



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 1, 2024

PUBLIC ACCESS OPINION 24-003
(Request for Review 2024 PAC 79650)

OPEN MEETINGS ACT:
Taking Final Action in Closed Session

Ms. Mary O'Rourke Rosinski
1729 Chancellor Street
Evanston, Illinois 60201

The Honorable Daniel Biss
Mayor
City of Evanston
Morton Civic Center
2100 Ridge Avenue
Evanston, Illinois 60201

Dear Ms. Rosinski and Mr. Biss:

This binding opinion is issued by the Attorney General pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2022)). For the reasons discussed below, this office concludes that the City of Evanston (City) City Council violated section 2(e) of OMA¹ during the closed session portion of its October 16, 2023, meeting by taking final action to authorize an exclusive representation agreement with a real estate broker.

BACKGROUND

On January 9, 2024, Ms. Mary Rosinski submitted a Request for Review, on a form dated January 2, 2024, to the Public Access Bureau alleging that the City Council improperly took final action to authorize an exclusive representation agreement with Jones Lang

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

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LaSalle Midwest, LLC (JLL) during the closed session portion of its October 16, 2023, meeting.² Noting that the exclusive representation agreement was not brought before the City Council at any open meeting, Ms. Rosinski explained that she first learned³ about the City's execution of the agreement from a local news article published on December 22, 2023.⁴ The article begins:

Evanston officials are exploring moving city offices from the Morton Civic Center to a downtown site while they consider their next options for the building.

Officials confirmed this week that they have engaged the commercial real estate firm Jones Lang LaSalle to facilitate lease negotiations for office space in downtown Evanston.^{5]}

Ms. Rosinski attached a copy of the executed exclusive representation agreement with JLL to her Request for Review and noted that it was signed by the City Manager on October 17, 2023—the day after the City Council's October 16, 2023, meeting.⁶ The agreement states that the City "hereby engages JLL to be its exclusive real estate broker to identify and evaluate [the City's] acquisition of office space in the Chicago, Illinois metropolitan area, Workplace Strategy, and the disposition of current site at 2100 Ridge Road, Evanston, Illinois 60201."⁷ The

²OMA – Request for Review by Public Access Counselor (PAC) form from Mary O'Rourke Rosinski [to Public Access Counselor, Office of the Illinois Attorney General] (January 2, 2024).

³It is undisputed that Ms. Rosinski's Request for Review is timely under section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2022)). That provision generally requires a Request for Review to be submitted within 60 days of an alleged violation of OMA, but contains the following exception: "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." 5 ILCS 120/3.5(a) (West 2022). Although Ms. Rosinski did not submit the Request for Review within 60 days after the alleged violation occurred, a member of the public exercising reasonable diligence would not have been aware of facts indicating that the City Council may have violated OMA during closed session on October 16, 2023, until the news article was published; Ms. Rosinski submitted her Request for Review within 60 days after her discovery of the alleged violation.

⁴OMA – Request for Review by Public Access Counselor (PAC) form from Mary O'Rourke Rosinski [to Public Access Counselor, Office of the Illinois Attorney General] (January 2, 2024).

⁵Bob Seidenberg, *City exploring temporary move from Civic Center offices to downtown*, Evanston RoundTable (Dec. 22, 2023), <https://evanstonroundtable.com/2023/12/22/officials-exploring-move-for-offices-in-civic-center-to-downtown/>.

⁶OMA – Request for Review by Public Access Counselor (PAC) form from Mary O'Rourke Rosinski [to Public Access Counselor, Office of the Illinois Attorney General] (January 2, 2024).

⁷Contract for the purpose of an exclusive representation agreement, Jones Lang LaSalle Midwest, LLC – City of Evanston, § 1, October 17, 2023.

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"Compensation" section is divided in two parts, one for brokering a lease of property for the City and one for brokering a sale of the Morton Civic Center (Civic Center). The agreement states that as to a lease, the City "is not obligated to compensate JLL, provided that [the City] performs pursuant to the terms of the Agreement, for the acquisition of space and Workplace Strategy services."⁸ Rather, the agreement requires that any lease the City executes provides for JLL to be paid "one full market commission" by the lessor if certain conditions are met.⁹ In contrast, as to the sale of the Civic Center, the agreement provides:

Building Disposition : In the event of a disposition transaction that involves a procuring broker, [the City] shall pay a fee to JLL in the amount of six percent (6%) of gross sales proceeds. This fee shall be split between JLL and procuring broker and JLL shall be responsible for paying procuring broker once payment has been received from [the City]. Procuring broker shall be defined as anyone other than Chris Cummins and Steven Spinell of JLL. In the event of a transaction where Chris Cummins and Steven Spinell of JLL are the procuring broker, [the City] shall pay a fee in the amount of five percent (5%) of gross sales proceeds. In the event of a transaction that doesn't involve a procuring broker, [the City] shall pay a fee in the amount of five percent (5%) of gross proceeds. Fee shall be due and payable at the time of closing.^[10]

Stating that "[t]he Civic Center has been a controversial issue for years[.]" with a long-awaited report from AECOM about options for the Civic Center still pending,¹¹ Ms. Rosinski argued that "[d]ecisions like this fail the transparency test."¹²

⁸Contract for the purpose of an exclusive representation agreement, Jones Lang LaSalle Midwest, LLC – City of Evanston, § 5.a., October 17, 2023.

⁹Contract for the purpose of an exclusive representation agreement, Jones Lang LaSalle Midwest, LLC – City of Evanston, § 5.a., October 17, 2023.

¹⁰Contract for the purpose of an exclusive representation agreement, Jones Lang LaSalle Midwest, LLC – City of Evanston, § 5.b., October 17, 2023.

¹¹The news article notes that "[d]iscussions about relocating city operations to a new civic center date back to the 1990s[.]" and "officials expect that a feasibility study the city contracted for with AECOM, a Chicago firm, in late 2022 – to help reach an informed choice on renovation versus relocation – will be released in the next couple of weeks and will be an item for discussion at the meeting." Bob Seidenberg, *City exploring temporary move from Civic Center offices to downtown*, Evanston RoundTable (Dec. 22, 2023), <https://evanstonroundtable.com/2023/12/22/officials-exploring-move-for-offices-in-civic-center-to-downtown/>.

¹²OMA – Request for Review by Public Access Counselor (PAC) form from Mary O'Rourke Rosinski [to Public Access Counselor, Office of the Illinois Attorney General] (January 2, 2024).

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On January 11, 2024, the Public Access Bureau sent a copy of the Request for Review to Mayor Daniel Biss, in his capacity as the head of the City Council. The Public Access Bureau also sent the Mayor a letter requesting, for this office's confidential review, unredacted copies of the October 16, 2023, closed session minutes and closed session verbatim recording, together with a detailed written answer to the allegation that the City Council violated OMA by taking final action to enter the exclusive representation agreement with JLL outside of an open meeting.¹³ On January 19, 2024, the City's Interim Corporation Counsel, Ms. Alexandra B. Ruggie, provided this office with the requested materials on behalf of the City Council, including a redacted written answer for forwarding to Ms. Rosinski¹⁴ and an unredacted written answer for this office's confidential review.¹⁵

On January 22, 2024, the Public Access Bureau forwarded a copy of the City Council's redacted written answer to Ms. Rosinski and notified her of her opportunity to reply.¹⁶ On January 24, 2024, Ms. Rosinski submitted a reply.¹⁷

ANALYSIS

Section 1 of OMA (5 ILCS 120/1 (West 2022)) declares:

It is the public policy of this State that public bodies exist to aid in the conduct of the people's business and that the people have a right to be informed as to the conduct of their business. In order that the people shall be informed, the General Assembly finds and declares that it is the intent of this Act to ensure that the *actions of public bodies be taken openly* and that their deliberations be conducted openly. (Emphasis added.)

¹³Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to The Honorable Daniel Biss, Mayor, City of Evanston (January 11, 2024), at 1-2.

¹⁴Section 3.5(c) of OMA (5 ILCS 120/3.5(c) (West 2022)) provides that "[t]he Public Access Counselor shall forward a copy of the answer or redacted answer, if furnished, to the person submitting the request for review."

¹⁵Letter from Alexandra B. Ruggie, Interim Corporation Counsel, City of Evanston, to Joshua Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (January 19, 2024).

¹⁶Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Mary O'Rourke Rosinski (January 22, 2024).

¹⁷E-mail from Mary Rosinski to [Joshua] Jones, [Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (January 24, 2024).

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Section 2(e) of OMA enshrines the public's right to be present when public bodies take action by providing that "[n]o final action may be taken at a closed meeting[.]" and that "[f]inal action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted."

In the City Council's non-confidential answer to this office, the City's Interim Corporation Counsel defended the manner in which the City executed an agreement with JLL as follows:

The City Manager for the City of Evanston signed the agreement with JLL on October 17, 2023. Pursuant to Evanston City Code, the City Manager may execute agreements on behalf of the City of Evanston for amounts under \$25,000 dollars. The agreement entered into with JLL does not involve City funds and therefore this was within the City Manager's codified right to execute without prior City Council approval. *See* Evanston City Code 1-17-1. The contract does specify a percentage if a sale of City property occurs. Any sale of City property and the fees associated with that sale would be approved in open session by the Evanston City Council. If at any time the City wishes to engage a lease or purchase of a property, this action would be taken in open public session.^[18]

The City Council provided a few sentences of additional explanation in the confidential version of its answer.

In her reply, Ms. Rosinski asked: "If the council directed the city manager to sign the agreement, was it done in an executive session?"¹⁹ If so, she argued, "then that decision should have been brought to a public meeting and the public should have been given the right to weigh in."²⁰ Ms. Rosinski noted that "there was never any public discussion of this representation agreement, let alone never any public ratification of this contract with JLL for

¹⁸Letter from Alexandra B. Ruggie, Interim Corporation Counsel, City of Evanston, to Joshua Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (January 19, 2024), at 1.

¹⁹E-mail from Mary Rosinski to [Joshua] Jones, [Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (January 24, 2024).

²⁰E-mail from Mary Rosinski to [Joshua] Jones, [Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (January 24, 2024).

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exclusive representation."²¹ Ms. Rosinski disputed the City Council's claim that the \$25,000 threshold for the City Manager to execute contracts without City Council approval is relevant to the alleged violation, as "final action does not need to include a dollar amount, a final decision is a final decision and that should not be done in executive session."²² Even if \$25,000 was a meaningful threshold, Ms. Rosinski contended, the agreement makes the City liable for a far greater expenditure in the event it sells the Civic Center: "Section 5.b commits the City of Evanston, in event of sale to pay a 5-6% commission to JLL. This commits the city to pay between \$500,000-\$600,000 if the building sells for \$10,000,000 to any purchaser brought to the table within the representation time specified in the contract."²³ Ms. Rosinski also asserted that the City Council's course of action²⁴ since executing the agreement suggested that the City Council saw no need to adopt the exclusive representation agreement in open session:

The decision previously taken to execute the lease/sale contract with JLL, as evidenced in the contract signed on Oct. 17, was not brought up, discussed, or voted last Monday night, Jan. 22, 2024 when the Council voted to lease office space downtown for 15 years for space to relocate the Civic Center and JLL is the city representative.^[25]

The Public Access Bureau has reviewed the verbatim recording and minutes²⁶ of the closed session portion of the City Council's October 16, 2023, meeting. The verbatim

²¹E-mail from Mary Rosinski to [Joshua] Jones, [Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (January 24, 2024).

²²E-mail from Mary Rosinski to [Joshua] Jones, [Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (January 24, 2024).

²³E-mail from Mary Rosinski to [Joshua] Jones, [Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (January 24, 2024).

²⁴According to a local news report, on January 22, 2024, the City Council voted to enter into a 15-year lease agreement pursuant to a "deal negotiated with the property owner by city staff and the commercial brokerage Jones Lang La Salle, or JLL[.]" Jonah Meadows, *Evanston City Council Votes To Lease New Civic Center Space Downtown*, Patch (Jan. 23, 2024, 4:45 p.m.), <https://patch.com/illinois/evanston/evanston-city-council-votes-lease-new-civic-center-space-downtown>.

²⁵E-mail from Mary Rosinski to [Joshua] Jones, [Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (January 24, 2024).

²⁶The portion of the minutes summarizing the closed session discussion is one sentence long and does not capture the discussion that transpired. This office reminds the City Council that section 2.06(a)(3) of OMA (5 ILCS 120/2.06(a)(3) (West 2022)) requires minutes to include "a *summary of discussion* on all matters proposed, deliberated, or decided, and a record of any votes taken." (Emphasis added.) Although the adequacy of the minutes is not at issue in this Request for Review, the City Council may wish to amend the minutes to provide a more detailed account of the closed session discussion.

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recording confirms that in closed session, the City Manager expressly sought the City Council's approval of the proposed exclusive representation agreement with JLL in order for the City to enter the agreement. After the City Council discussed whether to authorize the exclusive representation agreement, the Mayor polled the members of the City Council on that question. A majority of the City Council approved entering the exclusive representation agreement with JLL, and the Mayor stated that City staff had the direction to execute the agreement.²⁷ The Council then returned to open session and voted to adjourn without further considering or acting on the agreement.²⁸ The City Manager's signature on the contract is dated the following day, October 17, 2023.²⁹

OMA does not prohibit a public body from polling its members in closed session about whether to authorize an official action, as long as it follows up with a final vote in open session to effectuate the action. *Board of Education of Springfield School District No. 186 v. Attorney General of Illinois*, 2017 IL 120343, ¶ 73 ("[F]inal action cannot have been taken at the closed meeting, * * * but * * * the statute contains no bar to a public body's taking a preliminary vote at a closed meeting."); *see also Jewell v. Board of Education, Du Quoin Community Unit Schools, District No. 300*, 19 Ill. App. 3d 1091, 1095 (1974) ("The statute does not prohibit the Board from polling its members at a closed session. Thus the fact that there were two votes taken, one at the closed and one at the open session, should not be considered a violation of the open meeting law. The crucial fact is that the final vote was taken at an open session."); *Howe v. Retirement Board of the Firemen's Annuity & Benefit Fund*, 2013 IL App (1st) 122446, ¶ 29 (vacating the board's decision to deny disability benefits because the board had circulated the written decision for signatures privately rather than voting on it in open session); *Lawrence v. Williams*, 2013 IL App (1st) 130757, ¶ 21 (finding electoral board's written decision null and void because the decision was not made in an open meeting). When a public body violates OMA by taking final action in closed session, it may remedy the violation at a subsequent meeting by conducting another vote on the matter in open session. *Board of Education of School District No. 67 v. Sikorski*, 214 Ill. App. 3d 945, 952 (1991) (concluding that public body violated OMA by approving postponement of a sale of property in closed session, but the sale was not void because the public body cured and ratified its violation at subsequent open meetings).

The City Council's closed session authorization of the exclusive representation

²⁷Evanston City Council, Closed Session Meeting, October 16, 2023 (on file with Public Access Bureau, Office of the Attorney General).

²⁸Evanston City Council, Regular Meeting, October 16, 2023, Minutes 3.

²⁹Contract for the purpose of an exclusive representation agreement, Jones Lang LaSalle Midwest, LLC – City of Evanston, October 17, 2023.

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agreement with JLL was not preliminary or tentative.³⁰ Behind closed doors, the City Council agreed to bind the City to an agreement with a particular firm that requires, among other things, a potential expenditure of hundreds of thousands of dollars of public funds if the Civic Center is sold. The City Council did not subsequently take final action on the matter in open session. The \$25,000 threshold the City Council cited in its response to this office is irrelevant to whether the City Council took final action in closed session. That provision of the Evanston Code of Ordinances provides, in pertinent part: "All contracts with the City costing in excess of twenty-five thousand dollars (\$25,000.00) must be approved by the City Council."³¹ This does not limit the scope of the City Council's ability to take final action on any matter, including the approval of contracts that are claimed to have lower costs. Although the City Council argued that the City Manager had the right to execute the agreement without its approval, that is not at all what happened here. The verbatim recording unequivocally illustrates that the City Council's authorization was sought and obtained in closed session as a prerequisite for the City Manager to sign the agreement. That procedure is consistent with section 1-8-3(F)³² of the Evanston Code of Ordinances, which provides that "[t]he City Manager may sign, on behalf of the City, *any contract authorized by the City Council*, except where otherwise directed by the City Council or by State statute." (Emphasis added.)

Further, although the City Council claims that "[a]ny sale of City property and the fees associated with that sale would be approved in open session[,]"³³ the City Council had already directed the City Manager to enter into an agreement during the closed session portion of the October 16, 2023, meeting, which obligated the City to pay fixed percentages of any sale proceeds to JLL. While the City Council would, of course, still need to vote in open session to accept any offer to purchase the Civic Center, the City Council did not provide information suggesting that such action could somehow alter its contractual obligation to pay the fees owed to JLL. Moreover, the City Council provided no legal or factual support for its general proposition that a public body does not take final action when there is no immediate expenditure of public funds, or when the decision being approved allegedly will cost less than \$25,000. OMA, by its plain language, places no monetary parameters on final actions, nor does the Act authorize public bodies to privately make decisions that do not involve payments of public funds. There is no basis for a reviewing body to read such a limitation into the statute. *Evanston*

³⁰An intermediary measure, such as requesting mediation in pursuit of a final action to resolve a contract dispute, is not a final action in and of itself. *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 176 (1989). While the City Council did not expressly argue that its authorization of the exclusive representation agreement was merely an intermediary measure in the process of reaching final action, this office notes that entering into such an agreement is a standalone action that is separate and distinct from the approval of any sale or lease negotiated by JLL.

³¹Evanston Code of Ordinances § 1-17-1(A) (last amended July 10, 2023).

³²Evanston Code of Ordinances § 1-8-3(F) (last amended January 23, 2012).

³³Letter from Alexandra B. Ruggie, Interim Corporation Counsel, City of Evanston, to Joshua Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (January 19, 2024), at 1.

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Insurance Co. v. Riseborough, 2014 IL 114271, ¶ 23 (a reviewing body "may not read into a statute any limitations or conditions which are not expressed in the plain language of the statute."). Given OMA's central purpose of ensuring that the public is kept informed about the conduct of the people's business, the statute cannot reasonably be construed to allow a governing body to bind the public body to a contract, such as the exclusive representation agreement with JLL, in private.

Accordingly, this office concludes that the City Council violated section 2(e) of OMA by authorizing an exclusive representation agreement with JLL during the closed session portion of its October 16, 2023, meeting, without taking concomitant action in open session.

FINDINGS AND CONCLUSIONS

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

1) On January 9, 2024, Ms. Mary Rosinski submitted a Request for Review to the Public Access Bureau alleging that the City Council improperly took final action to authorize an exclusive representation agreement with Jones Lang LaSalle Midwest, LLC during the closed session portion of its October 16, 2023, meeting. It is undisputed that Ms. Rosinski's Request for Review was timely filed and otherwise complies with the requirements of section 3.5(a) of OMA.

2) On January 11, 2024, the Public Access Bureau sent a copy of the Request for Review to the City Council. The Public Access Bureau also sent the City Council a letter requesting unredacted copies of the October 16, 2023, closed session minutes and closed session verbatim recording for this office's confidential review, together with a detailed written answer to the allegation that the City Council violated OMA by taking final action to enter an exclusive representation agreement with JLL outside of an open meeting.

3) On January 19, 2024, the City's Interim Corporation Counsel, on behalf of the City Council, provided this office with the requested materials, including a redacted written answer for forwarding to Ms. Rosinski and an unredacted written answer for this office's confidential review.

4) On January 22, 2024, the Public Access Bureau forwarded a copy of the City Council's redacted written answer to Ms. Rosinski and notified her of her opportunity to reply. On January 24, 2024, Ms. Rosinski submitted a reply.

5) Section 2(e) of OMA provides that "[n]o final action may be taken at a closed meeting[,] and that "[f]inal action shall be preceded by a public recital of the nature of the

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matter being considered and other information that will inform the public of the business being conducted."

6) In closed session on October 16, 2023, the City Manager asked the City Council to authorize an exclusive representation agreement with JLL in order for the City to execute the agreement. When polled, a majority of the members of the City Council approved the execution of the agreement with JLL. Still in closed session, the City's Mayor stated that City staff had been directed to execute the agreement.

7) Following the closed session, the City Council returned to open session and voted to adjourn without further considering or taking action on the exclusive agreement.

8) The City Manager's signature on the contract is dated October 17, 2023. Among other things, the agreement obligates the City to pay to JLL 5-6% of the proceeds of a sale of the Civic Center.

9) The City Council's claims—that the City Manager executed the contract on his own and that the agreement was not subject to final action because it costs less than \$25,000—are unavailing. The verbatim recording conclusively shows that the City Manager expressly sought and obtained the City Council's approval to enter the agreement. Section 2(e) of OMA does not limit the requirement that public bodies take final action openly to those final actions that concern expenditures of a certain amount of public funds or, for that matter, any public funds.

10) Accordingly, the Attorney General concludes that the City Council violated section 2(e) of OMA by taking final action during the closed session portion of its October 16, 2023, meeting.

In accordance with these findings of fact and conclusions of law, the City Council is directed to take immediate and appropriate action to comply with this opinion by reconsidering and taking final action on the exclusive representation agreement with JLL in the open session portion of a meeting after a sufficient public recital in accordance with section 2(e) of OMA. As required by section 3.5(e) of OMA, the City 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 2022).

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This opinion shall be considered a final decision of an administrative agency for the purpose of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2022). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review in the Circuit Court of Cook County or Sangamon County within 35 days of the date of this decision, naming the Attorney General of Illinois and Ms. Mary Rosinski as defendants. *See* 5 ILCS 120/7.5 (West 2022).

Very truly yours,

KWAME RAOUL
ATTORNEY GENERAL

By:



Brent Stratton
Chief Deputy Attorney General

cc: Ms. Alexandra B. Ruggie
Interim Corporation Counsel
City of Evanston
2100 Ridge Avenue
Evanston, Illinois 60201

CERTIFICATE OF SERVICE

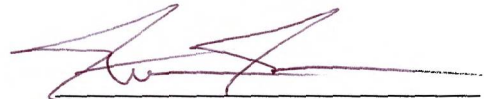
Steve Silverman, Bureau Chief, Public Access Bureau, hereby certifies that he has served a copy of the foregoing Binding Opinion (Public Access Opinion 24-003) upon:

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The Honorable Daniel Biss
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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 Chicago, Illinois on March 1, 2024.



Steve Silverman
Bureau Chief

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