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STATE OF ILLINOIS

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April 18, 2024

Via electronic mail

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Via electronic mail

The Honorable Ed Mulholland
President, Board of Education
North Boone Community Unit School District 200
6923 Hunter Road
Capron, Illinois 61012
emulholland@nbcusd.org

RE: OMA Request for Review – 2024 PAC 80940

Dear Ms. Schilling and Mr. Mulholland:

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2022)).

On April 8, 2024, this office received Ms. Nancy Grimme Schilling's Request for Review alleging that Mr. Ed Mulholland, President of the Board of Education (Board) of North Boone Community Unit School District 200 (District), violated OMA when he took "unilateral board action" on certain occasions in January and February 2024.¹ Ms. Schilling noted that she is a member of the Board and the treasurer. Specifically, she alleged:

I learned on February 14, 2024, that at the direction of Mr. Ed Mulholland, the board president, it was decided at the January 24,

¹Exhibit A from [Nancy Grimme Schilling] to [Public Access Counselor] (April 8, 2024).

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Ms. Nancy Grimme Schilling
The Honorable Ed Mulholland
April 18, 2024
Page 2

2024 special meeting to remove the January 23, 2024 live recording from the school district website and to withhold the same from the public and myself. I also learned on February 14, 2024, that Mr. Mulholland had directed the superintendent, Dr. Michael Greenlee to mislead me and the public to believe that the reason the January 23, 2024, public meeting was not available, was due to technical difficulties.^[2]

Ms. Schilling also alleged that Mr. Mulholland "unilaterally decided to deny the public access to the administrative staff at the February 13, 2024 business services meeting and also the February 20, 2024 board meeting."³ She concluded by alleging that "Mr. Mulholland's actions violated"⁴ sections 1.02,⁵ 2,⁶ and 2.06⁷ of OMA. Ms. Schilling attached copies of various communications among Board members and District administrators.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2022)) provides, in relevant part:

A person who believes that a *violation of this Act* by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation. If facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, by a person utilizing reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation. The request for review must be in writing, must be signed by the requester, and must include a summary of the facts *supporting the allegation*. (Emphasis added.)

As a threshold matter, the Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (5 ILCS 140/1 *et*

²Exhibit A from [Nancy Grimme Schilling] to [Public Access Counselor] (April 8, 2024).

³Exhibit A from [Nancy Grimme Schilling] to [Public Access Counselor] (April 8, 2024).

⁴Exhibit A from [Nancy Grimme Schilling] to [Public Access Counselor] (April 8, 2024).

⁵5 ILCS 120/1.02 (West 2022).

⁶5 ILCS 120/2 (West 2022), as amended by Public Act 103-311, effective July 28, 2023.

⁷5 ILCS 120/2.06 (West 2022).

seq. (West 2022)).⁸ The intent of OMA is "to ensure that the actions of *public bodies* be taken openly and that their deliberations be conducted openly." (Emphasis added.) 5 ILCS 120/1 (West 2022). Thus, OMA concerns the transparency with which public bodies as a whole meet and conduct public business; the Act generally does not govern individual decisions by members of public bodies or how they treat each other. Therefore, allegations about Mr. Mulholland's unilateral actions are not subject to review by the Public Access Bureau. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 48267, issued June 23, 2017, at 1 (OMA "does not govern unilateral actions by heads of public bodies[.]"). Moreover, no provision of OMA requires a public body to publicly post recordings of in-person open meetings. Accordingly, removing such a recording from a public body's website does not violate OMA. Similarly, the allegation that Mr. Mulholland directed staff that their presence was not needed at the February meetings does not identify an OMA violation.⁹ Although many public bodies choose to post open session recordings on their websites and make staff with relevant information available at meetings to promote transparency, those practices are not required by OMA and therefore are not subject to review by this office.

OMA does require public bodies to make and maintain verbatim recordings of its closed sessions, and to provide "[a]ccess to verbatim recordings * * * to duly elected officials or appointed officials filling a vacancy of an elected office in a public body[] * * * in the public body's main office or official storage location, in the presence of a records secretary, an administrative official of the public body, or any elected official of the public body." 5 ILCS 120/2.06(a), (e) (West 2022). With respect to the assertion that the Board could not provide Ms. Schilling with access to the verbatim recording of the closed session portion of the January 24, 2024, meeting because it does not possess such a recording due to technical difficulties, this office reminds the Board to ensure that it has the appropriate technology in place to ensure that it makes and keeps a verbatim recording of each and every closed session discussion.

⁸*See* 15 ILCS 205/7(c)(3) (West 2022).

⁹With respect to the assertion that the Board does not possess a verbatim recording of the closed session of its January 24, 2024, meeting due to technical difficulties, this office reminds the Board to ensure that it has the appropriate technology in place to ensure that it makes and keeps a verbatim recording of each and every closed session discussion. *See* 5 ILCS 120/2.06(a) (West 2022). OMA provides that "[a]ccess to verbatim recordings shall be provided to duly elected officials or appointed officials filling a vacancy of an elected office in a public body, and access shall be granted in the public body's main office or official storage location, in the presence of a records secretary, an administrative official of the public body, or any elected official of the public body." 5 ILCS 120/2.06(e) (West 2022).

Ms. Nancy Grimme Schilling
The Honorable Ed Mulholland
April 18, 2024
Page 4

This file is closed. If you have any questions, you may contact me at
matthew.goodman@ilag.gov.

Very truly yours,

Matt Goodman

MATT GOODMAN
Assistant Attorney General
Public Access Bureau

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