OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 5, 2024

Via electronic mail
[redacted]

RE: OMA Requests for Review – 2024 PAC 80205; 80206

Dear [redacted]:

The Public Access Bureau has received your two Requests for Review alleging that the Winnetka Village Council (Council) violated the Open Meetings Act (OMA) in connection with its December 12, 2023, special meeting. For the reasons set forth below, the Public Access Bureau concludes that no further action is warranted in these matters.

Request for Review 2024 PAC 80205

On February 15, 2024, you submitted the above-referenced Request for Review alleging that the Council "violated 5 ILCS 120/2.06(d) at its December 12, 2023 closed meeting, first made public in a resolution presented in its open meeting on December 19, 2023. [You] do not believe the Village "reasonably" reviewed closed meeting minutes to make a determination of whether or not they require ongoing confidentiality."[1] The minutes of the December 12, 2023, meeting indicate that the Board entered closed section pursuant to the exceptions in section 2(c)(11)[2] for pending or probable and imminent litigation and section 2(c)(21)[3] for "[d]iscussion

[1]Request for Review [redacted] to Public Access Counselor, Office of the Attorney General (February 15, 2024), at 4.

[2]5 ILCS 120/2(c)(11) (West 2022), as amended by Public Act 103-311, effective July 28, 2023.

[3]5 ILCS 120/2(c)(21) (West 2022), as amended by Public Act 103-311, effective July 28, 2023.

of minutes of meetings lawfully closed under this Act, whether for purposes of approval by the body of the minutes or semi-annual review of the minutes as mandated by Section 2.06." You stated that the Board spent 42 minutes in closed session, and that the resolution approved on December 19, 2023, indicates that the Board approved the minutes of 42 closed meetings and determined that those minutes and the minutes of 75 other closed meetings required ongoing confidentiality.

Section 2.06(d) of OMA (5 ILCS 120/2.06(d) (West 2022)) sets forth the requirement for a public body to periodically review its closed session minutes and determine the continued need for confidentiality:

> (d) Each public body shall periodically meet to review minutes of all closed meetings. Meetings to review minutes shall occur every 6 months, or as soon thereafter as is practicable, taking into account the nature and meeting schedule of the public body. * * * At such meetings a determination shall be made, and reported in an open session that (1) the need for confidentiality still exists as to all or part of those minutes or (2) that the minutes or portions thereof no longer require confidential treatment and are available for public inspection. The failure of a public body to strictly comply with the semi-annual review of closed session written minutes * * * shall not cause the written minutes or related verbatim record to become public or available for inspection in any judicial proceeding, other than a proceeding involving an alleged violation of this Act, if the public body, within 60 days of discovering its failure to strictly comply with the technical requirements of this subsection, reviews the closed session minutes and determines and thereafter reports in open session that either (1) the need for confidentiality still exists as to all or part of the minutes or verbatim record, or (2) that the minutes or recordings or portions thereof no longer require confidential treatment and are available for public inspection.

As outlined above, section 2.06(d) of OMA plainly requires public bodies to meet approximately every six months to review closed session minutes and thereafter report in open session whether those minutes require continued confidentiality or whether certain minutes may be made publicly available. OMA does not, however, set forth any procedure for a public body to follow for conducting the reviews or require a public body to spend a certain amount of time reviewing minutes. Although it would be consistent with the spirit of OMA, and section 2.06(d) specifically, for public bodies to substantively review all meeting minutes before determining that minutes still require confidentiality, the Act does not contain any language that prescribes

the manner of the reviews or that limits public bodies' discretion to determine during semi-annual reviews whether or not closed session minutes must be disclosed. Accordingly, the Public Access Bureau concludes that no further action is warranted with respect to this allegation.

Request for Review 2024 PAC 80206

On February 15, 2024, you submitted a second Request for Review alleging that the Council violated OMA in connection with the accuracy of its December 12, 2023, special meeting minutes. Specifically, you alleged that, despite being counted as "absent" in the roll call for those minutes, Council Trustee Robert Dearborn was later recorded in the minutes as having made a motion to enter into closed session discussion.

Section 2.06(a) of OMA (5 ILCS 120/2.06(a) (West 2022)) provides that "[a]ll public bodies shall keep written minutes of all their meetings[,]" which are to include, in relevant part, "the members of the public body recorded as either present or absent * * *; and (3) a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken." However, the Public Access Bureau has previously determined that "de minimis inconsistencies in minutes concerning * * * who made motions to enter or adjourn closed session do not deprive the public of any meaningful information concerning the resulting vote or the substance of closed session discussions." Ill. Att'y Gen. PAC Req. Rev. Ltr. 61021, issued December 19, 2019, at 2. This office has reviewed the December 12, 2023, minutes and confirms the alleged discrepancy. However, because this plainly appears to be a de minimis error in connection with a procedural vote to enter closed session, the Public Access Bureau concludes that no further action is warranted with respect to this allegation.

With that, in consideration of the Public Access Counselor's charge to provide advice and education to both the public and public bodies, on March 1, 2024, the Deputy Public Access Counselor contacted the Council to inform it of the discrepancy in its December 12, 2023, meeting minutes. Later that same day, the Council's legal counsel replied, confirming the scrivener's error reflecting then-absent Trustee Dearborn's motion to enter closed session and noted that the Council will consider correcting the December 12, 2023, special meeting minutes at a future meeting.

These files are closed. If you have any questions, please contact me at the Springfield address listed on the first page of this letter.

Very truly yours,

[redacted]

CHRISTOPHER R. BOGGS
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Public Access Bureau

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