau's review of this allegation is limited to the agendas and minutes from meetings that occurred within 60 days of April 28, 2022, the date this office received his Request for Review, because [redacted] did not provide any information to establish that a person utilizing reasonable diligence could not have discovered the alleged violations within the 60-day statutory deadline for any earlier meetings. *See* 5 ILCS 120/3.5(a) (West 2020).

[2]OMA – Request for Review by Public Access Counselor (PAC) form completed by [redacted] (April 3, 2022).

On May 5, 2022, this office sent a copy of the Request for Review to the Commission and asked it to provide a written response to those allegations, including clarification about whether the Commission held a meeting on March 30, 2022, and, if so, to specify if, when, and where notice was posted and whether it took minutes, and allowed the public to attend and participate in that meeting. This office also requested that the Commission clarify whether its website is maintained by a full-time Commission staff member. On May 9, 2022, the Commission provided a written answer together with copies of the agenda and the meeting minutes for the Board's March 30, 2022, special meeting. On May 12, 2022, this office forwarded a copy of the Commission's written answer to [redacted]; he replied on May 20, 2022.[3] On August 2, 2022, an Assistant Attorney General (AAG) in the Public Access Bureau spoke with Ms. Jennifer Solum, Assistant Superintendent for the Commission, to clarify certain aspects of the Commission's response to this office.

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 2020). "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 1.02 of OMA (5 ILCS 120/1.02 (West 2020)) defines "public body" as including:

> all legislative, executive, administrative or advisory bodies of the State, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, and any subsidiary bodies of any of the foregoing including but limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue[.]

The Commission is a "separate County Governmental Agency"[4] that was created pursuant to section 2 of the Military Veterans Assistance Act. 330 ILCS 45/2 (West 2020). Therefore, the Commission meets the definition of a "public body" as defined by section 1.02 of OMA.

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[3]In his reply, [redacted] raises additional alleged OMA violations. However, because those allegations were not raised in the Request for Review, they are outside the scope of this determination.

[4]Will County Illinois, Veterans Assistance Commission, https://www.willcountyillinois.com/County-Offices/Special-Services/Veterans-Assistance-Commission (last visited July 7, 2022).

Alleged Violations of Meeting Requirements

The intent of OMA is "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2020). To that end, OMA provides for advance notice of meetings,[5] the right of the public to attend all meetings where public business is discussed or acted upon,[6] and an opportunity for members of the public to address public officials during open meetings.[7]

The Commission's response to this office confirmed that the Board held a special meeting on March 30, 2022, but asserted that the agenda for this meeting was properly posted on the announcement board in the building that is the Commission's principal office and meeting location. The Commission also indicated that the agenda was available for the public to view for at least 48 hours before the meeting. The Commission further stated that "[t]he public was allowed to attend and participate in the meeting."[8] The Commission provided this office with copies of the Board's agenda and minutes for the March 30, 2022, special meeting, which show that the meeting was held in-person, and included a Zoom link to permit remote participation. [redacted] has not stated that he was unable to view the agenda on the Commission's announcement board or that he attempted to attend the special meeting, either in person or remotely, but was unable to so. Although [redacted] asserted that "[t]he disaster proclamation and executive order allowing completely remote meetings has long since expired[,]"[9] a disaster proclamation authorizing the Board to meet remotely[10] was in effect at the time of the March 30,

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[5]Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2020) requires an agenda for each regular meeting to 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.

[6]Section 2(a) of OMA (5 ILCS 120/2(a) (West 2020), as amended by Public Act 102-558, effective August 20, 2021; 102-237, effective January 1, 2022; 102-813, effective May 13, 2022) provides that "[a]ll meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a."

[7]5 ILCS 120/2.06(g) (West 2020), as amended by Public Act 102-653, effective January 1, 2022, provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body."

[8]Letter from Jennifer Solum, Assistant Superintendent, Veterans Assistance Commission of Will County, to Shannon Barnaby Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (May 9, 2022).

[9]OMA – Request for Review by Public Access Counselor (PAC) form completed by [redacted] (April 3, 2022).

[10]*See* 5 ILCS 120/7(e)(1) (West 2020).

2022, meeting.[11] Therefore, the available information does not include facts from which this office can conclude that the Board violated sections 2(a) or 2.02(a) of OMA in connection with its March 30, 2022, special meeting.

Based on this office's review of the agenda of Board's March 30, 2022, special meeting, public comment was not listed on the agenda. Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2021 Supp.)) requires a public body to permit members of the public to address its members at all meetings, including special meetings, during a designated time period. The Public Access Bureau has previously determined that section 2.06(g) of OMA does not require a public body to list public comment on a meeting agenda in order for members of the public to be able to address the members of the public body during that meeting. Ill. Att'y Gen. PAC Req. Rev. Ltr. 26020, issued April 14, 2014, at 2. A better practice, however, would be for the Board to list public comment as an agenda item (with the timing in accordance with its established and recorded rules governing public comment), or, at least, to invite public comment during open meetings even if public comment is not listed as an agenda item.

Posting of Agendas and Minutes on Website

Section 2.02(a) of OMA requires an agenda for each regular meeting to 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, and further provides: "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." Section 2.02(b) of OMA[12] adds that "a public body that has a website that the full-time staff of the public body maintains shall post notice on its website of all meetings of the governing body of the public body."

In its response to this office, the Commission indicated that its website is not currently maintained by a full-time staff member. Further, the Commission confirmed that "agendas and approved meeting minutes are posted and made publicly available for review at the office of the [Commission]" and stated that it "gave Public Notice of the schedule of regular

[11]Gubernatorial Disaster Proclamation, issued March 4, 2022; Executive Order No. 2020-07, issued March 4, 2020.

[12]5 ILCS 120/2.02(b) (West 2020).

meetings at the beginning of the year that states the regular dates, times, and place of meetings."[13]

[redacted] reply disputes the Commission's statement that its website is not currently maintained by a full-time staff member. He appears to argue that because the Commission has full-time employees, and because the website has been updated since he submitted his Request for Review, a full-time Commission staff member's responsibilities must include website maintenance. In the August 2, 2022, telephone conversation, Ms. Solum explained to this office that at the time of the meeting in question, information concerning the Commission was hosted on the County's website. She stated that employees of the County's information technology (IT) department maintain the County's website—not any employee of the Commission—and that the Commission was required to submit a request to the County's IT department to update Commission information on the County's website. As noted above, the Commission is a separate agency from the County. *See* 330 ILCS 45/10 (West 2020) ("The superintendent and other employees shall be employees of the Veterans Assistance Commission, and no provision in this Section or elsewhere in this Act shall be construed to mean that they are employees of the county."). Accordingly, County IT staff are not employees of the Commission. Because the Commission does not employ a full-time staff member whose responsibilities include maintaining its website, the Commission was not required to post its agendas or meeting minutes to the Commission's website.

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, my e-mail address is Shannon.Barnaby@ilag.gov. This matter is closed.

Very truly yours,

[redacted]

SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

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[13]Letter from Jennifer Solum, Assistant Superintendent, Veterans Assistance Commission of Will County, to Shannon Barnaby Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (May 9, 2022).