OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

August 5, 2024

Via electronic mail
[redacted]

Via electronic mail
Ms. Tiffany Nelson-Jaworski
Senior Counsel
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RE: OMA Request for Review – 2023 PAC 77728

Dear [redacted] and Ms. Nelson-Jaworski:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2022)). For the reasons explained below, the Public Access Bureau concludes that the Thornton Township (Township) Board of Trustees (Board) violated OMA by failing to provide the public with sufficient access to its August 15, 2023, meeting and by improperly restricting [redacted] from addressing the Board at the meeting.

In her Request for Review, submitted August 15, 2023, [redacted] alleged that when she arrived at the Township building ten minutes before the start of the Board's meeting that evening, a security guard told her that she was not wanted in the building. [redacted] alleged that she nonetheless entered the building, but that she and other local residents were not allowed in the meeting room despite ample space for them. According to [redacted], the Township's Senior Advisor, Keith Freeman, intervened on behalf of the Board by requiring her and others to go to an overflow room that did not have sound. [redacted] also alleged she signed up for public comment, but that Mr. Freeman told her she was not allowed to

come to the Board room to give in-person public comment; rather, she could only submit her public comment to the clerk via e-mail.

On August 24, 2023, this office sent a copy of [redacted] Request for Review to the Board and asked it to provide copies of the August 15, 2023, meeting agenda, minutes (in draft form, if necessary), any recording(s) of open session from the meeting, and any public comment rules that the Board had established and recorded. This office also asked the Board to provide a written response to the allegations in [redacted] Request for Review, addressing [redacted] claim that she and others were improperly excluded from the Board room and that the meeting was inaudible from the overflow room. This office requested evidence of the capacity of the meeting room and a description of any measures the Board took to make the August 15, 2023, meeting convenient and open to the public. This office asked that the written response also address [redacted] allegation that the Board improperly prohibited her from providing public comment at the August 15, 2023, Board meeting.

The Board did not respond to this office's letter. Therefore, this office sent a second letter to the attention of the Township Supervisor, Tiffany Henyard, on September 18, 2023, seeking the same information. After additional follow-up with the Board's attorney, this office received the Board's initial written response in this matter on October 3, 2023, as well as copies of the August 15, 2023, meeting agenda and minutes, the Board's established and recorded public comment rules, and various police reports. The written response asserted that [redacted] was not allowed in the Township Board room because seating was filled to capacity, and that Township officials would have felt unsafe with her in the Board room due to her past conduct and "perceived threats[.]"[1] That same day, this office forwarded a copy of the Board's initial written response to [redacted]; she submitted two replies on October 7, 2023. She attached a recording she made at the August 15, 2023, meeting, which appears to depict Mr. Freeman agreeing that [redacted] signed in for public comment but telling her that she must send her comment to the clerk. [redacted] also provided a link to a *Lansing Journal* article about the Board meeting.[2] That article included a picture of the Board room during the meeting, which depicted empty space behind two rows of five chairs each. The article stated that there were ten chairs in the room for members of the public, half of which were occupied by

[1]Letter from Thornton Township to Katie Goldsmith, Public Access Bureau (October 3, 2023), at [1].

[2]Josh Bootsma, *Security denies public entrance at Thornton Township meeting; Freeman restricts public comment; Board approves Walk of Hope spending*, THE LANSING JOURNAL (Aug. 18, 2023), https://thelansingjournal.com/2023/08/18/thornton-township-passes-walk-of-hope-expenses-as-some-residents-prevented-from-accessing-public-meeting/.

"township-involved individuals."[3] On October 19, 2023, [redacted] sent another written reply, which included a copy of a Facebook post she had made that was critical of Ms. Henyard and Mr. Freeman; [redacted] argued that the post is not threatening in nature but instead reflects legitimate political protest.

Meanwhile, on October 10, 2023, the AAG again asked the Board's attorney for a copy of the recording of the Board meeting and posed additional questions concerning the capacity of the meeting room. On October 17, 2023, the Board's attorney provided a copy of the recording of the Board meeting. On November 28, 2023, the Board's attorney provided a supplemental written response addressing the AAG's questions from October 10, 2023. On November 29, 2023, this office forwarded a copy of the Board's supplemental written response to [redacted]; she substantively replied on January 23, 2024, and attached a letter written by another individual who attended the August 15, 2023, Board meeting. That individual's letter referenced attachments, but no attachments were included. On February 9, 2024, [redacted] asked the AAG to proceed without the attachments.

DETERMINATION

Convenient and Open Meeting

Section 1 of OMA (5 ILCS 120/1 *et seq.* (West 2022)) provides that "it is the intent of this Act to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." Section 1 of OMA further provides that members of the public have "the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." Section 2.01 of OMA (5 ILCS 120/2.01 (West 2022)) provides that "[a]ll meetings required by this Act to be public shall be held at specified times and places which are convenient and **open to the public**." (Emphasis added.) Section 2.01 requires not "'absolute accessibility' but 'reasonable accessibility.'" *Gerwin v. Livingston County Board*, 345 Ill. App. 3d 352, 362 (2003).

In its initial written response to this office, the Board denied that it violated OMA on August 15, 2023. The Board claimed that "[c]ontrary to [redacted] allegations, the Board room and the chairs therein were filled and there was no seating available for her."[4] The Board stated that [redacted] and others were offered the opportunity to listen to the meeting in the lower level of the building. The Board also stated: "As far as the Township knows, there

[3]Josh Bootsma, *Security denies public entrance at Thornton Township meeting; Freeman restricts public comment; Board approves Walk of Hope spending*, THE LANSING JOURNAL (Aug. 18, 2023), https://thelansingjournal.com/2023/08/18/thornton-township-passes-walk-of-hope-expenses-as-some-residents-prevented-from-accessing-public-meeting/.

[4]Letter from Thornton Township to Katie Goldsmith, Public Access Bureau (October 3, 2023), at [1].

were no technical difficulties with the broadcast of the meeting. However, the microphones were not working in the overflow room so [redacted] was invited to write down her comment to be read into the record but she refused to do so."[5] Addressing [redacted] attendance in particular, the Board claimed:

> [D]ue to the past conduct and perceived threats to the Supervisor and other Township staff by [redacted], the Supervisor and others did not feel safe with [redacted] in the Board room. Supervisor Henyard has filed certain police reports and complaints against [redacted] related to perceived threats and alleged stalking of Supervisor Henyard by [redacted].[6]

In reply, [redacted] referenced the *Lansing Journal* article, stating: "It has a picture of the 10 chairs in the board room. And that two more rows could've fit. They took those chairs out purposely. There used to be 4 rows."[7] As to audio of the meeting in the overflow room, [redacted] contended:

> Despite what The Township is claiming, they were well aware that the sound wasn't working. They sent employees down trying to fix it. As you can see in the newspaper article, there where other residents down there and I will get witness statements saying that there was no sound and the township knew because when Keith freeman, the senior advisor, came down to tell me I couldn't come up to give my public comments, the residents asked him what was wrong with the sound and he said they're working on it. [8]

The *Lansing Journal* article included an unattributed quotation that the audio of the meeting "came on for a hot minute and then cut off again[.]"[9] [redacted] also disputed that she posed any kind of security threat to Ms. Henyard or the Township more broadly. She explained

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[5]Letter from Thornton Township to Katie Goldsmith, Public Access Bureau (October 3, 2023), at [1];

[6]Letter from Angela L. Hill to whom this may concern (January 11, 2024), at [1].

[7]E-mail from [redacted] to [Katie] Goldsmith (October 7, 2023).

[8]E-mail from [redacted] to [Katie] Goldsmith (October 7, 2023).

[9]Josh Bootsma, *Security denies public entrance at Thornton Township meeting; Freeman restricts public comment; Board approves Walk of Hope spending*, THE LANSING JOURNAL (Aug. 18, 2023), https://thelansingjournal.com/2023/08/18/thornton-township-passes-walk-of-hope-expenses-as-some-residents-prevented-from-accessing-public-meeting/.

that after 18 years of employment with the Township, Ms. Henyard had fired her, and then had sought to restrict her from the Township events she had attended for decades. [redacted] described her history of interactions with Ms. Henyard in detail and argued that her criticism of Ms. Henyard as an elected official and her attendance at Township events cannot be considered harassing or threatening behavior.

The Board's November 28, 2023, supplemental written response, signed by Mr. Freeman, stated:

> At some point before the August 15, 2023, Thornton Township Board meeting, the board room had been used for another event and some of the seating was removed. For some unknown reason, the seating had not been replaced. The security guard who was posted outside the door incorrectly informed attendees that there was no seating available and instructed them to watch the meeting in the overflow room on the first floor of the building.[10]

Mr. Freeman also stated: "I did not observe any technological issues. I likewise have not been informed of any issues related to the streaming of the meeting, aside from [redacted] complaint."[11]

On January 23, 2024, [redacted] submitted a reply to the Board's supplemental written response. [redacted] reply incorporated a written statement by Ms. Angela L. Hill, a resident of the Village of Dolton (where Ms. Henyard is Mayor and where Mr. Freeman is Village Administrator), who stated that she also attended the August 15, 2023, Board meeting. Ms. Hill corroborated [redacted] description of how the meeting transpired, explaining that "[a]fter Keith Freeman came out he tried to direct us downstairs we refused telling [him] we wanted access to sign in to speak and would not be able to [hear] whose names [were] called. He was made aware of the fact no one could hear. No sound."[12]

The Board unequivocally violated section 2.01 of OMA by failing to make its August 15, 2023, meeting convenient and open to the public. While the Board initially claimed the meeting room was at capacity, the Board acknowledged in its supplemental response that the

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[10]Letter from Thornton Township to Katie Goldsmith, Public Access Bureau (November 28, 2023), at [1].

[11]Letter from Thornton Township to Katie Goldsmith, Public Access Bureau (November 28, 2023), at [1].

[12]Letter from Angela L. Hill to whom this may concern, Office of the Illinois Attorney General (January 11, 2024), at [1].

room was not at capacity, blaming the security guard. The Board's use of an overflow room on August 15, 2023, did not ameliorate the Board's improper denial of access to the meeting room; it exacerbated the violation, as there was no valid reason to use an overflow room and the available evidence reflects that the meeting was not sufficiently audible in that location. It may be appropriate to use an overflow room to provide the public with contemporaneous access to at least the audio of a meeting when the main meeting room is at full capacity and an alternative room with great capacity is unavailable, but a public body may not otherwise divert attendees to an overflow room to prevent them from being physically present. This office cautions the Board to ensure that there is adequate seating in the Board room to accommodate prospective attendees at every future Board meeting, and to also allow members of the public to stand in the meeting room, subject to the room's fire code occupancy limit. Additionally, on the rare occasions that an overflow room may be necessary to provide reasonable access to a meeting, the Board must take measures to ensure its meetings are sufficiently audible in that space.

As to [redacted] attendance in particular, the Public Access Bureau has determined that a public body did not violate OMA when a member of the public was prevented from attending a meeting because of a court order,[13] and that a public body did not violate OMA by ejecting a member of the public from the middle of a meeting for disrupting the meeting.[14] This office has reviewed the police reports that the Board provided for our confidential review. Notably, none of the police reports indicate that [redacted] is barred from attending Board meetings by a court order. The materials this office has received in this matter reflect that [redacted] is sharply critical of Ms. Henyard and her administration, but they do not support the allegations that she poses a *bona fide* security or safety concern, or that the police department that generated the reports treated her as such. The Board did not demonstrate that the mere presence of [redacted] in the meeting room would have endangered anyone, disrupted the meeting, or otherwise jeopardized the Board's ability to proceed in an orderly manner. The Board therefore violated OMA by prohibiting [redacted] from entering the meeting room. This office cautions the Board to refrain from excluding members of the public from attending its open meetings absent a court order barring attendance, the occurrence of actual disruptions that impede the ability to continue conducting public business, or demonstrable evidence of a likelihood of disruptive conduct or a threat to public safety.

Public Comment

[13] *See, for instance,* Ill. Att'y Gen. PAC Req. Rev. Ltr. 37043, issued September 1, 2015, at 1 (Stalking No Contact Order prevented member of public from attending meeting, thus public body did not violate her right to public comment).

[14] *See, for instance,* Ill. Att'y Gen. PAC Req. Rev. Ltr. 35101, issued July 13, 2015, at 2 (unable to conclude public body violated OMA by removing member of public from meeting when she refused to stop speaking after her public comment time expired and her speech became increasingly uncivil).

Section 2.06(g) of OMA[15] provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." Section 2.06(g) "requires that all public bodies subject to the Act provide an opportunity for members of the public to address public officials at open meetings." Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 5. Under the plain language of section 2.06(g), a public body must establish and record rules governing public comment, which must tend to accommodate public comment rather than impose unreasonable limits, and may restrict public comment only pursuant to those rules. *See* Ill. Att'y Gen. Pub. Acc. Op. No. 23-013, issued September 13, 2023, at 3-4. A public body may not silence a public comment based on the chairperson's disagreement with the speaker's viewpoint. *See, for instance, I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 924 (N.D. Ill. 2009).

The Board's ordinance regarding public comment provides, in relevant part:

> (1) Prior to meetings, the Township Board will make available a sign-in sheet, where prospective speakers must print their names, and may, if they chose to, disclose their contact information and the subject matter upon which they wish to address the board. A commenter will still be allowed to comment, even if the commenter opts to not disclose their contact information or the topic they wish to address;
> (2) Speakers will be recognized for comment during the public comment period only if they have completed the required portions of the sign-in sheet (their name), and will be called in the order in which they have signed in;
> (3) When recognized to comment, each speaker must begin by stating his or her name, and shall be permitted three (3) minutes to address the board. This period shall not include the board members' responses, if any, to the speaker[.][16]

The Board's answer to this office indicated that it believed it met the public comment requirement by giving [redacted] the opportunity to put her public comment in writing. In reply, [redacted] stated: "I was not asked to write my comment for the clerk to read into record; I was told to email the clerk and someone would get back to me with answers to my questions because I am not allowed upstairs to speak."[17] [redacted] further argued that

[15]5 ILCS 120/2.06(g) (West 2022).

[16]Thornton Township Ordinance No. 22-004, §§ 2(1)-(3) (approved November 9, 2022).

[17]E-mail from [redacted] to [Katie] Goldsmith (October 7, 2023).

"[t]here is no reason I can not go into a board meeting and address the board or [Township Supervisor Henyard]."[18]

The Board clearly violated OMA by prohibiting [redacted] from addressing its members in person during its August 15, 2023, meeting. The Board's established and recorded public comment rules do not state that the Board may require public comments to be submitted by e-mail rather than voiced to the Board in person.[19] Even if the Board had such an established and recorded rule, it would unreasonably restrict the right to public comment and thus be invalid. Public bodies have an express statutory duty to provide members of the public with the opportunity to verbally address their members at in-person open meetings. Therefore, this office cautions the Board to refrain from requiring members of the public to submit public comments in writing and ensure that members of the public are permitted to vocally address its members in person at each open meeting, and to otherwise fully uphold the right to address public officials.

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 file. If you have questions, you may contact me at katherine.goldsmith@ilag.gov.

Very truly yours,

[redacted]

KATIE GOLDSMITH
Assistant Attorney General
Public Access Bureau

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cc: *Via electronic mail*
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333 East 162nd Street
South Holland, Illinois 60473
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[18]E-mail from [redacted] to [Katie] Goldsmith (October 7, 2023).

[19]This office notes that the analysis in this matter concerns only in-person meetings, not the remote meetings that were available during the COVID-19 pandemic under section 7(e) of OMA (5 ILCS 120/7(e) (West 2022)).