



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

June 13, 2019

Via electronic mail

Ms. Brandi Husch
[REDACTED]

Via electronic mail

Mr. Patrick J. Hewson
Gilbert, Huffman, Prosser, Hewson & Barke, Ltd.
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RE: OMA Request for Review – 2016 PAC 41025

Dear [REDACTED] and Mr. Hewson:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that, during its March 2, 2016, special meeting, the Board of Trustees (Board) of John A. Logan College (College) violated OMA by improperly discussing matters in closed session that were outside the scope of the exceptions to the general requirement that public bodies conduct business openly.¹

On March 25, 2016, Ms. Brandi Husch, a student member of the Board at that time, submitted a Request for Review alleging that that during the Board's March 2, 2016, special meeting, the Board discussed Ms. Husch's legal and personal past in closed session. On April 5, 2016, this office forwarded a copy of Ms. Husch's Request for Review to the Board and asked it to provide this office with copies of the agenda, open and closed session minutes, and

¹In issuing this letter, we recognize that it is coming long after the meeting in question. Ms. Husch has advised this office that she is still seeking a determination and because her Request for Review raises legal questions that may reoccur, this letter is intended to provide guidance to the requester and public body.

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closed session verbatim recording from the March 2, 2015, meeting, together with a detailed written response to Ms. Husch's allegations regarding that meeting. This office also asked the Board to "clarify whether the Board discussed matters during its March 2, 2016, closed session other than those matters it publicly disclosed as the reason for entering closed session."²

On April 29, 2016, Mr. Patrick J. Hewson, counsel for the Board, submitted a written response to this office on the Board's behalf, denying that the Board discussed matters during the closed session other than those matters that it disclosed as the reason for going into closed session. The Board also provided this office the requested records. In her reply, Ms. Husch reiterated that Board discussed matters not relevant to the stated reason for going into closed session.

DETERMINATION

Section 2(a) of OMA (5 ILCS 120/2(a) (West 2016)) 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." (Emphasis added.) The exceptions set forth in subsection 2(c) of OMA are to be "strictly construed, extending only to subjects clearly within their scope." 5 ILCS 120/2(b) (West 2016).

Section 2(c)(1) permits a public body to discuss in closed session "[t]he appointment, employment, compensation, discipline, performance or dismissal of **specific employees** of the public body or legal counsel for the public body[.]" (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, "section 2(c)(1) of OMA 'is intended to permit public bodies to candidly discuss the relative merits of individual employees, or the conduct of individual employees.'" Ill. Att'y Gen. Pub. Acc. Op. No. 16-013, at 5 (quoting Ill. Att'y Gen. Pub. Acc. Op. No. 12-011, issued July 11, 2012, at 3). *See also* Ill. Att'y Gen. Pub. Acc. Op. No. 18-012, issued October 2, 2018, at 4 (closed session budgetary discussions that may impact the employment of certain personnel was not authorized by section 2(c)(1) where the discussion did not center on the merits or conduct of specific employees or prospective employees).

The March 2, 2016, Board meeting minutes state that the Board publicly cited the statutory language of section 2(c)(1) when it closed the meeting to "discuss the appointment,

²Letter from Edie Steinberg, Assistant Attorney General, Public Access Bureau to Dr. Ron House, President, John A. Logan College (April 5, 2016).

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employment, compensation, discipline, performance, or dismissal of specific individuals[.]”³
The Board’s response states that the overarching topic of the closed session discussion was the proposed layoff of fifty-five employees from the College. Although the Board does not dispute that one of its Board’s members had harsh words for Ms. Husch and questioned her judgment, the Board argued that this part of the closed session did not violate OMA because that exchange occurred during the emotionally-charged atmosphere of the Board discussing the layoff of fifty-five employees, which it characterized as a discussion of personnel.

This office has listened to the verbatim recording of the closed session of the March 2, 2016, Board meeting, which was just over one hour and ten minutes long. Based on our review, the Board spent the majority of the meeting discussing the imminent layoff of fifty-five College employees in general and related issues regarding the layoffs. One of the Board members also criticized Ms. Husch’s legal background and past judgments as part of the discussion of layoffs in general. The Board only discussed specific employees by name for less than six minutes of the meeting, and spoke about specific employees without naming them for just over two minutes. Because the bulk of the Board’s closed session discussion did not discuss the dismissal of specific employees, but discussed the layoff of a large number of employees in general, a subject which is not authorized to be discussed in a closed session by section 2(c)(1) of OMA, this office concludes that the Board violated section 2(a) of OMA.

To remedy this violation, this office asks that the Board vote to release to Ms. Husch, and to make publicly available, a copy of the verbatim recording of its March 2, 2016, closed session at issue here. The Board may redact only those portions that discuss specific employees.⁴

³John A. Logan College Board of Trustees, Special Meeting, March 2, 2016, Minutes 1.

⁴The discussion of a specific employee by name is held from approximately minute 11:45 through minute 12:28 of the verbatim recording. The board may have named a few employees during the discussion held between approximately 12:30 and 15:24 of the verbatim recording, but it was difficult to discern. The Board held a discussion regarding five specific employees of one department who were not named between approximately 56:20 and 57:38 of the verbatim recording. The Board discussed a specific employee by that person’s actions, but did not name that employee, between approximately 1:00:40 and 1:01:44 of the verbatim recording.

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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, you may contact me at (312) 814-5201 or at the Chicago address on the bottom of the first page of this letter.

Very truly yours,



EDIE STEINBERG
Assistant Attorney General
Public Access Bureau



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cc: *Via electronic mail*
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