



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

March 22, 2019

*Via electronic mail*

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

RE: OMA Request for Review – 2019 PAC 57237  
FOIA Request for Review – 2019 PAC 57238

Dear Mr. Allen:

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)) and section 9.5(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(c) (West 2016)). For the reasons set forth below, the Public Access Bureau has determined that no further action is warranted in these matters.

On March 13, 2019, you submitted a Request for Review concerning actions of the DuPage Township Board (Board). Because you alleged violations of both OMA and FOIA, this office opened two separate files, although they are consolidated for this determination. You stated:

On February 15, 2019, the DuPage Township Board went into closed session for the purpose of discussing personnel and the appointment of a new Supervisor. This closed session lasted approximately three hours.

It has come to our attention that there were discussions during these 3 hours of closed session that were not discussions permitted by the Open Meetings Act.<sup>[1]</sup>

---

<sup>1</sup>E-mail from Kirk Allen to Public Access [Bureau] (March 13, 2019).

Mr. Kirk Allen  
March 22, 2019  
Page 2

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides that a request for review must be written, signed by the requester, and "must include a summary of the facts supporting the allegation." Your Request for Review has not provided any facts to support the allegation that the Board engaged in improper closed session discussion. You state only that "it has come to our attention" that the Board discussed matters outside the cited exceptions; a statement devoid of any supporting facts provides an insufficient basis for this office to take further action.

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 15<sup>th</sup>, 2019 meeting of the Board of Trustees."<sup>2</sup> 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.

The Township asserted that its Board of Trustees "[had] made no determination that this recording no longer requires confidential treatment."<sup>3</sup>

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[.]"<sup>4</sup>

Your March 13, 2019, Request for Review also disputed the denial of your FOIA request. You asserted that the Township did not respond to your question seeking clarification regarding the Township's position on the closed session discussions. Additionally, you alleged

---

<sup>2</sup>E-mail from Kirk Allen, Edgar County Watchdogs, to [Amy Albright] (February 17, 2019).

<sup>3</sup>E-mail from Amy Albright, DuPage Township Human Resource Coordinator, to [Kirk] Allen (March 4, 2019).

<sup>4</sup>E-mail from Kirk Allen to [Amy Albright] (March 4, 2019).

Mr. Kirk Allen  
March 22, 2019  
Page 3

that the Township failed to comply with the requirements of section 9(a) of FOIA (5 ILCS 140/9(a) (West 2016)).

First, although you also asked the Township to clarify whether it believed the entirety of the closed session discussion was proper, a public body is not required to answer questions in response to a FOIA request. *Kenyon v. Garrels*, 184 Ill. App. 3d 28, 32 (4th Dist. 1989). Because section 2.06(a) prohibits the disclosure of closed session verbatim recordings, absent a determination of the public body to the contrary, this office construes the Township's response to your FOIA request as a denial pursuant to section 7(1)(a) of FOIA (5 ILCS 140/7(1)(a) (West 2017 Supp.), as amended by Public Act 100-732, effective August 3, 2018), which exempt from disclosure "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." The Township asserted that the Board had not made a determination that the verbatim recording of the closed session of its February 15, 2019, meeting no longer requires confidential treatment. This office has not received information to the contrary. Therefore, no further action is warranted as to your claim that the Township improperly denied your FOIA request.<sup>5</sup>

---

<sup>5</sup>With regard to the Township's compliance with the procedural requirements for denying a request, section 9(a) of FOIA provides:

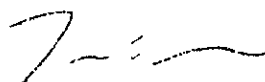
Each public body denying a request for public records shall notify the requester in writing of the decision to deny the request, the reasons for the denial, including a detailed factual basis for the application of any exemption claimed, and the names and titles or positions of each person responsible for the denial. Each notice of denial by a public body shall also inform such person of the right to review by the Public Access Counselor and provide the address and phone number for the Public Access Counselor. Each notice of denial shall inform such person of his right to judicial review under Section 11 of this Act.

In the Township's e-mailed response to your request, the Township cited the specific OMA provision that was the basis for its denial, including the language of that provision. The Township also provided the name and title of the Township employee who appears to have been responsible for denying your request. The Township did not cite section 7(1)(a) of FOIA, nor did it set forth the requisite information concerning your right to request a review by the Public Access Counselor or seek judicial review. This office reminds the Township that a public body is required to include all of the information listed in section 9(a) of FOIA whenever it denies any portion of a FOIA request.

Mr. Kirk Allen  
March 22, 2019  
Page 4

This letter serves to close this file. If you have questions, please contact me at the Chicago address on the bottom of the first page of this letter.

Very truly yours,



TERESA LIM  
Assistant Attorney General  
Public Access Bureau

57237 o no fi war mun  
57238 f no fi war mun

cc: *Via electronic mail*  
Ms. Amy Albright  
Human Resource Coordinator  
DuPage Township  
241 Canterbury Lane  
Bolingbrook, Illinois 60440  
aalbright@dupagetownship.com