



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 29, 2019

Via electronic mail

Mr. Kirk Allen
P.O. Box 593
Kansas, Illinois 61933
kirk@illinoisleaks.com

RE: FOIA Request for Review – 2019 PAC 57401

Dear Mr. Allen:

This determination is issued pursuant to section 9.5(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(c) (West 2016)). For the reasons explained below, this office concludes that no further action is warranted as to this matter.

On February 17, 2019, you submitted a FOIA request to DuPage Township (Township) seeking "[a] copy of the applicable closed session recordings of discussions that were outside the authorized exemptions for closed session that took place during the February 15th, 2019 meeting of the Board of Trustees."¹ On February 25, 2019, the Township extended the time to respond pursuant to section 3(e) of FOIA (5 ILCS 140/3(e) (West 2016)). On March 4, 2019, the Township cited section 2.06(e) of OMA (5 ILCS 120/2.06(e) (West 2016)) as its basis for denying your request. Section 2.06(e) of OMA provides, in pertinent part:

Unless the public body has made a determination that the verbatim recording [of a closed session] no longer requires confidential treatment or otherwise consents to disclosure, the verbatim record of a meeting closed to the public shall not be open for public inspection or subject to discovery in any administrative or judicial proceeding other than one brought to enforce this Act.

¹E-mail from Kirk Allen, Edgar County Watchdogs, to [Amy Albright] (February 17, 2019).

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The Township asserted that its Board of Trustees "[had] made no determination that this recording no longer requires confidential treatment."²

That same day, you replied to the Township, asking whether "the Township is taking the position that all closed session discussions during the meeting in question met the exemptions provided under OMA[.]"³ On March 13, 2019, you submitted a Request for Review (2019 PAC 57238) disputing the denial of your request. On March 22, 2019, this office determined that no further action was warranted because (1) FOIA does not require public bodies to answer questions, and (2) the recording was exempt from disclosure under section 7(1)(a) of FOIA⁴ (5 ILCS 140/7(1)(a) (West 2017 Supp.), as amended by Public Act 100-732, effective August 3, 2018), based on section 2.06(e) of OMA, because it was undisputed that the Township had not made a determination that the recording no longer required confidential treatment. Ill. Att'y Gen. PAC Req. Rev. Ltrs. 57237 and 57238, issued March 22, 2019, at 3.

In this submission, you provided a copy of an e-mail from a member of the Board of Trustees asserting that its February 15, 2019, closed session included discussions of unspecified matters that are not authorized by any exception⁵ to the general requirement that public bodies conduct public business openly. Despite that allegation, it remains undisputed that the Board has not determined that any portion of the February 15, 2019, closed session discussion no longer requires confidential treatment. Accordingly, section 2.06(e) of OMA prohibits disclosure of the entire verbatim recording and it is correspondingly exempt from disclosure pursuant to section 7(1)(a) of FOIA.

Your related OMA Request for Review (2019 PAC 57400) alleges that the Board of Trustees improperly discussed topics in closed session during its February 15, 2019, meeting. If this office concludes that the Board of Trustees violated OMA in that manner, it may determine that an appropriate remedy is disclosure of those portions of the verbatim recording that document improper discussions.

²E-mail from Amy Albright, DuPage Township Human Resource Coordinator, to [Kirk] Allen (March 4, 2019).

³E-mail from Kirk Allen to [Amy Albright] (March 4, 2019).

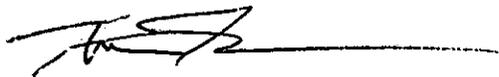
⁴Section 7(1)(a) of FOIA exempts from disclosure "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law.

⁵Section 2(a) of OMA (5 ILCS 120/2(a) (West 2017 Supp.), as amended by Public Act 100-646, effective July 27, 2018) sets forth the exceptions.

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This file is closed. If you have any questions, please contact me at (312) 814-6756 or ssilverman@atg.state.il.us.

Very truly yours,



STEVE SILVERMAN
Bureau Chief
Public Access Bureau

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cc: *Via electronic mail*
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