

MEMORANDUM

TO: President Deborah Birutis, Board of Trustees

FROM: Kathleen Elliott

RE: Release of Information from Closed Sessions

DATE: May 17, 2012

I have been asked to respond to questions/allegations concerning Trustee Spande's public dissemination of a summary of closed session discussions of the Village Board regarding the staffing of the police department.

Trustee Hughes has asked if there been any laws or village ordinance broken by this act. Trustee Reyes has alleged that Mr. Spande has deliberately and intentionally broken the law, and that Trustee Spande "has violated every rule set by State Statute to keep confidential ES conversations particularly those involving personnel matters purely for political gain to his WU cohorts. He quotes dates, times, what he thinks was said using protected information from ES audio tapes which were in the hands of the village manager which begs the obvious question of under what authority does the village manager grant a trustee access to ES tapes and for what intended purpose. This matter will undoubtedly end up in court. Under state laws the intentional nature of these violations requires that the accused pay their legal fees which may be substantial."

First, the Village Manager has acted appropriately by honoring Trustee Spande's request to review closed session tapes. Trustees are entitled to have access to these records.

The law favors the right of an individual council member to have access to such records of the municipality as are needed to carry out the council member's duties.⁷ The Illinois Attorney General has also given opinions indicating that all members of a legislative body are entitled to the data they reasonably need to make decisions.⁸

⁷*Wayne Tp. Bd. Of Auditors DuPage County v. Vogel*, 68 Ill.App.3d 714 (2nd Dist. 1979); *Wagner v. Redmond*, 127 So.2d 275 (La.App. 1961)

⁸ILL. ATT'Y GEN. OP. NO. S-1484 (1980); ILL. ATT'Y GEN. OP. NO. 83-011; *See also People ex rel. Better Broadcasting Council, Inc. v. Keane*, 17 Ill.App.3d 1090 (1st Distr. 1973)

2011 Illinois Municipal Handbook, pg. 137, Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer, P.C., published by the Illinois Municipal League.

With regard to the legality of Trustee Spande's release of the summary, the Illinois Municipal Code provides that "The city council shall determine its own rules of proceeding and punish its members for disorderly conduct. With the concurrence of two-thirds of the aldermen then holding office, it may expel an alderman from a meeting, but not a second time for the same incident." 65 ILCS 5/3.1-40-15. That is the only penalty provided by state law for violation of the village board's rules of procedure. There is no provision in the Municipal Code that prohibits a participant from disclosing closed session information. In fact, closed sessions are not even discussed in the Municipal Code. The only statute regarding closed sessions that is applicable to municipalities is the Open Meetings Act ("OMA"). The Open Meetings Act, by its very name and policy statement, favors disclosure of public business. 5ILCS 120/1. "There is nothing in the [Open Meetings] Act that provides a cause of action against a public body for disclosing information from a closed meeting." *Swanson v. Board of Police Comm'rs*, 197 Ill. App.3d 592, 555 N.E.2d 35 (2nd Dist. 1990). In addition, the Illinois Attorney General has stated that public bodies do not have the authority to sanction one of their members for disclosing information or issues discussed by the public body in a closed meeting.); ILL. ATT'Y GEN. OP. NO. 91-001.

The only relevant Village Code provisions are Sec. 1-5-5.A.4.k.(2), which provides for censoring a member, and Sec. 1-5-5.A.4.k. (4), which provides "Prosecution: Any person can refer allegations of municipal officer misconduct or misfeasance to the state's attorney office for prosecution. The state's attorney shall decide the merits of the allegations for the purpose of prosecution. A municipal official who is found to be guilty of a culpable omission of duty, or who is guilty of wilful and corrupt oppression, misconduct, or misfeasance in the discharge of the duties of office is guilty of a business offense, and on conviction shall be fined not less than five hundred one dollars (\$501.00) nor more than one thousand dollars (\$1,000.00) as provided by state law. The court ordering the conviction shall enter an order removing the convicted officer from office. (Ord. 2006-8-35, 8-17-2006)"

I am not aware of what state law Trustee Reyes is referring to when he states that "Under state laws the intentional nature of these violations requires that the accused pay their legal fees which may be substantial." OMA provides that the court may assess against any party, except a State's Attorney, reasonable attorney's fees and other litigation costs reasonably incurred by any other party who substantially prevails in any action brought in accordance with OMA, provided that costs may be assessed against any private party or parties bringing an action pursuant to OMA only upon the court's determination that the action is malicious or frivolous in nature. However, Trustee Spande did not violate OMA.