



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 27, 2023

PUBLIC ACCESS OPINION 23-004
(Request for Review 2023 PAC 74927)

OPEN MEETINGS ACT:
Requirement to Provide General
Subject Matter of Personnel
Transactions on Meeting Agenda

Mr. Tim Burns
227 Banbury Avenue
Elk Grove Village, Illinois 60007

The Honorable William (Bill) Dussling
President, Board of Education
Township High School District 214
2121 South Goebbert Road
Arlington Heights, Illinois 60005

Dear Mr. Burns and Mr. Dussling:

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 Board of Education (Board) of Township High School District 214 (District) violated section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2020)) during its September 15, 2022, meeting by taking final action to approve a severance agreement with an assistant superintendent without setting forth the general subject matter of that vote on the posted meeting agenda.

BACKGROUND

On January 5, 2023, Mr. Tim Burns submitted a Request for Review to the Public Access Bureau alleging that the Board violated OMA during its September 15, 2022, meeting by voting to approve "an elaborate multi-page severance agreement" involving a payout of \$183,274

Mr. Tim Burns
The Honorable William (Bill) Dussling
March 27, 2023
Page 2

to an assistant superintendent without setting forth the general subject matter of that final action on the agenda.¹ He stated that he became aware of the alleged violation from two news articles published by the *Daily Herald* on December 2, 2022,² and December 22, 2022,³ and argued that the relevant facts were not reasonably knowable by the public until that time because the severance agreement was neither announced publicly at nor listed in the minutes of the September 15, 2022, meeting.⁴ The agenda items in question provided:

10. Closed session

For the purpose of discussing

- The appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body 5 ILCS 120/2(c)(1), amended by P.A. 101- 459.

Immediately following closed session, action may take place as a result of closed session discussion.

11. Reconvene in open session

- The appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body 5 ILCS 120/2(c)(1), amended by P.A. 101- 459

Immediately following closed session, action may take place as a result of closed session discussion.^[5]

On January 9, 2023, the Public Access Bureau sent a copy of the Request for Review to the School Board President, Mr. William (Bill) Dussling. The Public Access Bureau

¹Letter from Tim Burns to Public Access Counselor, Office of the Attorney General (January 5, 2023), at 1-2.

²Christopher Placek, *Superintendent's departure isn't only administrative turnover in District 214*, DAILY HERALD (Dec. 2, 2022, 4:55 p.m.), <https://www.dailyherald.com/news/20221202/superintendents-departure-isnt-only-administrative-turnover-in-district-214> (last visited January 30, 2022).

³Christopher Placek, *Ex-District 214 business chief paid \$183,000 as part of mysterious departure*, DAILY HERALD (Dec. 22, 2022, 6:52 p.m.), <https://www.dailyherald.com/news/20221222/ex-district-214-business-chief-paid-183000-as-part-of-mysterious-departure> (last visited January 30, 2022).

⁴Letter from Tim Burns to Public Access Counselor, Office of the Attorney General (January 5, 2023), at 1-2.

⁵Township High School District 214 Board of Education, Agenda Item 10, Closed Session (September 15, 2022).

Mr. Tim Burns
The Honorable William (Bill) Dussling
March 27, 2023
Page 3

also sent Mr. Dussling a letter asking for copies of any notices, agendas, minutes, and recordings of the Board's September 15, 2022, open session meeting for this office's review.⁶ This office also asked the Board to respond in writing to the allegation that it improperly took final action on the severance agreement because it omitted the general subject matter of the agreement from the agenda.⁷

On January 18, 2023, counsel for the Board provided the Public Access Bureau with copies of the agenda and open session minutes, and a written response denying that the Board violated OMA.⁸ The Board's attorney also argued that Mr. Burns' complaint should be dismissed as untimely.⁹ On January 18, 2023, this office forwarded a copy of the Board's response letter to Mr. Burns.¹⁰ On January 27, 2023, he submitted a reply.¹¹

On March 3, 2023, this office extended the time within which to issue a binding opinion by 21 business days, to April 4, 2023.¹²

ANALYSIS

"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

⁶Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to The Honorable William (Bill) Dussling, President, Board of Education, Township High School District 214 (January 9, 2023), at 1.

⁷Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to The Honorable William (Bill) Dussling, President, Board of Education, Township High School District 214 (January 9, 2023), at 1.

⁸Letter from Elizabeth Kelly, On behalf of District 214, Kriha Boucek, to Joshua M. Jones, Deputy Bureau Chief, PAC, Office of the Attorney General (January 18, 2023).

⁹Letter from Elizabeth Kelly, On behalf of District 214, Kriha Boucek, to Joshua M. Jones, Deputy Bureau Chief, PAC, Office of the Attorney General (January 18, 2023), at 7-9.

¹⁰Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Tim Burns (January 18, 2023).

¹¹Letter from Tim Burns to Public Access Counselor, Office of the Attorney General (January 27, 2023).

¹²Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Tim Burns and Elizabeth Kelly, Kriha Boucek (March 3, 2023).

Mr. Tim Burns
The Honorable William (Bill) Dussling
March 27, 2023
Page 4

openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

Authority for Review

As an initial matter, the Board argued that Mr. Burns' Request for Review "was not timely and, therefore, should be dismissed."¹³ Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2020)) provides, in relevant part:

A person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation. **If facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, by a person utilizing reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation.** (Emphasis added.)

The Board argued that the Public Access Counselor lacks the authority to review Mr. Burns' allegations because:

[O]n September 15, 2022, the Board publicly recited its vote on Personnel Transaction Report II. This action was done publicly in front of anyone in attendance at the meeting that evening, as well as virtually before any person electing to live-stream the Board's meeting that night. Moreover, following the Board's public action on Personnel Transaction Report II that evening, a copy of the Report was available for public inspection. Further, had a member of the public not been able to attend the September 15, 2022, meeting or live-stream it, they could have reviewed the minutes from that evening's meeting after they were approved on October 20, 2022, and posted online on October 25, 2022. In those minutes, it specifically states that the Board approved Personnel Report

¹³Letter from Elizabeth Kelly, On behalf of District 214, Kriha Boucek, to Joshua M. Jones, Deputy Bureau Chief, PAC, Office of the Attorney General (January 18, 2023), at 7.

Mr. Tim Burns
The Honorable William (Bill) Dussling
March 27, 2023
Page 5

Transaction II. This was all done more than 60 days prior to Mr. Burns' Request for Review.^[14]

The Board added that a recording of the meeting was available for anyone to review on the District's website from September 21, 2022, to date, and that "Personnel Transaction Report II" could have been requested after the meeting pursuant to the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2020)). The Board claimed that Mr. Burns did not exercise reasonable diligence in relation to the alleged violation because:

A reasonable person seeking to stay present on Board actions would have either attended the meeting, watched the live-stream of the meeting, reviewed the meeting minutes, or watched the recorded meeting to learn that action was taken on September 15, 2022, concerning a personnel matter outlined on Personnel Transaction Report II.^[15]

In reply, Mr. Burns argued that a person using reasonable diligence would not have realized that the Board was considering approving a severance agreement for a District administrator during its September 15, 2022, meeting because several other local school districts had posted sufficiently informative agenda items when considering similar personnel moves.¹⁶ Noting that the agenda included a separate agenda item for "[a]pproval of Personnel Transaction Report"¹⁷ that the Board acted on earlier in the meeting,¹⁸ he contended: "When the public first heard of the passing of 'Personnel Transaction Report 2' it believed that Personnel Transaction Report 2 was something miniscule or routine as 'Personnel Transaction Report 1' which had a very similar title [and] was very much routine and featured general personnel matters."¹⁹

¹⁴Letter from Elizabeth Kelly, On behalf of District 214, Kriha Boucek, to Joshua M. Jones, Deputy Bureau Chief, PAC, Office of the Attorney General (January 18, 2023), at 8.

¹⁵Letter from Elizabeth Kelly, On behalf of District 214, Kriha Boucek, to Joshua M. Jones, Deputy Bureau Chief, PAC, Office of the Attorney General (January 18, 2023), at 8.

¹⁶Letter from Tim Burns to Public Access Counselor, Office of the Attorney General (January 27, 2023), at 1-2.

¹⁷Township High School District 214 Board of Education, Agenda Item 8.2, Closed Session (September 15, 2022).

¹⁸Township High School District 214 Board of Education, Meeting, September 15, 2022, Minutes [2].

¹⁹Letter from Tim Burns to Public Access Counselor, Office of the Attorney General (January 27, 2023), at 7-8.

The minutes of the September 15, 2022, meeting and the Board's public recital during the meeting do not mention the action the Board took to approve a severance agreement. A member of the public who attended the September 15, 2022, Board meeting and subsequently obtained the minutes upon their approval on October 25, 2022, would still have had no understanding that the Board approved the severance agreement by adopting "Personnel Transaction Report II." As discussed further below, the Board did not describe any contents of "Personnel Transaction Report II" during open session on September 15, 2022, and the minutes similarly refer only to "Approval of Personnel Transaction Report II" rather than the Board's vote to approve the severance agreement.²⁰ Moreover, the Board did not claim that it posted the executed severance agreement on its website, but instead claimed that the public could have requested it under FOIA. Nevertheless, the Board did not demonstrate that "utilizing reasonable diligence" requires submitting a FOIA request when an agenda item, open session discussion, and minutes are too generic for the public to ascertain the final action taken.

OMA does not define "reasonable diligence," and there are no published cases in which an Illinois reviewing court has interpreted that term. "When presented with an issue of statutory construction, [a court's] primary objective is to ascertain and give effect to the intent of the legislature." *Better Government Ass'n v. Ill. High School Ass'n*, 2017 IL 121124, ¶22, 89 N.E.3d 376, 383 (2017). "Where the meaning of a statute is unclear from a reading of its language, courts may look beyond the statutory language and consider the purpose of the law, the evils it was intended to remedy, and the legislative history of the statute." *Johnston v. Weil*, 241 Ill. 2d 169, 175-76 (2011).

The General Assembly added the "reasonable diligence" provision to section 3.5(a) of OMA to fix the problem of secret meetings going undiscovered during the 60-day window for submitting Requests for Review. Representative David McSweeney, House sponsor of the bill that, as Public Act 99-402, effective August 19, 2015, added the "reasonable diligence" exception to the statute, explained during the House floor debate:

House Bill 175 would simply reform the Open Meetings Act by allowing problems with any violations to be reported 60 days after discovery instead of 60 days after the date of the meeting. In my area, there was a power plant that was being built within 300 yards of a school. There were secret meetings and there was no recourse.
* * * We placed a two-year limit on it.^[21]

²⁰Township High School District 214 Board of Education, Meeting, September 15, 2022, Minutes [3].

²¹Remarks of Rep. McSweeney, March 5, 2015, House Debate on House Bill No. 175, at 11.

Local news media reported the context behind the bill:

McSweeney filed the legislation in response to what was potentially an illegal July 2013 meeting by the Oakwood Hills Village Board in which it discussed in closed-session the monetary windfall that would come from the building of a 430-megawatt, \$450-million power plant in the small town. The Open Meetings Act, which among other things limits what governments can debate behind closed doors, does not have an exemption that covers such a conversation.

But the meeting was not public knowledge until a year later, in July 2014, when it was discovered by the attorney hired by village residents who were opposed to the project. (Hyperlinks omitted.)^[22]

The legislative history reflects that the purpose of the amended section 3.5(a) is to enable members of the public to submit complaints about alleged violations of OMA when the underlying facts were not reasonably knowable within 60 days of their occurrence. Section 3.5(a) now recognizes that by nature certain OMA violations—particularly improper closed session discussions or private meetings—may not be contemporaneously evident to reasonably attentive members of the public. Submitting a FOIA request is a measure that extends beyond using reasonable diligence, as it goes further than simply keeping up with the activities of local government through attending or viewing open meetings and reviewing the minutes from those meetings. Reasonably diligent members of the public are generally reliant on news media to report details about governmental affairs that are not otherwise apparent. The reporting on the severance agreement described how the relevant facts were not evident to the public or press on or about the time of the September 15, 2022, Board meeting:

Johnson's departure wasn't announced publicly at the Sept. 15 school board meeting when the pact was approved. Instead, the board's formal vote and acceptance of her resignation was disguised as a nondescript "personnel transaction."

Pat Mogge, the district's director of community engagement and outreach, confirmed Johnson's resignation was listed on Personnel Transaction Report Two that the board

²²Kevin P, *State Rep. David McSweeney's Open Meetings Act reform bill clears committee*, Shaw Local News Network (February 19, 2015, 3:15 p.m.), <https://www.shawlocal.com/2015/02/19/state-rep-david-mcsweeneys-open-meetings-act-reform-bill-clears-committee/atppbm/>.

discussed in closed session, then unanimously voted to approve in open session.

In recent months, board members at their meetings haven't specifically announced the personnel items they're voting on after closed session, and their meeting minutes released sometimes a month later do not provide further description -- a change from past practice.

It was only at a meeting more than two months after Johnson's resignation, on Nov. 17, that the public formally learned of the administrative turnover. On that date, the board came out of closed session and voted on a modified job description for a new associate superintendent for business services/chief school business official.^[23]

Because Mr. Burns submitted this Request for Review within 60 days after the facts of the alleged violation became reasonably publicly available from the first *Daily Herald* article, this office has the authority to review whether the Board provided sufficient advance notice of the action taken on the severance agreement at issue in his allegations.

Notice of Final Action

Section 2.02(c) of OMA requires that "[a]ny agenda required under this Section shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting." OMA does not define the term "general subject matter[.]" "General" is defined, as "[r]elating to, concerned with, or applicable to the whole or every member of a class or category[.]" and "[i]nvolving only the main features of something rather than details or particulars." The American Heritage Dictionary 552 (2d coll. ed. 1982). "Subject matter" is defined as "[t]he issue presented for consideration; the thing in which a right or duty has been asserted; the thing in dispute." *Black's Law Dictionary* (11th ed. 2019), available at Westlaw BLACKS. The commonly understood meanings of this term do little to clarify the amount of information section 2.02(a) requires a public body to provide on its meeting agenda for topics upon which it anticipates taking final action. Although the modifier "general" signifies that an agenda item may identify a broad subject matter, the word is inherently ambiguous.

²³Christopher Placek, *Ex-District 214 business chief paid \$183,000 as part of mysterious departure*, DAILY HERALD (Dec. 22, 2022, 6:52 p.m.), <https://www.dailyherald.com/news/20221222/ex-district-214-business-chief-paid-183000-as-part-of-mysterious-departure> (last visited January 30, 2022).

However, the Senate debate on House Bill No. 4687, which, as Public Act 97-827, effective January 1, 2013, added section 2.02(c) of OMA, indicates that the General Assembly intended this provision to ensure that agendas provide sufficiently descriptive advance notice of the matters upon which a public body anticipates taking final action:

[T]here was just no real requirement as to how specific they needed to be to the public of what they were going to discuss that would be final action. And this just says that you have to have a * * * general notice if you're going to have and take final action, as to generally what's going to be discussed so that – that people who follow their units of local government know what they're going to be acting upon. Remarks of Sen. Dillard, May 16, 2012, Senate Debate on House Bill No. 4687, at 47.

In its answer to this office, the Board denied that the agenda failed to set forth the general subject matter of the Board's vote to approve the severance agreement with the assistant superintendent. The Board noted that the agenda listed a closed session under section 2(c)(1) of OMA,²⁴ which allows a public body to go behind closed doors to discuss "[t]he appointment, employment, compensation, discipline, performance, or dismissal of specific employees[.]"²⁵ The Board further noted that the agenda "apprised the public that, following its [closed session] discussion, action on the matter would be taken."²⁶ According to the Board's attorney:

Following a discussion during closed session, the Board properly returned to open session and, consistent with its agenda, took action on a Personnel Transaction Report II – the item discussed during closed session. As part of this action, the public recital of the action clearly notified the public that it was taking action to approve the "Personnel Transaction Report II," which was available for public inspection, if requested. This is consistent

²⁴5 ILCS 120/2(c)(1) (West 2021 Supp.), as amended by Public Act 102-813, effective May 13, 2022.

²⁵Letter from Elizabeth Kelly, On behalf of District 214, Kriha Boucek, to Joshua M. Jones, Deputy Bureau Chief, PAC, Office of the Attorney General (January 18, 2023), at 5.

²⁶Letter from Elizabeth Kelly, On behalf of District 214, Kriha Boucek, to Joshua M. Jones, Deputy Bureau Chief, PAC, Office of the Attorney General (January 18, 2023), at 5.

with how all such District personnel matters are acted on at the meeting.^[27]

Seizing on Sen. Dillard's remarks during legislative debate about "people who follow their units of local government[,]" the Board's attorney argued that members of the public who have paid attention to the Board's activities should know that the Board typically handles final action on closed session discussion items the same way. The Board's attorney stated that the Board "has a long-standing practice of informing the public of its intent to take action on specific closed meeting discussions in the same manner it did on the September 15, 2022, agenda."²⁸ Thus, the Board's attorney asserted, "anyone following District business would have understood from the information provided on the September 15, 2022, agenda that the Board intended to consider and possibly take action on a confidential personnel matter following a discussion on the matter in closed session."²⁹ The Board's attorney argued that this matter is distinguishable from a binding opinion (Ill. Att'y Gen. Pub. Acc. Op. No. 19-012, issued November 13, 2019) in which the Attorney General concluded that a public body improperly took final action under section 2.02(c) because the agenda item at issue was inconsistent with the other agenda items because it did not contain a general subject matter.³⁰

Mr. Burns replied by arguing that Sen. Dillard's comment cannot be construed to mean that a public body may satisfy section 2.02(c) of OMA by having a pattern or practice of taking final action after closed session pursuant to agenda items that merely cite a section 2(c) exception and indicate that unspecified action may follow. That interpretation, Mr. Burns argued, would mean that new residents would be left without a means of understanding what their government was up to.³¹ Indeed, it would negate the addition of section 2.02(c) to OMA if that provision was construed to mean that a public body may continue to vaguely indicate that it might take action after closed session in relation to a section 2(c) exception simply because that is how the public body has operated in the past. Such an interpretation must be avoided. *See,*

²⁷Letter from Elizabeth Kelly, On behalf of District 214, Kriha Boucek, to Joshua M. Jones, Deputy Bureau Chief, PAC, Office of the Attorney General (January 18, 2023), at 2.

²⁸Letter from Elizabeth Kelly, On behalf of District 214, Kriha Boucek, to Joshua M. Jones, Deputy Bureau Chief, PAC, Office of the Attorney General (January 18, 2023), at 3.

²⁹Letter from Elizabeth Kelly, On behalf of District 214, Kriha Boucek, to Joshua M. Jones, Deputy Bureau Chief, PAC, Office of the Attorney General (January 18, 2023), at 3.

³⁰Letter from Elizabeth Kelly, On behalf of District 214, Kriha Boucek, to Joshua M. Jones, Deputy Bureau Chief, PAC, Office of the Attorney General (January 18, 2023), at 4.

³¹Letter from Tim Burns to Public Access Counselor, Office of the Attorney General (January 27, 2023), at 5.

e.g., Dynak v. Board of Education, 2020 IL 125062, ¶24, 164 N.E.3d 1226, 1233 (2020) (a reviewing body construing a statute must "presume that the legislature did not intend absurdity, inconvenience, or injustice."). Rather, the very purpose of adding section 2.02(c) to OMA was to ensure that sufficient notice be provided to the public when a public body wishes to take final action. In context, Sen. Dillard's remark about "people who follow their units of local government" refers to members of the public reviewing the agenda before a meeting, not people with some sort of advanced level of knowledge about the public body's policies and practices. Thus, the Board's citation of Binding Opinion 19-012 is misplaced. There, the fault was not inconsistency itself, but the fact that three action items on the agenda set forth a general subject matter while the one that raised application fees for permits from \$100 to \$500 did not. Ill. Att'y Gen. Pub. Acc. Op. No. 19-012, at 6. Had the other three action items contained the same lack of a general subject matter, all four items would have been improper despite being consistent with each other.

The Board's attorney also argued that the agenda item for the severance agreement needed to be stated in more general terms than the agenda items that do not concern closed session discussion topics because of the public policy in favor of allowing public bodies to discuss certain sensitive matters in closed session.³² The Board's attorney contended that "[t]o provide more specific detail on the agenda about the general subject matter of the Board's actions following a closed session discussion on the same would disrupt the intent of the Act and render the appropriate use of closed discussion moot."³³ In reply, Mr. Burns disputed that an agenda item setting forth the general subject matter of approval of the severance agreement would have infringed on the candor of the closed session. He argued that the Board knew that it would be approving the severance agreement after the closed session because the text of the severance agreement included the approval date of September 15, 2022, and other records related to the severance agreement such as Ms. Johnson's signed resignation letter also bear the same date.³⁴

Section 2.02(c) requires a public body to list on its agenda "the general subject matter of *any* resolution or ordinance that will be the subject of final action at the meeting." (Emphasis added.) The plain language of that provision applies to all items on which a public body takes final action, and there is no indication in section 2.02(c), or elsewhere in OMA, that the General Assembly intended that items discussed in a closed session meeting could be

³²Letter from Elizabeth Kelly, On behalf of District 214, Kriha Boucek, to Joshua M. Jones, Deputy Bureau Chief, PAC, Office of the Attorney General (January 18, 2023), at 5.

³³Letter from Elizabeth Kelly, On behalf of District 214, Kriha Boucek, to Joshua M. Jones, Deputy Bureau Chief, PAC, Office of the Attorney General (January 18, 2023), at 6.

³⁴Letter from Tim Burns to Public Access Counselor, Office of the Attorney General (January 27, 2023), at 5.

described more generally that items discussed in open session. The closed session exceptions in OMA permit a public body to have candid deliberative discussions of the matters within the scope of those provisions. The requirement that a public body set forth on its agenda only the "general subject matter" of any closed session items on which it intends to take action does not risk revelation of the content of those detailed, and often lengthy, deliberations.

Additionally, the Board's attorney argued that a requirement to include any additional information in the agenda item would make the public recital requirement of section 2(e) of OMA³⁵ redundant:

If Section 2.02(c) of the OMA were read to require more specific information than notice that the Board intended to enter closed session to discuss a personnel matter and then planned to take action on that discussion item after returning from its deliberation, the public recital requirement under the OMA would be rendered superfluous.^[36]

This office's review of the video recording of the Board's September 15, 2022, meeting revealed that after returning from closed session, Board President Bill Dussling asked for a motion "to approve Personnel Transaction Report II."³⁷ The motion was made and seconded, and Mr. Dussling asked: "Any comments by the Board members? Any comments by the public?"³⁸ Hearing nothing, Mr. Dussling asked the Clerk to call the roll, and the motion passed. Thus, the Board's public recital for purposes of section 2(e) still gave no indication of the business the Board was conducting beyond making one or more personnel decisions—a broad category that could include matters such as hirings, firings, raises, disciplinary actions, and severance agreements. Moreover, the Board did not identify the category or categories of employee(s) at issue on the agenda or during its public recital prior to its vote on the matter. Because the public recital merely referenced a personnel transaction report without indicating the

³⁵Section 2(e) of OMA (5 ILCS 120/2(e) (West 2021 Supp.), as amended by Public Act 102-813, effective May 13, 2022) provides, in pertinent part: "Final action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted."

³⁶Letter from Elizabeth Kelly, On behalf of District 214, Kriha Boucek, to Joshua M. Jones, Deputy Bureau Chief, PAC, Office of the Attorney General (January 18, 2023), at 7.

³⁷Township High School District 214 Board of Education, Meeting, September 15, 2022, Video Recording, at 1:57:04, *available at* <https://vimeo.com/749718402/46082d1323>.

³⁸Township High School District 214 Board of Education, Meeting, September 15, 2022, Video Recording, at 1:57:11, *available at* <https://vimeo.com/749718402/46082d1323>.

Mr. Tim Burns
The Honorable William (Bill) Dussling
March 27, 2023
Page 13

Board was taking final action on a severance agreement, it is erroneous for the Board to assert that it "was not required at the time of the posting [of the agenda] to provide more specific detail – that would come during the public recital of the action during the meeting."³⁹

Significantly, the requirements of section 2.02(c) and 2(e) of OMA have two distinct purposes. Section 2.02(c) is intended to provide the public with *advance notice* of the types of actions that may be taken at meetings. Without such advance notice, members of the public would be deprived of information needed to identify those meetings that they wish to attend and possibly address public officials⁴⁰ because a public body may take action on a particular topic of interest. In contrast, the plain language of section 2(e) indicates that the public recital requirement is intended to ensure those in attendance are informed "of the business being conducted[]" during the meeting. Because section 2(e) requires a greater degree of detail⁴¹ than the posting of an agenda item for a potential final action, it is not a redundant requirement. *Board of Education of Springfield School District No. 186 v. Attorney General of Illinois*, 2017 IL 120343, ¶46, 77 N.E.3d 625, 632 (2017) ("[B]ecause the statute must be read so that no part of it is rendered superfluous," section 2.02(c) and section 2(e) must be interpreted as imposing separate obligations on public bodies.).

A member of the public who read the Board's September 15, 2022, meeting agenda would have had no indication that the Board would vote on a severance agreement with a high-level administrator such as an assistant superintendent. The final action was significant and plainly distinguishable from the more routine personnel transactions that the Board approved earlier in the meeting, as Ms. Johnson had been the District's "associate superintendent for finance and operations since 2013[.]" and her payout totaled \$183,274.⁴² Section 2.02(c) of OMA exists to apprise the public *in advance* of the general subject matter of such decisions on the agenda, to uphold the public policy that "the people have a right to be informed as to the conduct of their business." 5 ILCS 120/1 (West 2020). At a minimum, section 2.02(c) required

³⁹Letter from Elizabeth Kelly, On behalf of District 214, Kriha Boucek, to Joshua M. Jones, Deputy Bureau Chief, PAC, Office of the Attorney General (January 18, 2023), at 7.

⁴⁰Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2020)) provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body."

⁴¹Section 2(e) of OMA requires the public body to "state the essence of the matter under consideration, its character or its identity[]" and "to inform the public of the specific item of business (the purpose of the loan, the subject of the contract, the type of property being purchased, the title of the policy, or the purpose of the resolution)." *Board of Education of Springfield School District No. 186 v. Attorney General of Illinois*, 2017 IL 120343, ¶¶46, 50, 77 N.E.3d 625, 634 (2017).

⁴²Christopher Placek, *Ex-District 214 business chief paid \$183,000 as part of mysterious departure*, DAILY HERALD (Dec. 22, 2022, 6:52 p.m.), <https://www.dailyherald.com/news/20221222/ex-district-214-business-chief-paid-183000-as-part-of-mysterious-departure> (last visited January 30, 2022).

Mr. Tim Burns
The Honorable William (Bill) Dussling
March 27, 2023
Page 14

the Board's agenda to have notified the public of the general category of employee (for example, administrators, teachers, or bus drivers) and general type of personnel transaction at issue. Although section 2.02(c) does not require the agenda to identify the subject of possible final employment action by name, an agenda that merely notified the public that the Board would consider some kind of action related to appointment, employment, compensation, discipline, performance, or dismissal of unspecified employees does not set forth the general subject matter of the severance agreement with the assistant superintendent that the Board approved at its September 15, 2022, meeting. The Board therefore violated section 2.02(c) of OMA.

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 5, 2023, Mr. Tim Burns submitted a Request for Review to the Public Access Bureau alleging that the Board violated OMA on September 15, 2022, by voting to approve a severance agreement involving a payout of more than \$183,000 to an assistant superintendent without setting forth the general subject matter of that final action on the agenda. He stated that he became aware of the alleged violation from two news articles published by the *Daily Herald* on December 2, 2022, and December 22, 2022, and argued that the relevant facts were not reasonably knowable by the public until that time. Mr. Burns' Request for Review was timely filed and otherwise complies with the requirements of section 3.5(a) of OMA.

2) On January 9, 2023, the Public Access Bureau sent a copy of the Request for Review to the School Board President, Mr. William (Bill) Dussling. The Public Access Bureau also sent Mr. Dussling a letter asking for copies of any notices, agendas, minutes, and recordings of the Board's September 15, 2022, open session meeting for this office's review, and a written response to the allegation that the Board improperly took final action on the severance agreement because it had not listed the general subject matter of that vote on the agenda.

3) On January 18, 2023, counsel for the Board provided the Public Access Bureau with copies of the agenda and open session minutes, and a written response denying that the Board violated OMA.

4) On January 18, 2023, this office sent a copy of School Board's answer to Mr. Burns. On January 27, 2023, he submitted a reply.

5) On March 3, 2023, the Public Access Bureau properly extended the time within which to issue a binding opinion by 21 business days, to April 4, 2023, pursuant to section

3.5(e) of OMA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

6) Section 3.5(a) of OMA grants the Public Access Counselor the authority to review the Board's September 15, 2022, meeting because Mr. Burns submitted his allegations within 60 days after discovering the alleged violation, and the facts of the alleged violation would not have been evident sooner to a person using reasonable diligence. In particular, the Board's public recital during the September 15, 2022, meeting gave no indication of what personnel transaction the Board was approving by adopting "Personnel Transaction Report II." A person who attended the meeting and read the minutes still would have had no notion of the substance of the Board's vote beyond the generalized category of a personnel matter.

7) Section 2.02(c) of OMA provides that "[a]ny agenda required under this Section shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting."

8) The Board's September 15, 2022, meeting agenda indicated that the Board would adjourn to closed session to discuss "[t]he appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body[.]" and that "action may take place as a result of closed session discussion."

9) During the meeting, the Board held a closed session discussion and then voted to approve "Personnel Transaction Report II", which consisted of a severance agreement with the District's assistant superintendent.

10) The agenda items in question did not set forth the general subject matter of the Board's vote to approve the severance agreement with the assistant superintendent. The agenda items neither identified the type of employee at issue nor the type of personnel transaction to be considered. Because a member of the public who read the agenda before the meeting would not have known what the Board would be acting upon, the Board failed to provide sufficient advance notice for the severance agreement as required by section 2.02(c).

In accordance with these findings of fact and conclusions of law, the Board is directed to remedy this violation by re-voting the severance agreement pursuant to a sufficiently detailed agenda item at a properly-noticed open meeting. The Board is also directed to identify on future meeting agendas the general type of employee and general type of personnel transaction to be contemplated when it wishes to approve a personnel transaction. As required by section 3.5(e) of OMA, the Board shall either take necessary action as soon as practical to comply with the directives of this opinion or shall initiate administrative review under section 7.5 of OMA. 5 ILCS 120/7.5 (West 2020).

Mr. Tim Burns
The Honorable William (Bill) Dussling
March 27, 2023
Page 16

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 Mr. Tim Burns 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: Ms. Elizabeth Kelly
Kriha Boucek
2 TransAm Plaza Drive, Suite 450
Oakbrook Terrace, Illinois 60181

CERTIFICATE OF SERVICE

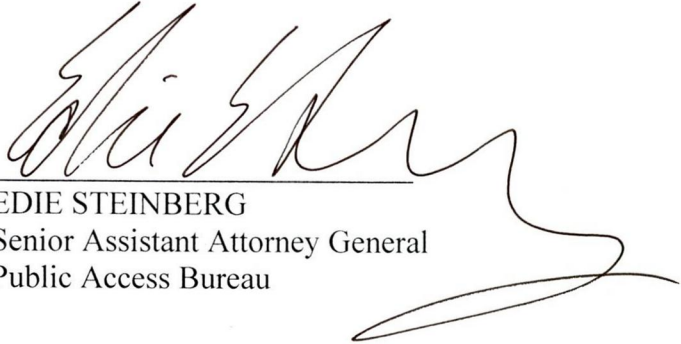
Edie Steinberg, Senior Assistant Attorney General, Public Access Bureau, hereby certifies that she has served a copy of the foregoing Binding Opinion (Public Access Opinion 23-004) upon:

Mr. Tim Burns
227 Banbury Avenue
Elk Grove Village, Illinois 60007
prestmb@sbcglobal.net

The Honorable William (Bill) Dussling
President, Board of Education
Township High School District 214
2121 South Goebbert Road
Arlington Heights, Illinois 60005
c/o patrick.mogge@d214.org

Ms. Elizabeth Kelly
Kriha Boucek
2 TransAm Plaza Drive, Suite 450
Oakbrook Terrace, Illinois 60181
elizabeth@krihaboucek.com

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 March 27, 2023.


EDIE STEINBERG
Senior Assistant Attorney General
Public Access Bureau

EDIE STEINBERG
Senior Assistant Attorney General
Public Access Bureau
Office of the Attorney General
100 West Randolph Street, 11th Floor
Chicago, Illinois 60601
(312) 814-5201