



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

June 2, 2020

PUBLIC ACCESS OPINION 20-004
(Request for Review 2020 PAC 62037)

OPEN MEETINGS ACT:
Discussion of the Process for
Evaluating an Employee
in Closed Session

Ms. Kathryn McKechnie
1530 South State Street
Chicago, Illinois 60605

Ms. Saadia Siddique
Chair
South Loop Elementary School Local School Council
1212 South Plymouth Court
Chicago, Illinois 60605

Dear Ms. McKechnie and Ms. Siddique:

This binding opinion is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2018)). For the reasons discussed below, this office concludes that the South Loop Elementary School Local School Council (Council) violated section 2(a) of OMA (5 ILCS 120/2(a) (West 2018), as amended by Public Acts 101-031, effective June 28, 2019; 101-459, effective August 23, 2019) during its February 12, 2020, meeting by improperly discussing in closed session the schedule and process for evaluating the school's principal.

BACKGROUND

On March 5, 2020, Ms. Kathryn McKechnie, a member of the Council, submitted a Request for Review to the Public Access Counselor alleging that the Council convened a

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closed session meeting to discuss "how we were going to proceed with the principal evaluation for this school year. We did not spend any time discussing her performance, just how we were going to incorporate the parent and teacher/staff surveys into the process."¹ Ms. McKechnie further alleged that she "brought up [her] objection to going into closed session and was told that Julissa Cruz at the Local School Council Relations office said it was fin[e] to go into closed session to discuss anything that relates to the principal evaluation."² Ms. McKechnie attached to her e-mail a recording of the closed session meeting in question. On that same date, Ms. McKechnie sent a second e-mail to the Public Access Counselor clarifying that the meeting at issue occurred on February 12, 2020.³

On March 13, 2020, the Public Access Bureau sent a copy of the Request for Review to the Council and requested that the Council provide a written response to the allegations, along with copies of the agenda, open and closed session minutes for the February 12, 2020, meeting, and the verbatim recording of the closed session of that meeting for this office's confidential review.⁴

On March 17, 2020, the Chair of the Council furnished this office with copies of the agenda, open and closed session minutes, and the closed session verbatim recording, as well as the Council's written response.⁵ The Council also provided a copy of an e-mail exchange between Jennifer Rakstad, another member of the Council, and Julissa Cruz, an employee of the Chicago Public Schools, containing e-mails dated December 12 and December 13, 2019, addressing some questions related to the principal evaluation process.⁶ On March 27, 2020, the

¹E-mail from Kathryn McKechnie to Public Access [Bureau, Office of the Attorney General] (March 5, 2020).

²E-mail from Kathryn McKechnie to Public Access [Bureau, Office of the Attorney General] (March 5, 2020).

³E-mail from Kathryn McKechnie to Public Access [Bureau, Office of the Attorney General] (March 5, 2020).

⁴Letter from Leah Bartelt, Deputy Public Access Counselor, Public Access Bureau, Office of the Attorney General, to Saadia Siddique, President, South Loop Elementary School Local School Council (March 13, 2020).

⁵Letter from Saadia Siddique, South Loop Elementary School LSC Chair, to Leah Bartlett [sic], Deputy Public Access Counselor, Public Access Bureau, Office of the Attorney General, State of Illinois (March 17, 2020).

⁶E-mail from Jennifer L. Rakstad to Julissa [Cruz] (December 12, 2019); e-mail from Julissa Cruz to [Jennifer Rakstad] (December 13, 2019); e-mail from Jennifer L. Rakstad to Julissa Cruz (December 13, 2019).

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Public Access Bureau forwarded a copy of the Council's response letter to Ms. McKechnie.⁷ She replied on April 2, 2020.⁸

On May 4, 2020, this office extended the time within which to issue a binding opinion by 21 business days, to June 3, 2020, pursuant to section 3.5(e) of OMA.⁹

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 2018). 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." 5 ILCS 120/2(b) (West 2018), as amended by Public Acts 101-031, effective June 28, 2019; 101-459, effective August 23, 2019; *see also Henry v. Anderson*, 356 Ill. App. 3d 952, 996 (4th Dist. 2005) ("exceptions to the requirement of open meetings are to be strictly construed.").

With respect to the vote to enter closed session, the open session meeting minutes of the Council provide: "Motion to start the closed session to discuss the private details of the Principal Evaluation[.]"^{10, 11} The Council stated in its response to this office that the motion to go into closed session was made pursuant to section 2(c)(1) of OMA (5 ILCS 120/2(c)(1) (West 2018), as amended by Public Acts 101-031, effective June 28, 2019; 101-459, effective August 23, 2019), and argued that its closed session discussion fell within the scope of that exception.

⁷Letter from Leah Bartelt, Deputy Public Access Counselor, Public Access Bureau, Office of the Attorney General, to Kathryn McKechnie (March 27, 2020).

⁸Letter from Kathryn J. McKechnie, [South Loop Elementary School Local School Council] Community Member, to Leah Bartelt, Deputy Public Access Counselor, Public Access Bureau, Office of the Attorney General, State of Illinois (April 2, 2020).

⁹Letter from Leah Bartelt, Deputy Public Access Counselor, Public Access Bureau, Office of the Attorney General, to Kathryn McKechnie and Saadia Siddique, Chair, South Loop Elementary School Local School Council (May 4, 2020).

¹⁰South Loop Elementary School Local School Council, Meeting, February 12, 2020, Minutes 1.

¹¹Section 2a of OMA (5 ILCS 120/2a (West 2018)) provides that "[t]he 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.)

Section 2(c)(1) permits a public body to discuss in closed session:

*The appointment, employment, compensation, discipline, performance, or dismissal of specific employees, * * * of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee * * * of the public body or against legal counsel for the public body to determine its validity. (Emphasis added.)*

In construing this section, the Attorney General has concluded that "language referencing 'specific employees' signifies 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).

Moreover, the Attorney General has determined that section 2(c)(1) does not permit closed session discussion of the elimination of a job or position for reasons unrelated to job performance, even if the job or position is held by only one person. Ill. Att'y Gen. Pub. Acc. Op. No. 15-007, issued September 16, 2015, at 5 ("[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.").

In its response to the Request for Review, the Council explained:

During the closed session, the [Council] discussed the timing of the process, as well as whether to adopt the suggested evaluation approach of dropping the highest and lowest scores before coming up with the average score. As part of the discussion, members discussed specific individual ratings of Principal Shelton, as well as the views of individual [Council] members of her performance. [Citation omitted.] As part of the closed session, the [Council] decided to stay with the prior process used to evaluate the principal and not adopt a new evaluation system.^[12]

¹²Letter from Saadia Siddique, South Loop Elementary School LSC Chair, to Leah Bartlett [sic], Deputy Public Access Counselor, Public Access Bureau, Office of the Attorney General (March 17, 2020), at 2.

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This office has reviewed the recording of the February 12, 2020, closed session meeting furnished by the Council.¹³ The Council's response to the Request for Review accurately described the discussion held during closed session, which primarily focused on the timing of the principal evaluation process and alternative options for calculating the principal's evaluation score. The bulk of the Council's discussion did not concern the merits, conduct, or other issues related to the performance of the current principal, but instead concerned the Council's process for evaluating the principal and the process for considering her reappointment. The Council discussed the timing of the evaluation and the process by which it would evaluate the principal rather than "the appointment, employment, compensation, discipline, performance, or dismissal" of the principal. Discussing how the evaluation would be conducted does not constitute an evaluation of how the principal actually performed her job. As previously noted, the exceptions to the requirement that meetings be open to the public "are to be strictly construed, extending only to subjects clearly within their scope."¹⁴ Section 2(c)(1) does not authorize a discussion of whether to drop the highest and lowest evaluation scores the principal may receive once the Council received the principal's scores, or a discussion of the evaluation process in general.

As described in the Council's response to this office, the Council also discussed specific individual ratings of the principal and individual Council members' opinions of her performance. The Council's discussion of those matters does fall within the scope of section 2(c)(1). Nevertheless, that discussion was brief, and can be segregated from the remainder of the closed session discussion.¹⁵

The Council argued in its response to this office that it voted to enter closed session to discuss a potential new process for evaluating the principal because that discussion "had the potential of raising issues and discussion of Principal Shelton's performance."¹⁶ However, the discussion that the Council actually held in closed session involved approximately 32 minutes of discussion of the timing and process of the evaluation and less than three minutes of discussion of prior ratings of the principal. The possibility that an open session discussion

¹³South Loop Elementary School Local School Council, Closed Meeting, February 12, 2020, Audio File (on file with Public Access Bureau, Office of the Attorney General).

¹⁴Section 2(b) of OMA (5 ILCS 120/2(b) (West 2018), as amended by Public Acts 101-031, effective June 28, 2019; 101-459, effective August 23, 2019).

¹⁵South Loop Elementary School Local School Council, Closed Meeting, February 12, 2020, Audio File, at 26:09-28:27 (on file with Public Access Bureau, Office of the Attorney General).

¹⁶Letter from Saadia Siddique, South Loop Elementary School LSC Chair, to Leah Bartelt, Deputy Public Access Counselor, Public Access Bureau, Office of the Attorney General (March 17, 2020), at 2.

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may touch on issues that a public body is authorized to discuss in closed session does not permit a public body to hold a lengthy closed session discussion on matters outside the scope of the exceptions to the general requirement that public bodies conduct public business openly. *See* Ill. Att'y Gen. Pub. Acc. Op. No. 12-011, issued July 11, 2012, 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 discussion leading to those decisions, however, may not be closed to the public."). Further, "[n]othing in [OMA] shall be construed to require that any meeting be closed to the public." 5 ILCS 120/2a (West 2018).

With the exception of the discussion held from 26:09 through 28:27 of the recording, wherein the Council commented on the principal's prior scores, the Council's discussion was not authorized by section 2(c)(1) of OMA because it concerned the process for evaluating the principal rather than her performance. Accordingly, this office concludes that the Council violated section 2(a) of OMA by improperly closing that discussion to the public.

The Council has argued that making public "any discussion of the closed session meeting does not serve the public interest[]" because the Council members "opted for no change to the process of Principal evaluation[.]"¹⁷ This office disagrees. There is a significant public interest in a public body's discussion of the process for evaluating a high-ranking school administrator such as a principal, regardless of whether those deliberations result in a change in policy. Even if a lesser public interest was involved, the intent of OMA is to ensure that a public body's "*deliberations* be conducted openly." (Emphasis added.) 5 ILCS 120/1 (West 2018). When a public body deliberates in closed session about matters that do not fall within the scope of the exception that was relied on to close the meeting, it is appropriate for the public body to remedy that violation by making the verbatim recording of those deliberations public. Deliberations on matters that do not fall within the closed session exceptions must be conducted openly not only when they result in policy change, but also when they do not. In short, a decision to retain an existing policy will be significant to those who may seek to clarify, modify or repeal that policy.

FINDINGS AND CONCLUSIONS

After full examination and giving due consideration to the information submitted, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

¹⁷Letter from Saadia Siddique, South Loop Elementary School LSC Chair, to Leah Bartleet [sic], Deputy Public Access Counselor, Public Access Bureau, Office of the Attorney General (March 17, 2020), at 2.

1) On March 5, 2020, Ms. Kathryn McKechnie, a member of the South Loop Elementary School Local School Council, submitted a Request for Review alleging that during its February 12, 2020, meeting, the Council entered closed session to discuss the school's principal evaluation process and incorporation of surveys into that process. The Request for Review was timely filed and otherwise complied with the requirements of section 3.5(a) of OMA.

2) On March 13, 2020, the Public Access Bureau sent a copy of the Request for Review to the Council. The Public Access Bureau requested copies of the open and closed session minutes, agenda, and the closed session verbatim recording of the February 12, 2020, meeting. This office also requested a written response to the allegations in the Request for Review.

3) In a letter dated March 17, 2020, the Chair of the Council provided this office with copies of the closed session verbatim recording, open and closed session minutes, and the agenda of the February 12, 2020, meeting, along with a written response. The response asserted that the Council properly entered into closed session pursuant to section 2(c)(1) of OMA to discuss the principal evaluation process and specific individual ratings of the principal.

4) On March 27, 2020, the Public Access Bureau forwarded a copy of the Council's response letter to Ms. McKechnie. She replied on April 2, 2020.

5) On May 4, 2020, this office extended the time within which to issue a binding opinion by 21 business days, to June 3, 2020, pursuant to section 3.5(e) of OMA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

6) 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 enter closed session to discuss "[t]he appointment, employment, compensation, discipline, performance, or dismissal of specific employees, * * * or legal counsel for the public body[.]"

7) 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 considerations applicable to categories of employees, such as the process for evaluating their performance.

8) During its February 12, 2020, closed session, the Council primarily discussed the process for evaluating the current principal, including the score calculation process and the timing of certain steps, rather than the actual performance or evaluation scores of the principal.

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Although the Council also held a short discussion concerning the principal's scores, that discussion was isolated and can be segregated from its discussion about the evaluation process.

9) Accordingly, the Attorney General concludes that the Council discussed in closed session matters outside the scope of section 2(c)(1). This finding compels the conclusion that the Council 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).

In accordance with these findings of fact and conclusions of law, the Council is directed to remedy this violation by disclosing to Ms. Kathryn McKechnie and making publicly available the verbatim recording of the unauthorized portions of the closed session discussion from the February 12, 2020, meeting. As required by section 3.5(e) of OMA, the Council 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 2018)).

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 2018). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review with the Circuit Court of Cook or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois and Ms. Kathryn McKechnie as defendants. *See* 5 ILCS 120/7.5 (West 2018).

Sincerely,

KWAME RAOUL
ATTORNEY GENERAL

By:


Brent D. Stratton
Chief Deputy Attorney General

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 20-004) upon:

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kathryn.j.mckechnie@gmail.com

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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 June 2, 2020.


SARAH L. PRATT
Public Access Counselor

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