



United Counties Council of Illinois
217 East Monroe ~ Suite 101
Springfield, Illinois 62701

217.544.5585

W. Michael McCreery, Executive Director

Officers/Executive Committee Members

- David Meyer, President
- David Zimmerman, Vice President
- Joseph Payette, Secretary
- P.E. Cross, Treasurer
- Matthew Prochaska
- Mark Kern
- Samuel Newton

September 23, 2019

To: UCCI Membership

Re: Review of Closed Meeting Minutes

Issue:

What criteria should a county board consider when determining whether to release closed meeting minutes for public inspection?

Analysis:

As a general principle, the Illinois Open Meetings Act (“the OMA”) requires all public bodies, which includes county boards, to meet publicly, except when otherwise permitted by law.¹ Subsection (c) of the OMA allows a public body to hold closed meetings.² Pursuant to the OMA, public bodies must keep minutes of both open and closed meeting.³ A public body shall keep minutes that shall include but need not be limited to: (i) the date, time and place of the meeting; (ii) the members of the county board recorded as either present or absent and whether the members were physically present or present by means of video or audio conference; and (iii) a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken.⁴

The public body must approve its open meeting minutes within thirty (30) days or at its next regular meeting, whichever is later, and must also post those approved open meeting minutes to the

¹ 5 ILCS 120/2(a).

² 5 ILCS 120/2(c).

³ 5 ILCS 120/2.06(a).

⁴ 5 ILCS 120/2.06(a).

public body's website within ten (10) days following the approval.⁵

A public body shall also keep a verbatim record of all their closed meetings in the form of an audio or video recording.⁶ The public body may destroy the verbatim record without notification to or the approval of a records commission or the State Archivist under the Local Records Act⁷ or the State Records Act⁸ no less than eighteen (18) months after the completion of the meeting recorded but only after: (i) the county board has approved the destruction of a particular recording; and (ii) the county board has approved minutes of the closed meeting.⁹

Minutes for a closed session meeting may be made available for public inspection if the public body chooses to release them.¹⁰ The OMA requires that the county board shall periodically, but no less than semi-annually, meet to review minutes of all closed meetings.¹¹ At such a review meeting, a determination shall be made, and **reported in an open session** that the need for confidentiality still exists as to all or part of those minutes or that the minutes or portions thereof no longer require confidential treatment and are available for public inspection.¹² If, following the review of the closed meeting minutes, the public body determines that confidentiality is no longer needed, it must make those minutes available to the public.¹³

While the OMA does not enumerate a list of considerations a public body must consider when determining whether to make close meeting minutes available to the public, section 2(c) of the OMA

⁵ 5 ILCS 120/2.06(b) (“a public body that has a website **that the full-time staff of the public body maintains** shall post the minutes of a regular meeting of its governing body open to the public on the public body's website within 10 days after the approval of the minutes by the public body.”).

⁶ 5 ILCS 120/2.06(a).

⁷ 50 ILCS 205.

⁸ 5 ILCS 160.

⁹ 5 ILCS 120/2.06(c).

¹⁰ 5 ILCS 120/2.06(d).

¹¹ 5 ILCS 120/2.06(d).

¹² 5 ILCS 120/2.06(d).

¹³ 5 ILCS 120/2.06(d)(f).

provides the exemptions allowing for closed meetings.¹⁴ Without addressing each item on the list, the following considerations may provide some guidance in that regard. Note carefully, however, that because each situation is different and fact specific, county boards are encouraged to raise individual issues with their respective State's Attorney. Closed sessions are regularly convened by public bodies for the purpose of discussing matters related to the "appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body." Issues such as employee discipline, performance evaluations, and dismissal should play into any decision to release closed meeting minutes. Specific attention should be paid to any relevant statutes of limitations for potential employment claims, e.g., wrongful termination claims. An additional practical consideration could also include whether a particular employee discussed in closed session is still employed by the county or exhausting any grievance procedures or other types of appeals available to them as employees. Similarly, in reviewing whether to release minutes relating to collective bargaining, careful consideration should include any impact such a release could have on current or future collective bargaining negotiations.

In addition to personnel related matters, another common reason for entering a closed meeting is "litigation, when an action against, affecting or on behalf of the particular public body has been filed and is pending before a court or administrative tribunal, or when the public body finds that an action is probable or imminent." Similar to personnel considerations, a public body should take note of any applicable statute of limitations. Additionally, a County Board should consult with its State's Attorney, as well as any other counsel involved, to be sure that it is not waiving privilege by releasing any closed meeting minutes.

¹⁴ 5 ILCS 120/2(c).

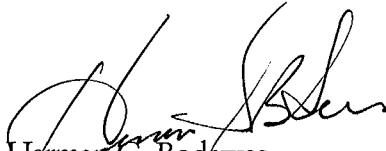
Our research reveals no authority to suggest public bodies are limited from continuing to hold minutes confidential for an extended period of time. Indeed, the OMA does not contain a maximum amount of time that a public body may keep a set of closed meeting minutes confidential. However, so long as a set of minutes is kept confidentially, it must be continually reviewed on the statutorily-required semi-annual basis. Following such semi-annual review, a public body would be prudent to use a formal resolution to document which minutes are to remain confidential, which are to be released to the public, and which verbatim recordings may be destroyed. This approach will satisfy the requirement that “a determination shall be made, and **reported in an open session** that the need for confidentiality still exists as to all or part of those minutes or that the minutes or portions thereof no longer require confidential treatment and are available for public inspection.”¹⁵

Conclusion:

In sum, it is the opinion of this office that OMA does not contain an enumerated listing of considerations that public bodies must consider when determining whether to make closed session minutes available to the public. Because each individual situation has its own set of unique facts, determinations as to whether to make closed session meeting minutes public must be made by the public body on a case-by-case basis with the assistance of the State’s Attorney. That said, considerations should include a thorough review of any relevant statutes of limitations, the employment status of employees addressed in closed session, as well as the impact a release of closed session minutes relating to labor matters could have on ongoing or future collective bargaining sessions.

¹⁵ 5 ILCS 120/2.06(d).

At the request and direction of UCCI this opinion was prepared by
GIFFIN, WINNING, COHEN & BODEWES, P.C.



Herman G. Bodewes



John M. Gabala