



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 9, 2024

Via electronic mail

[REDACTED]

Via electronic mail

Mr. Thomas J. Halleran
Storino, Ramello & Durkin
9501 West Devon Avenue, Suite 800
Rosemont, Illinois 60018
thomas@srd-law.com

RE: OMA Request for Review – 2023 PAC 78082

Dear [REDACTED] Olson and Mr. Halleran:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2022)). For the reasons explained below, the Public Access Bureau concludes that two subcommittees of the Township of Schaumburg (Township) DEI Committee (Committee) have held improper unnoticed meetings because they are public bodies subject to the requirements of the Act.

In a Request for Review submitted September 8, 2023, [REDACTED] e [REDACTED] alleged that during the September 6, 2023, Committee meeting, the chairperson stated that working groups that report to the Committee had met; [REDACTED] alleged that no notice had been provided for those meetings as required. [REDACTED] also alleged: "A current trustee to the Township, Gibson, asserted several weeks ago that there was a subcommittee of the DEI committee which was 'not public-facing.'"¹ Indeed, during the Committee's May 3, 2023, meeting, under the "Demographic Subcommittee Report" item, the minutes state: "Subcommittees are not public facing body [*sic*]. Public is not free to make inquiries during this time."² The "Reports" section

¹E-mail from [REDACTED] to Public Servant (September 8, 2023).

²Township of Schaumburg DEI Committee, Meeting, May 3, 2023, Minutes 1.

500 South 2nd Street
Springfield, Illinois 62701
(217) 782-1090 • Fax: (217) 782-7046

115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-3000 • Fax: (312) 814-3806

1745 Innovation Drive, Suite C
Carbondale, Illinois 62903
(618) 529-6400 • Fax: (618) 529-6416

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of the minutes also contains a summary of the "Mission Statement Subcommittee Report" provided during the meeting.³ The Request for Review alleged "that meetings of working groups which report to the DEI committee constitute meetings of public bodies, and that a failure to supply proper notice of such meetings is a violation of the OMA."⁴

On September 13, 2023, this office sent a copy of the Request for Review to the Committee and asked it to provide, for this office's confidential review, copies of any records from the working group or subcommittee gatherings that occurred in the 60 days prior to the submission of this Request for Review, such as agendas, minutes, notes, proposals, presentations, etc. This office also requested a detailed written answer to the allegation that these working groups/subcommittees had violated OMA during this time period by holding meetings without following the procedures set out in OMA. On September 25, 2023, the Township's outside counsel responded on behalf of the Committee, providing a draft copy of a mission statement for this office's confidential review but no other records because "[t]he Township does not maintain any agendas or minutes from the gatherings of the working groups[.]"⁵ The Township's attorney asserted that the "Demographic Team" and "Mission Statement Team" are working groups that are not subject to the requirements of OMA because neither group is comprised of a majority of a quorum of the Committee.

Given that the Request for Review did not allege that the Demographic and Mission Statement groups were subject to OMA because they constituted meetings of the Committee, but instead alleged that each group is itself a public body, an Assistant Attorney General (AAG) in the Public Access Bureau followed up with the Township's attorney by e-mail. Noting that the Committee's May 3, 2023, minutes refer to the entities at issue as "subcommittees," and that subcommittees constitute public bodies subject to OMA, the AAG asked the Township's counsel to "supplement the Committee's answer by explaining how these 'subcommittees' were formulated, how the members were appointed, and the nature of the functions performed by these entities."⁶ On September 29, 2023, the Township's attorney provided a supplemental response. On October 2, 2023, ██████████ submitted a reply addressing both responses by maintaining that the entities are public bodies which must comply with the Act.

³Township of Schaumburg DEI Committee, Meeting, May 3, 2023, Minutes 1.

⁴E-mail from ██████████ to Public Servant (September 8, 2023).

⁵Letter from Thomas J. Halleran, Storino, Ramello & Durkin, to Joshua Jones, Deputy Bureau Chief, Public Access Bureau (September 25, 2023), at 2.

⁶E-mail from Joshua Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General, to [Thomas] Halleran (September 27, 2023).

DETERMINATION

"In order that the people shall be informed, the General Assembly finds and declares that it is the intent of [OMA] to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2022).

Section 1.02 of OMA (5 ILCS 120/1.02 (West 2022)) defines a "public body" as:

[A]ll legislative, executive, administrative or advisory bodies of the State, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, and *any subsidiary bodies of any of the foregoing including* but not limited to committees and *subcommittees* which are supported in whole or in part by tax revenue, or which expend tax revenue, except the General Assembly and committees or commissions thereof.
(Emphasis added.)

Thus, OMA expressly includes "subsidiary bodies * * * including but not limited to * * * subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue," in the definition of "public body." Illinois courts consider the following factors in determining whether an entity could be a "subsidiary body": (1) the extent to which the entity has a legal existence independent of government resolution, (2) the degree of government control exerted over the entity, (3) the extent to which the entity is publicly funded, and (4) the nature of the functions performed by the entity. *Better Government Ass'n v. Illinois High School Ass'n*, 2017 IL 121124, ¶ 26. In that case, the Illinois Supreme Court explained that "no single factor is determinative or conclusive, but * * * the key distinguishing factors are government creation and control." *Better Government Ass'n*, 2017 IL 121124, ¶ 26.

In its answer to this office, the Township "assert[ed] that the Demographic Team and Mission Statement Team created to support the DEI Committee are not subsidiary bodies of the DEI, even though such teams were initially listed as the Demographic Subcommittee Team and Mission Statement Subcommittee Team on the May 3, 2023 Meeting Agenda of the DEI Committee."⁷ The Township described the formation of the "teams" as follows:

The DEI Committee was established by ordinance on September 28, 2022 and the first meeting of the DEI Committee took place on January 4, 2023. As a new committee, the DEI sought to formulate a clear and concise mission statement.

⁷Letter from Thomas J. Halleran, Storino, Ramello & Durkin, to Joshua Jones, Deputy Bureau Chief, Public Access Bureau (September 29, 2023), at [1].

Additionally, the DEI Committee determined that in order [to] best serve the residents of the Township, it required an analysis of the demographic data of such persons residing within the Township. In order to accomplish these aforementioned goals, the DEI asked for volunteers from among its committee members and also from non-committee members. Thereafter, the Mission Statement Team and Demographic Team was formed through such volunteers. The DEI Committee did not vote for or appoint such members of the Mission Statement Team or the Demographic Team. Each team, or "working groups", is comprised of four (4) members, which include committee members and non-committee volunteers. Certain individuals joined these teams based upon their area of expertise in their occupation. For example, a member of the Demographic Team is a data analyst that is proficient in analyzing demographic data.^[8]

This office reviewed the minutes posted on the Committee's webpage⁹ in search of information about the formulation of the "teams" at issue, and found that during the Committee's April 5, 2023, meeting, the following actions occurred during new business as the Committee was discussing demographic data:

- b. Motion to create a subcommittee to work together to work on recommendations to share out with the big team based on the data reviewed this evening
 - i. Motion approved 6 aye's 0 nays
 - ii. Felipe, Larin, Kevin, Sophie. Larin will be the point person.

- c. Motion to create a subcommittee to work on developing committee mission statement
 - i. Motion approves 6 aye's 0 nays
 - ii. Sohal, Gennie, Felipe, Ayaan^[10]

⁸Letter from Thomas J. Halleran, Storino, Ramello & Durkin, to Joshua Jones, Deputy Bureau Chief, Public Access Bureau (September 29, 2023), at [1-2].

⁹Township of Schaumburg, Agendas & Minutes, <https://schaumburgtownship.org/transparency/agenda-minutes/>.

¹⁰Township of Schaumburg DEI Committee, Meeting, April 5, 2023, Minutes [2].


Therefore, despite the Township's assertions that the "teams" were established informally, the Committee did in fact formally create Demographic and Mission Statement subcommittees and appears to have accepted if not appointed their members too. Further, the "teams" have no legal existence independent of the Committee.

As to the functions and roles of the "teams," the Township asserted:

The Mission Statement Team is a project-based team that was formed in order to formulate a clear and concise mission statement for the DEI Committee by brain storming ideas in an informal setting and providing such ideas or suggestions to the DEI Committee. Once this project is complete, the Mission Statement Team will no longer gather. The Demographic Team's function is to compile and analyze demographic data, in order to provide such information to the DEI Committee so that it may best serve the Township's residents. This type of information compilation and analysis is best completed outside of a formal DEI Committee meeting setting due to the time required to compile and analyze such data. Both teams gather in an informal manner at a time and location that is determined by the team members not the DEI Committee. These team gatherings do not take place at a regular date or time and are not funded by the DEI Committee or the Township. The purpose of both teams is to gather information and formulate ideas to support the DEI Committee, which can be more effectively done through a smaller informal team, or working group, such as the Mission Statement Team and Demographic Team. Such information gathered or ideas presented to the DEI Committee are reflected on the DEI Committee's agenda and in the DEI Committee's meeting minutes.^[1]

The Township has acknowledged that the "teams" were created solely to support the public business of the Committee and thereby serve the Township. The Township's attorney did not cite any case law or other legal authority supporting the claim that the "teams" are not public bodies. Although the Township's attorney stated that the Committee does not choose meeting times or locations for the "teams," these entities report to the Committee, are expected to provide work product to the Committee to advance its objectives, and serve at the pleasure of the Committee. Additionally, although the Township's attorney asserted that the "team gatherings" are not funded by the Committee or the Township, the Township acknowledged that the Committee is part of the Township government by ordinance. Moreover, the "teams" perform

¹¹Letter from Thomas J. Halleran, Storino, Ramello & Durkin, to Joshua Jones, Deputy Bureau Chief, Public Access Bureau (September 29, 2023), at [2].



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the quintessential subcommittee role of studying and reporting back on specific issues within the Committee's purview.

Accordingly, regardless of whether the Township wishes to refer to them as "working groups" or "teams," this office concludes that the Demographic and Mission Statement subcommittees are public bodies subject to the requirements of OMA. This office requests that the subcommittees conduct all future meetings in accordance with the provisions of OMA. Among other things, the subcommittees should provide advance notice of their meetings (5 ILCS 120/2.02 (West 2022)), keep written minutes (5 ILCS 120/2.06(a) (West 2022)), and provide members of the public with an opportunity to address subcommittee members (5 ILCS 120/2.06(g) (West 2022)). This office also requests that any subcommittee members who have not already done so complete the OMA electronic training curriculum developed and administered by the Public Access Counselor. *See* 5 ILCS 120/1.05 (West 2022).

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,


JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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