



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

February 10, 2022

PUBLIC ACCESS OPINION 22-003
(Request for Review 2021 PAC 69031)

OPEN MEETINGS ACT:
Improper Remote Meeting
During a Public Health Emergency

Ms. Mary Ransome
605 South Christy Avenue
Sumner, Illinois 62466

The Honorable Betty Brian
Mayor
City of Sumner
129 East South Street
Sumner, Illinois 62466

Dear Ms. Ransome and Ms. Brian:

This binding opinion is issued by the Attorney General pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2020)). For the reasons discussed below, this office concludes that the City Council of the City of Sumner (City Council) held an improper remote meeting on January 11, 2022.

BACKGROUND

On December 16, 2021, Ms. Mary Ransome e-mailed the Public Access Bureau to raise a concern about the accessibility of the City Council meeting to be held later that day. On December 21, 2021, an Assistant Attorney General (AAG) in the Public Access Bureau e-mailed Ms. Ransome concerning the requirements for filing a Request for Review in connection

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with the December 16, 2021, meeting.¹ On December 23, 2021, Ms. Ransome replied by stating: "I have decided to wait on the review until the next council meeting which will be held on January 11, 2022."²

On January 14, 2022, Ms. Ransome submitted a Request for Review alleging that the City Council did not provide proper public access to its January 11, 2022, Zoom meeting.³ To provide context, Ms. Ransome first alleged that before the City Council's previous meeting:

I was told by the mayor of [S]umner (via phone) and the man in charge of the water department (in person conversation) that I could not attend since it was a zoom meeting. Later in the day, I asked the man in charge of the water department if he was aware of the open meetings act and he told me that I would need to talk with Travis who is our police chief. He said all he knew about the meetings was that the city provided the means for him to attend.⁴

Turning to the January 11, 2022, meeting at issue, Ms. Ransome alleged:

On January 10, 2022, a picture was taken of the front door of the Sumner City Hall * * * showing the agenda of the meeting to be held on January 11, 2022, via zoom. Please note that there was no link provided to attend the meeting. Therefore, per the conversation I had with the water department man [before the previous meeting], I contacted Travis, the police chief, via messenger * * *. At 6:31 p.m. on January 11, 2022, I received a text message on my phone with the link. I joined the meeting, per the mayor, the meeting had already started, like they had the opening prayer, etc. but that they were allowing me 5 minutes to talk about the letter I had sent. A discussion ensued. After the 5 minute time frame, the mayor said my time was up and the

¹E-mail from Joshua Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to [Mary] Ransome (December 21, 2021).

²E-mail from Mary Ransome to Joshua Jones, [Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (December 23, 2021).

³E-mail from Mary Ransome to Joshua Jones, [Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (January 14, 2022).

⁴E-mail from Mary Ransome to Joshua Jones, [Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (January 14, 2022).

meeting would have to move on and said goodbye, I told her that I wanted to listen to the rest of the meeting, she said that was okay but I couldn't talk anymore, I told her I wouldn't. I made no more comments but I did listen to the other parts of the Agenda until the meeting was over.^[5]

Ms. Ransome attached a photograph of the paper agenda posted on the door of Sumner City Hall and a screenshot of her text messages with the police chief. The agenda stated "ZOOM MEETING" at the top and stated that the meeting would commence at 6:30 p.m., but did not provide a Zoom videoconferencing link or any other means or directions for the public to access the remote meeting.⁶ In the first text message in the screenshot, Ms. Ransome asked for the Zoom meeting link, apparently sometime in the morning on January 11, 2022: "You said to let you know if I needed anything. I need to be able to participate in tonight's meeting. Can you provide the link to the zoom meeting please?"⁷ The screenshot indicates that the police chief responded that morning: "No problem just provide info of device you'll be using if phone for instance phone number if computer then an e-mail address[.]"⁸ Ms. Ransome then provided her number,⁹ and the police chief responded: "Ok they will send link via text just prior to meeting."¹⁰

Later on January 14, 2022, the Public Access Bureau sent a copy of the Request for Review to Mayor Betty Brian. The Public Access Bureau also sent Mayor Brian a letter asking for copies of any notices, agendas, minutes, and recordings from the City Council's January 11, 2022, meeting for this office's confidential review, and a written response "to the allegation that it did not provide the public with a timely link to the meeting or other means of accessing the meeting."¹¹

⁵E-mail from Mary Ransome to Joshua Jones, [Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (January 14, 2022).

⁶City of Sumner City Council, Agenda (header) (January 11, 2022).

⁷Text message from Mary Ransome to Travis [Trainer] ([January 11, 2022,] [unspecified]).

⁸Text message from Travis [Trainer] to Mary Ransome ([January 11, 2022,] 8:36 a.m.).

⁹Text message from Mary Ransome to Travis [Trainer] ([January 11, 2022,] 8:55 a.m.).

¹⁰Text message from Travis [Trainer] to Mary Ransome ([January 11, 2022,] 8:55 a.m.).

¹¹Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to The Honorable Betty Brian, Mayor, City of Sumner (January 14, 2022), at 2.

On January 19, 2022, counsel for the City Council, Mr. Brady R. Waldrop, provided the Public Access Bureau with a copy of the agenda, a copy of the unapproved draft minutes, and a written response.¹² Mr. Waldrop stated:

Notice of the meeting held on January 11, 2022, was posted on January 7, 2022, on the front door of City Hall. Said notice identified the meeting as a Zoom meeting. The meeting was open and accessible to the public as identified in Mary Ransome's text message and written statement provided to your office that show she was provided with a link to attend and participate in the meeting and did in fact attend and participate in the meeting. Any other member of the public who desired to attend and participate in the meeting was free to do so.^{13]}

On that same date, an AAG in the Public Access Bureau sent Mr. Waldrop two e-mails seeking clarification as to whether: (1) the City Council posted the Zoom link for the meeting anywhere or made it available only upon request; and (2) the City Council possessed a video recording of the meeting.¹⁴ On January 21, 2022, he responded:

[W]ith regard to the January 11, 2022 meeting, public notice was given of the meeting date, time, and location but no link or phone number to the Zoom meeting was publicly posted. Any member of the public could have requested the link or other information and the City would provide that link or other information to that member of the public. Additionally, there is no audio or video recording of the meeting.

The Chief of Police, Water Superintendent, Secretary, Treasurer, and one Council Member were physically present at the meeting held on January 11, 2022 at City Hall, which is the meeting's regular and standard location. At all times during the meeting, City Hall was accessible to anyone, including members of

¹²Letter from Brady R. Waldrop, Gosnell, Borden, Enloe, Sloss, McCullough & Waldrop, Ltd., to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Illinois Attorney General (January 19, 2022).

¹³Letter from Brady R. Waldrop, Gosnell, Borden, Enloe, Sloss, McCullough & Waldrop, Ltd., to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Illinois Attorney General (January 19, 2022), at 1.

¹⁴E-mails from Josh Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Brady Waldrop (January 19, 2022).

the public, who desired to attend the meeting in person.^[15]

On January 21, 2022, this office forwarded a copy of each City Council response to Ms. Ransome.¹⁶ On January 24, 2022, Ms. Ransome replied by asking, if the City Council allowed in-person attendance for its January 11, 2022, meeting, "why did the notice say it was a zoom meeting?"¹⁷ On January 26, 2022, Ms. Ransome submitted an expanded reply.¹⁸ Addressing the City Council's claim that in-person attendance was allowed, Ms. Ransome stated: "How were the citizens of Sumner to know this information since the posted notice did not reflect same? For example, notice should have stated Zoom meeting with link and if you wish to attend the meeting in person at City Hall you may do so."¹⁹

On February 10, 2022, Mr. Waldrop provided this office a copy of the approved minutes of the City Council's January 11, 2022, meeting.²⁰

ANALYSIS

OMA declares that 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).

Section 7(e) of OMA (5 ILCS 120/7(e) (West 2020)) sets forth the requirements for a public body to conduct a remote meeting without a quorum physically present during a public health emergency, such as the COVID-19 pandemic. At the time of the Board's January 11, 2022, meeting, a statewide disaster declaration²¹ was in place that the Governor had issued

¹⁵Letter from Brady R. Waldrop, Gosnell, Borden, Enloe, Sloss, McCullough & Waldrop, Ltd., to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Illinois Attorney General (January 21, 2022), at 1.

¹⁶Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to [Mary] Ransome (dated January 20, 2022, and transmitted via e-mail on January 21, 2022).

¹⁷E-mail from Mary Ransome to Joshua Jones, [Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (January 24, 2022).

¹⁸Letter from Mary M. Ransome to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Illinois Attorney General (January 26, 2022).

¹⁹Letter from Mary M. Ransome to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Illinois Attorney General (January 26, 2022).

²⁰E-mail from Brady R. Waldrop, Gosnell, Borden, Enloe, Sloss, McCullough & Waldrop, Ltd., to Joshua Jones (February 10, 2022).

pursuant to his authority under the Illinois Emergency Management Agency Act (20 ILCS 3305/7 (West 2020)). That disaster declaration satisfied section 7(e)(1) of OMA (5 ILCS 7(e)(1) (West 2020)).²² The following three additional subsections are particularly relevant here:

- (e) Subject to the requirements of Section 2.06 but notwithstanding any other provision of law, an open or closed meeting subject to this Act may be conducted by audio or video conference, without the physical presence of a quorum of the members, so long as the following conditions are met:

* * *

- (4) for open meetings, members of the public present at the regular meeting location of the body can hear all discussion and testimony and all votes of the members of the body, unless attendance at the regular meeting location is not feasible due to the disaster, * * * in which case the public body must make alternative arrangements and provide notice pursuant to this Section of such alternative arrangements in a manner to allow any interested member of the public access to contemporaneously hear all discussion, testimony, and roll call votes, such as by offering a telephone number or a web-based link;

* * *

- (7) Except in the event of a bona fide emergency, 48 hours' notice shall be given of a meeting to be held pursuant to this Section. Notice * * * shall be posted on the website of the public body[.] * * *

* * *

²¹Gubernatorial Disaster Proclamation, issued January 7, 2022, at [7].

²²Section 7(e)(1) of OMA provides:

(1) the Governor or the Director of the Illinois Department of Public Health has issued a disaster declaration related to public health concerns because of a disaster as defined in Section 4 of the Illinois Emergency Management Agency Act, and all or part of the jurisdiction of the public body is covered by the disaster area[.]

- (9) In addition to the requirements for open meetings under Section 2.06, public bodies holding open meetings under this subsection (e) must also keep a verbatim record of all their meetings in the form of an audio or video recording. Verbatim records made under this paragraph (9) shall be made available to the public under, and are otherwise subject to, the provisions of Section 2.06.

Construing the plain language of sections 7(e)(4) and 7(e)(7) together, when a public body holds a remote meeting for both its members and the public, the public body must post the remote meeting access information on its website with the meeting notice/agenda at least 48 hours in advance of the meeting, except in the event of a bona fide emergency.

The City Council's argument that it conducted its January 11, 2022, meeting properly is unavailing because the City Council provided inadequate advance notice of the meeting and insufficient access to the meeting. As quoted above, the City Council's first response to this office asserted that the meeting was proper because the agenda identified the meeting as a Zoom meeting and Ms. Ransome was able to attend and participate in the meeting. The approved meeting minutes, however, corroborate Ms. Ransome's allegation that the meeting was already underway when the City Council granted her access. The minutes show that the City Council acted on two motions before a member of the City Council sent Ms. Ransome the web-based link to the virtual meeting room and granted her five minutes to address the Council.²³ The City Council neither asserted nor provided evidence reflecting that it gave Ms. Ransome remote access to the full meeting.

While the City Council claimed in its supplemental response that its January 11, 2022, meeting was not just a Zoom meeting, but that the meeting room in City Hall was open to the public, the City Council did not provide advance notice of that option. Although the City Council asserted that "public notice was given of the meeting * * * location[,] "²⁴ the agenda provided no address; it was posted on the door of Sumner City Hall, the City Council's regular meeting location, but the only location information was the "ZOOM MEETING" heading.²⁵ That heading implies that the meeting would be accessible to the public only via the Zoom platform. Further, posting notice of a remote meeting without indicating how to access the meeting remotely plainly falls short of the requirement to "make alternative arrangements and

²³Sumner City Council, Meeting, January 11, 2022, Minutes 1.

²⁴Letter from Brady R. Waldrop, Gosnell, Borden, Enloe, Sloss, McCullough & Waldrop, Ltd., to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Illinois Attorney General (January 21, 2022), at 1.

²⁵City of Sumner City Council, Agenda (header) (January 11, 2022).

provide notice pursuant to this Section of such alternative arrangements in a manner to allow any interested member of the public access to contemporaneously hear all discussion, testimony, and roll call votes, such as by offering a telephone number or a web-based link." 5 ILCS 120/7(e)(4) (West 2020). The City Council's supplemental response to this office acknowledged that "no link or phone number to the Zoom meeting was publicly posted."²⁶ An agenda that states a meeting will be held by Zoom or another remote meeting platform without clarifying that in-person public attendance is allowed gives insufficient advance notice.

Furthermore, if a public body does provide remote access to any members of the public under section 7(e)(4), it should make the information needed to access the meeting readily and continuously accessible to the general public for at least the 48-hour period that precedes the meeting. See 5 ILCS 120/2.02(c) (West 2020) ("The public body conducting a public meeting shall ensure that at least one copy of any requested notice and agenda for the meeting is continuously available for public review during the entire 48-hour period preceding the meeting."). Notice of a remote meeting is not continuously available if any potentially interested members of the public must ask the public body for a web-based link to the meeting. Notably, sections 7(e)(4) and 7(e)(7) combine to expressly require that notice of the access information for a remote meeting under section 7(e) of OMA must be posted on the public body's website, regardless of other considerations such as the size of the public body or how its website is maintained. This contrasts with other provisions concerning website postings in OMA, which require website posting only if "the full-time staff of the public body maintains" the public body's website.²⁷ "The legislature's decision to use certain language in one instance and different language in another indicates that the legislature intended different results." *Julie Q. v. Dep't of Children & Family Services*, 2013 IL 113783, ¶41, 995 N.E.2d 977, 985 (2013). The City Council confirmed that it did not post the Zoom meeting link or call-in access information on its website or anywhere else before its January 11, 2022, meeting.

The City Council also violated OMA by failing to make a verbatim audio or video recording of the meeting, as expressly required by section 7(e)(9) of OMA. While a public body must make verbatim audio or video recordings of only the closed sessions of its normal in-person open meetings,²⁸ a public body that holds a remote meeting under section 7(e) of OMA must make and keep a verbatim audio or video recording of the entire meeting.

²⁶Letter from Brady R. Waldrop, Gosnell, Borden, Enloe, Sloss, McCullough & Waldrop, Ltd., to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Illinois Attorney General (January 21, 2022), at 1.

²⁷5 ILCS 120/2.02(a), (b) (West 2020); 5 ILCS 120/2.06(b) (West 2020).

²⁸5 ILCS 120/2.06(a) (West 2020) ("All public bodies shall keep * * * a verbatim record of all their closed meetings in the form of an audio or video recording.").

Accordingly, because the City Council provided inadequate notice of its January 11, 2022, meeting, afforded insufficient access to the meeting, and failed to make a verbatim recording of the meeting, the City Council violated OMA on that date.

FINDINGS AND CONCLUSIONS

After full examination and giving due consideration to the arguments presented, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

1) On January 11, 2022, the City of Sumner City Council held a meeting remotely via the Zoom videoconferencing platform. The agenda stated that the meeting was a "ZOOM MEETING."

2) On January 14, 2022, Ms. Mary Ransome submitted a Request for Review to the Public Access Bureau alleging that the City Council violated OMA by holding the meeting remotely without providing the public with a web-based link to the meeting before it began. Ms. Ransome's Request for Review was timely filed and otherwise complies with the requirements of section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2020)).

3) On January 14, 2022, the Public Access Bureau sent a copy of the Request for Review to Mayor Betty Brian and asked the City Council to provide copies of any notices, agendas, minutes, and recordings from its January 11, 2022, meeting for this office's confidential review. This office also requested a written response to the allegation that the City Council did not provide the public with advance notice of a web-based link to the meeting or other means of accessing the meeting.

4) On January 19, 2022, counsel for the City Council furnished a copy of the agenda, a copy of unapproved draft meeting minutes, and a written answer. On January 21, 2022, the City Council furnished an answer to this office's follow-up questions. The City Council acknowledged that it did not publicly post a web-based link to the meeting and did not record the meeting, but maintained that it held a proper remote meeting because the public was allowed to attend in person and Ms. Ransome joined the meeting remotely. On that same date, this office forwarded a copy of each answer to Ms. Ransome.

5) On January 24, 2022, and January 26, 2022, Ms. Ransome submitted replies. On February 10, 2022, the City Council furnished a copy of the approved minutes.

6) Section 7(e) of OMA provides the legal framework for public bodies to hold meetings remotely during the COVID-19 pandemic when a Gubernatorial disaster declaration is in effect.

7) Section 7(e)(4) requires that when "attendance at the regular meeting location is not feasible due to the disaster, including the issued disaster declaration, * * * the public body must make alternative arrangements * * * to allow any interested member of the public access to contemporaneously hear all discussion, testimony, and roll call votes, such as by offering a telephone number or a web-based link[.]" Section 7(e)(7) adds that "[e]xcept in the event of a bona fide emergency, 48 hours' notice shall be given of a meeting to be held pursuant to this Section. Notice * * * shall be posted on the website of the public body[.]" The City Council held its January 11, 2022, meeting by Zoom and the publicly posted agenda stated it was a Zoom meeting, but the agenda did not provide a telephone number or web-based link for accessing the meeting before it began.

8) Section 7(e)(9) provides that "[i]n addition to the requirements for open meetings under Section 2.06, public bodies holding open meetings under this subsection (e) must also keep a verbatim record of all their meetings in the form of an audio or video recording." The City Council acknowledged that it did not make any kind of recording of its January 11, 2022, remote meeting.

9) Therefore, the City Council improperly held its January 11, 2022, meeting remotely without satisfying the remote meeting requirements of section 7(e) of OMA.

In accordance with these findings of fact and conclusions of law, the Public Access Bureau concludes that the City of Sumner City Council violated OMA by failing to provide the public with sufficient notice of its January 11, 2022, meeting, by failing to provide adequate public access to the meeting, and by failing to make a verbatim audio or video recording the meeting. The City Council is directed to include the remote access information, such as a telephone number or a web-based link, in the meeting notice/agenda for any future remote meeting where in-person public attendance is not allowed. The City Council must specify on the agenda when in-person attendance is allowed for any remote meeting. The City Council is also directed to make and keep a verbatim audio or video recording of any future remote meeting it holds pursuant section 7(e) of OMA.

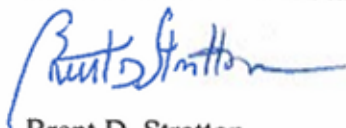
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This opinion shall be considered a final decision of an administrative agency for the purpose of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2020). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review in the Circuit Court of Cook County or Sangamon County within 35 days of the date of this decision, naming the Attorney General of Illinois and Ms. Mary Ransome as defendants. *See* 5 ILCS 120/7.5 (West 2020).

Very truly yours,

KWAME RAOUL
ATTORNEY GENERAL

By:



Brent D. Stratton
Chief Deputy Attorney General

cc: Mr. Brady R. Waldrop
Gosnell, Borden, Enloe, Sloss, McCullough & Waldrop, Ltd.
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CERTIFICATE OF SERVICE

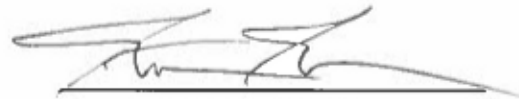
Steve Silverman, Bureau Chief, Public Access Bureau, hereby certifies that he has served a copy of the foregoing Binding Opinion (Public Access Opinion 22-003) upon:

Ms. Mary Ransome
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The Honorable Betty Brian
Mayor
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by causing a true copy thereof to be sent electronically to the addresses as listed above and by causing to be mailed a true copy thereof in correctly addressed, prepaid envelopes to be deposited in the United States mail at Chicago, Illinois on February 10, 2022.



STEVE SILVERMAN
Chief, Public Access Bureau

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