



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

March 29, 2019

The Honorable Alyssia Benford
Trustee
DuPage Township
241 Canterbury Lane
Bolingbrook, Illinois 60440

The Honorable Ken Burgess
Trustee
DuPage Township
241 Canterbury Lane
Bolingbrook, Illinois 60440

The Honorable Maripat Oliver
Trustee
DuPage Township
241 Canterbury Lane
Bolingbrook, Illinois 60440

The Honorable Dennis Raga
Trustee
DuPage Township
241 Canterbury Lane
Bolingbrook, Illinois 60440

RE: OMA Request for Review – 2019 PAC 57400

Dear Ms. Benford, Mr. Burgess, Ms. Oliver, and Mr. Raga:

The Public Access Bureau has received a Request for Review in which Mr. Kirk Allen alleges that the DuPage Township Board of Trustees (Board) violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2016)). A copy of the Request for Review is enclosed.

In his Request for Review, Mr. Allen alleges that the Board violated OMA during

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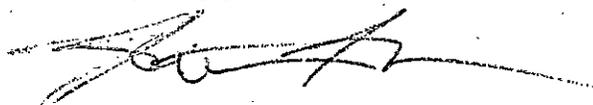
the closed session portion of its February 15, 2019, meeting by discussing topics that are not authorized by any of the statutory exceptions to the general requirement that public bodies conduct public business openly. In support of that allegation, Mr. Allen submitted the attached e-mail from a member of the Board alleging that such improper discussions occurred.

We have determined that further inquiry is warranted. In order to further evaluate this matter, please provide copies of the agenda, open and closed session meeting minutes (draft form if necessary), and closed session verbatim recording from the Board's February 15, 2019, meeting. Please also provide a written response from the Board that addresses Mr. Allen's allegation and identifies the exception or exceptions that the Board publicly cited and identified as its basis or bases for entering closed session.

As required by section 3.5(b) of the Open Meetings Act (5 ILCS 120/3.5(b) (West 2016)), please provide this information to our office within 7 working days after receipt of this letter. As we conduct our review of this matter, we will notify you if we need to review additional records or information. You have the option under the Act to provide a written response to these allegations in addition to the requested materials. That response may take the form of a letter, brief or memorandum. Please note that under the Act, we are required to forward a copy of any response from a public body to the requester and provide the requester an opportunity to reply. 5 ILCS 120/3.5(c) (West 2016). The Act also permits a public body to provide a copy of a response with confidential information redacted for release to the requester. **If you claim that any portion of your written response is confidential, please send two versions of your response letter: a complete copy for this office's confidential review and a redacted version suitable for this office to forward to the requester.** If you believe that other documents or information would be helpful to us as we review the issues, you may submit additional records or affidavits.

If you have any questions or would like to discuss this matter, please contact me at (312) 814-6756.

Very truly yours,



STEVE SILVERMAN
Bureau Chief
Public Access Bureau

Attachment

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

cc: *Via electronic mail*
Mr. Kirk Allen
P.O. Box 593
Kansas, Illinois 61933
kirk@illinoisleaks.com

Vail, Mary Jo

57401-FOIA
57400-OMA

From: Kirk Allen <Kirk@illinoisleaks.com>
Sent: Tuesday, March 26, 2019 9:47 AM
To: Public Access
Subject: Request for Review
Attachments: FOIA; RE: FOIA; FOIA request; FOIA; Executive Session February 2019.pdf

Request for review of alleged OMA and FOIA violations which includes supporting documentation of an alleged violation of discussion in closed session not covered by exemptions for closed session.

Public Body:

Dupage Township
241 Canterbury Lane
Bolingbrook, IL 60440
Phone: 630-759-1317
Fax: 630-759-3412

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.

OMA Request for Review:

I am asking the PAC to review this matter and make a determination if the closed session involved discussions that were not within the exceptions listed for closed session discussion under the OMA.

If the PAC confirms such a violation took place, we ask they direct the release of the applicable portions of the recording.

FOIA Request for Review

On February 17th, 2019, I submitted an FOIA request (attached) for the recording of the portions of the closed session outlined above that were not exempt under OMA.

On February 25, 2019, the public body responded (attached) and extended the time to respond by 5 days. While no direct citation was pointed to, it appears they are invoking 5 ILCS 140/3(e) vi.

"We cannot comply with the request for records within the 5 business day time limit without unduly burdening or interfering with our operations."

On March 4th, the public body responded citing an OMA statute rather than an FOIA citation.

"The board has made no determination that this recording no longer requires confidential treatment. Therefore, the recording has not been released."

On that same day, I responded requesting clarification on the position the Township was taking on my request. **I received no response.**

The response to my FOIA failed to comply with 5 ILCS 140/9:

Sec. 9. (a) 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*.

I am asking the PAC to review this matter and make a determination on the public bodies FOIA response to my request.

Please confirm receipt of this communication as several past communications have been dumped and/or blocked for unexplained reasons.

Thanks
Kirk Allen
PO Box 593
Kansas, IL 61933
217 508 0564

From: [Alyssia Benford](#)
To: [Kirk Allen](#)
Subject: Executive Session February 2019
Date: Friday, March 22, 2019 3:41:19 PM

Kirk,

Without disclosing anything that was exempt under OMA, I can confirm that there were several discussions held that do not qualify for closed session exemption during the February 15, 2019 closed session meeting of the DuPage Township Board.

Alyssia Benford