



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 2, 2018

PUBLIC ACCESS OPINION 18-012
(Request for Review 2018 PAC 53879)

OPEN MEETINGS ACT:
Improper Discussion of Budget and
Layoffs in Closed Session

Mr. William Thompson
President, Western Illinois University Chapter
University Professionals of Illinois
P.O. Box 414
Macomb, Illinois 61455-0414

The Honorable Carolyn Ehlert Fuller
Chair, Board of Trustees
Western Illinois University
1 University Circle
Macomb, Illinois 61455

Dear Mr. Thompson and Ms. Fuller:

This is a binding opinion issued by the Attorney General pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons discussed below, this office concludes that the Board of Trustees (Board) of Western Illinois University (University) violated section 2(a) of OMA (5 ILCS 120/2(a) (West 2017 Supp.)) by improperly discussing its budget, layoffs, and related matters in closed session during its June 28, 2018, meeting.

BACKGROUND

On July 3, 2018, Mr. William Thompson, President of the Western Illinois University Chapter of the University Professionals of Illinois, filed a Request for Review with

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this office alleging that the Board improperly discussed certain topics during its closed session on June 28, 2018.¹ Specifically, Mr. Thompson alleged that the Board discussed layoffs generally and/or whole classes of employees, rather than specific employees. In a July 9, 2018, e-mail, Mr. Thompson supplemented his original Request for Review by stating that he had learned that during the closed session, the "Board had discussed and decided to reduce the salaries of all librarians who have a contract [greater than] 9 months."²

On July 12, 2018, this office forwarded a copy of the Request for Review to the Board and asked it to provide copies of the agenda, open and closed session minutes, and the closed session verbatim recording of the June 28, 2018, meeting for this office's confidential review, together with a written response to Mr. Thompson's allegations.³

On July 19, 2018, this office received the requested materials from the Board's General Counsel. The minutes were in draft form, as they had not been approved. The response asserted that the Board "discussed specific employees during closed session staying within the scope of the exception that the Board publicly cited to go into closed session."⁴

On July 20, 2018, a copy of the Board's response was sent to Mr. Thompson.⁵ On July 22, 2018, Mr. Thompson replied by providing "a list of all the employees who were laid off on [June] 28th or who received contract reductions[.]" and arguing that those employees "are members of a class."⁶

¹Letter from William Thompson, WIU Chapter President of the University Professionals of Illinois, to PAC (July 3, 2018).

²E-mail from William Thompson, UPI @ WIU Chapter President, to Public Access [Bureau, Office of the Attorney General] (July 9, 2018).

³Letter from Marie Hollister, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to The Honorable Carolyn Ehlert Fuller, Chair, Board of Trustees, Western Illinois University (July 12, 2018).

⁴Letter from Elizabeth L. Duvall, General Counsel, Western Illinois University, to Marie Hollister, Assistant Attorney General, Public Access Bureau (July 18, 2018), [at 2].

⁵Letter from Marie Hollister, Assistant Attorney General, Public Access Bureau, Office of the Attorney General to William Thompson, President, University Professionals of Illinois, Western Illinois University Chapter (July 20, 2018).

⁶E-mail from William Thompson to Marie Hollister and Elizabeth Duvall (July 22, 2018).

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On August 14, 2018, this office extended the time within in which to issue a binding opinion by 21 business days, to October 2, 2018, pursuant to section 3.5(e) of OMA.⁷

ANALYSIS

OMA is intended "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2016). Section 2(a) of OMA provides that "[a]ll meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." The section 2(c) exceptions "are in derogation of the requirement that public bodies meet in the open, and therefore, the exceptions *are to be strictly construed, extending only to subjects clearly within their scope.*" (Emphasis added.) 5 ILCS 120/2(b) (West 2017 Supp.). Section 2a of OMA (5 ILCS 120/2a (West 2016)) further provides, in pertinent part:

A public body may hold a meeting closed to the public, or close a portion of a meeting to the public, upon a majority vote of a quorum present, taken at a meeting open to the public for which notice has been given as required by this Act. * * * The vote of each member on the question of holding a meeting closed to the public and a citation to the specific exception contained in Section 2 of this Act which authorizes the closing of the meeting to the public shall be publicly disclosed at the time of the vote and shall be recorded and entered into the minutes of the meeting.
(Emphasis added.)

The agenda for the Board's June 28, 2018, regular meeting provided: "The Board shall convene in closed session for the purpose of considering matters provided for in 5 ILCS 120/2c, including personnel, collective bargaining, litigation and real estate."⁸ The draft open session minutes, however, do not reference the closed session. In addition, the draft minutes do not contain a citation to any specific exception contained in section 2 of OMA that authorized the Board to hold a closed session or show that a vote on entering into closed session occurred.⁹

⁷Letter from Marie Hollister, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to William Thompson, President, University Professionals of Illinois, Western Illinois University Chapter, and Elizabeth L. Duvall, General Counsel, Western Illinois University Board of Trustees (August 14, 2018).

⁸Western Illinois University Board of Trustees, Agenda Item, "Motion to Convene to Closed Session – 8:00 a.m. – Union Board Room" (June 28, 2018).

⁹Western Illinois University Board of Trustees, Meeting, June 28, 2018, Draft Minutes.

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Nonetheless, the Board's response to this office stated that "the Board of Trustees discussed specific employees during closed session[,]" and the University's General Counsel confirmed, in a telephone conversation with an Assistant Attorney General in the Public Access Bureau, that the Board discussed the layoffs pursuant to section 2(c)(1) of OMA (5 ILCS 120/2(c)(1) (West 2017 Supp.)).¹⁰ The Board's response did not indicate that the Board held any closed session discussion of matters under the exceptions for collective bargaining, litigation, or real estate. Accordingly, this office will analyze the applicability of the section 2(c)(1) exception to the closed session discussion.

Section 2(c)(1) of OMA

Section 2(c)(1) of OMA permits a public body to close a portion of a meeting to discuss "[t]he appointment, employment, compensation, discipline, performance, or dismissal of *specific employees of the public body* * * *, including hearing testimony on a complaint lodged against an employee of the public body * * * to determine its validity." (Emphasis added.) In construing this exception, the Attorney General has concluded that "the General Assembly did not intend to permit public bodies to hold general discussions concerning categories of employees in closed session pursuant to section 2(c)(1)." Ill. Att'y Gen. Pub. Acc. Op. No. 16-013, issued December 23, 2016, at 4. Rather, "the exception is intended to permit public bodies to candidly discuss the relative merits of individual employees, or the conduct of individual employees[,]" as well as the qualifications of individual job candidates. Ill. Att'y Gen. Pub. Acc. Op. No. 12-011, issued July 11, 2012, at 3; *see also* Ill. Att'y Gen. Op. No. S-726, issued March 22, 1974, at 9 ("This provision is intended to protect the identity of prospective appointees or employees, and reputation of public employees."). Although budgetary considerations may impact the employment of certain personnel, closed session budgetary discussions that do not center on the merits or conduct of specific employees or prospective employees are not authorized by section 2(c)(1). Ill. Att'y Gen. Pub. Acc. Op. No. 12-011, at 3 ("To the extent that a public body is required to discuss the relative merits of individual employees as a result of its fiscal decisions, such discussions may properly be closed to the public under section 2(c)(1) of OMA. The underlying budgetary discussions leading to those decisions, however, may not be closed to the public.").

Based on this office's confidential review of the verbatim recording of the closed session portion of the June 28, 2018, meeting, the Board briefly discussed one particular employee. The overwhelming majority of the closed session discussion, however, concerned budgetary matters and considerations applicable to categories of employees, rather than the merits or conduct of individual employees. As discussed above, section 2(c)(1) of OMA does

¹⁰Telephone conversation between Marie Hollister, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, and Elizabeth L. Duvall, General Counsel, Western Illinois University (September 19, 2018).

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not permit general discussions about budgetary matters or classes of employees. Furthermore, with respect to layoffs, this office previously issued a binding opinion concluding:

The elimination of a job or position – even one held by only a single employee – for budgetary or other reasons unrelated to the performance of the employee is a matter relating to budget and management which does not carry implications for an individual employee's reputation. Thus, a discussion of eliminating a position itself which does not consider the performance of the employee or whether a particular employee should occupy the position, is not within the scope of the section 2(c)(1) exception. Ill. Att'y Gen. Pub. Acc. Op. No. 15-007, issued September 16, 2015, at 5.

See also Ill. Att'y Gen. Pub. Acc. Op. No. 15-005, issued August 4, 2015, at 6-7 (concluding that although a village board's decision to approve a police services contract with a sheriff's office may have affected the employment status of certain employees of the village's police department, the board's closed session discussion about the decision was not within the scope of section 2(c)(1) because the board did not discuss the performance or conduct of any specific employees).

Because the Board's June 28, 2018, closed session discussion concerned budgetary matters and groups of employees, with the exception of a discrete portion pertaining to a specific employee's contract, this office concludes that the Board violated section 2(a) of OMA by discussing in closed session matters outside the scope of the section 2(c)(1) exception.

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 July 3, 2018, and supplemented with additional information on July 9, 2018, Mr. William Thompson, President of the Western Illinois University Chapter of the University Professionals of Illinois, submitted a Request for Review in which he alleged that the Western Illinois University Board of Trustees violated OMA during its June 28, 2018, meeting. Specifically, Mr. Thompson alleged that the Board discussed layoffs generally and/or whole classes of employees, rather than specific employees — matters that were outside the scope of any exception to the general requirement that public bodies conduct business openly. Mr. Thompson'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 2016)).

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2) On July 12, 2018, the Public Access Bureau sent a copy of the Request for Review to the Board and asked it to provide this office with copies of the agenda, open and closed session minutes, and closed session verbatim recording of its June 28, 2018, meeting for this office's confidential review, together with a written response to Mr. Thompson's allegations.

3) In a letter dated July 18, 2018, and received by this office on July 19, 2018, counsel for the Board provided the requested materials and a written response. The response stated that "the Board discussed specific employees during closed session" and properly stayed within the scope of the section 2(c)(1) exception in OMA. Mr. Thompson was provided with a copy of the Board's written response in a letter dated July 20, 2018. Mr. Thompson replied on July 22, 2018, by providing "a list of all the employees who were laid off on [June] 28th or who received contract reductions[.]" and argued that those employees "are members of a class."

4) On August 14, 2018, this office properly extended the time within which to issue a binding opinion by 21 business days, to October 2, 2018, pursuant to section 3.5(e) of OMA. Therefore, the Attorney General may properly issue a binding opinion with respect to Mr. Thompson's Request for Review.

5) Section 2(a) of OMA requires that all meetings of public bodies be open to the public unless the subject of the meeting is covered by one of the limited exceptions enumerated in section 2(c) of OMA. Section 2(c)(1) of OMA permits a public body to close a portion of a meeting to discuss "[t]he appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body[.]"

6) By its plain language, section 2(c)(1) applies to discussions concerning *specific* employees. This exception does not permit a public body to discuss in closed session budgetary matters and other considerations applicable to categories of employees.

7) During its June 28, 2018, closed session, the Board primarily discussed budgeting and layoffs, rather than the performance or conduct of any specific employees, except for a brief discussion of a particular employee's contract. Accordingly, the Attorney General concludes that the Board violated OMA by discussing in closed session matters outside the scope of section 2(c)(1).

8) This finding compels the further finding that the Board violated section 2(a) of OMA, which requires that all meetings of public bodies be open to the public unless excepted by section 2(c), because the public was excluded from the improper closed session discussion.

In accordance with these findings of fact and conclusions of law, the Board is directed to remedy these violations by: (1) disclosing to Mr. Thompson and making available to

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the public a copy of the closed session minutes for and verbatim recording of the closed session portion of its June 28, 2018, meeting related to budgetary matters and categories of employees, except for the discrete portion concerning a specific employee's contract; and (2) conducting its future meetings in full compliance with OMA. 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 2016)).

This opinion shall be considered a final decision of an administrative agency for the purposes of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2016). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review in the Circuit Court of Cook or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois and Mr. William Thompson as defendants. *See* 5 ILCS 120/7.5 (West 2016).

Very truly yours,

LISA MADIGAN
ATTORNEY GENERAL

By:


Michael J. Luke
Counsel to the Attorney General

cc: Ms. Elizabeth L. Duvall
General Counsel
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CERTIFICATE OF SERVICE

Sarah L. Pratt, Public Access Counselor, hereby certifies that she has served a copy of the foregoing Binding Opinion (Public Access Opinion 18-012) upon:

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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 Springfield, Illinois on October 2, 2018.



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