



STATE OF NEBRASKA  
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August 2, 2021

Via email at [REDACTED]  
Samuel Lyon  
Lincoln, NE

RE: *File No. 21-M-114; Lincoln City Council, Samuel Lyon, Complainant*

Dear Mr. Lyon:

This letter is in response to your correspondence in which you requested that this office address alleged violations by the Lincoln City Council ("Council") of the Nebraska Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 through 84-1414 (2014, Cum. Supp. 2020) ("Act"). In accordance with our normal procedures, we requested a response from the Council after we received your complaint and we subsequently received a response from the City Attorney, Yohance Christie. We have now had an opportunity to review your allegations and the Council's response, and our conclusions are set out below.

### **ALLEGED VIOLATIONS**

Upon review of your complaint, we have identified three alleged violations of the Open Meetings Act, as follows:

1. The Council is discussing public business in private;
2. The Council is restricting public access to meetings; and
3. The Council is restricting the public's ability to speak at meetings.

Please be advised that your allegations regarding the March 16, 2020 meeting will not be addressed as it occurred more than one year ago. See Neb. Rev. Stat. § 84-1414(1) (a lawsuit to void any final action of a public body must be commenced within one year of the action). Additionally, this office will not address your First Amendment claim as it is unrelated to the Open Meetings Act.

## **ANALYSIS**

### ***Private Council Discussions***

Your complaint alleges the Council conducted public business in private on two occasions. While you allege the violations occurred at Pre-Council meetings, the Council states the allegations actually relate to Directors' Organizational Meetings. First, you allege at the March 1, 2021 Directors' Organizational Meeting, the Council violated the Act by: (1) the Chair asking Council members to submit questions in writing to the City Attorney so they could be discussed at a later meeting, and (2) Council member Raybould asking Lincoln-Lancaster County Health Department ("LLCHD") Director, Pat Lopez to email the Council documents relating to public policy decisions outside the view of the public. Neb. Rev. Stat. § 84-1408 states "the formation of public policy is public business and may not be conducted in secret." In its response, the Council states the Chair asked Council members to submit legal questions in writing to the City Attorney so he could research and respond to those questions at the next meeting. Further, this request came following a presentation by the City Attorney on the ramifications of the emergency declaration and directed health measures in place due to the COVID pandemic. It is not a violation of the Act for Council members to send questions to the City Attorney so that he can research the issues and address them at a later meeting. Because the questions would be discussed later in an open meeting, no public business was conducted in secret. With respect to the second allegation, the Council states Council member Raybould asked Health Director Pat Lopez about COVID positivity rates and Ms. Lopez responded that she could email the Council information contained on the LLCHD website. Ms. Lopez did not offer to provide any information to the Council that was not publicly available. It is not a violation of the Act for the Health Director to provide publicly available information to the Council.

You allege that at the March 8, 2021 Directors' Organizational Meeting, the Council violated the Act by Council member Washington asking the City Attorney to email her information and the City Attorney complying. In its response, the Council states Council member Washington asked the City Attorney for a list of all local ordinances and resolutions relating to COVID that had been passed. At the following meeting, Council member Washington asked the City Attorney to read the list aloud and the City Attorney did so. As such, no public business was conducted in secret. Accordingly, the Council did not violate the Open Meetings Act in regard to this portion of your complaint.

### ***Access to Meetings***

Your next allegation is the Council denied the public access at the February 8, 2021 meeting. Specifically, you claim the public was not allowed in the meeting room except to testify, the public was not allowed in the meeting room without identifying

themselves as a speaker, and the meeting room was too small to accommodate the public. You state that you and a member of the public asked the Council to lift its COVID-based restrictions at the February 8, 2021, March 22, 2021, and March 29, 2021 meetings and it did not. In its response, the Council states that it took reasonable health measures at the February 8, 2021 meeting due to the COVID pandemic. Specifically, the Council states it was following LLCHD Directed Health Measure (DHM) 2021-17, which recommended for exempted entities, to the extent possible, physical distancing of at least six feet of separation between individuals. In accordance with the DHM, the Council reduced the occupancy in the Council meeting room to ensure six feet of distance was maintained between individuals. The Council continued to meet in its normal meeting place known as the City Council Chambers ("Chambers"). The Council also placed monitors in the lobby of the City-County Building and the Bill Luxford studio, both immediately adjacent to the Chambers, and the meeting was broadcast live. Seating was provided in both areas to ensure individuals could attend but remain at least six feet apart. Individuals who wished to speak at the meeting were asked to sign in. This was done to ensure all individuals wishing to speak could do so and be notified since individuals were spread out among three rooms. Individuals not wishing to speak at the meeting were not asked to provide their name.

Neb. Rev. Stat. § 84-1412(2) (2014)<sup>1</sup> allows public bodies to "make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, televising, photographing, broadcasting, or recording its meetings . . . ." The measures taken by the Council were done to comply with DHM 2021-17 and were reasonable considering the circumstances. The Council's measures ensured all individuals attending were able to view the meeting live and were able to speak if they wished. As such, the Council did not violate the Act.

Next, you allege the Council held its February 8, 2021 meeting in a location too small to accommodate the public. Neb. Rev. Stat. § 84-1412(4) provides that "[n]o public body shall, for the purpose of circumventing the Open Meetings Act, hold a meeting in a place known by the body to be too small to accommodate the anticipated audience." Further, Neb. Rev. Stat. § 84-1412(5) provides "[n]o public body shall be deemed in violation of this section if it holds its meeting in its traditional meeting place which is located in this state." Since the Council held its February 8, 2021 meeting in its regular meeting location, i.e., Chambers, it did not violate this portion of the Act.

Next, you complain that individuals were not allowed in the meeting room at the February 8, 2021 meeting without identifying themselves as a speaker. Neb. Rev. Stat. § 84-1412 (3) provides, in part, that "[n]o public body shall require

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<sup>1</sup> Section 84-1412 was amended during the 2021 legislative session to include meetings held by virtual conferencing. 2021 Neb. Laws LB 83, § 13.

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members of the public to identify themselves as a condition for admission to the meeting . . . .” As it existed on February 8, 2020, § 84-1412(3) allowed public bodies to “require any member of the public desiring to address the body to identify himself or herself.” The Council only required individuals wishing to address the Council to identify themselves. It did not require individuals attending but not speaking do so. As such, the Council did not violate the Act regarding this portion of your complaint.

Finally, you allege you requested the Council lift its COVID restrictions at the February 8, 2021, March 22, 2021, and March 29, 2021 meetings and it did not. There is nothing in the Act which would require the Council to comply with your request. You also assert that a member of the public informed the Council they could not hear or participate from the hallway. Neb. Rev. Stat. § 84-1412(7) provides “[e]ach public body shall, upon request, make a reasonable effort to accommodate the public’s right to hear the discussion and testimony presented at a meeting.” The Council placed monitors in rooms adjacent to the Council Chambers to allow members of the public to observe the meeting. There is no evidence to suggest the public was unable to hear the discussion and testimony. In its response, the Council states it made reasonable accommodations for the public to attend and speak at meetings long before you made your request. The Council was under no obligation to comply with your request and did not violate the Act regarding this portion of your complaint.

### ***Public Comment***

You next allege at the February 8, 2021 meeting the Council moved a resolution to terminate an emergency declaration to the pending agenda to prevent the public from speaking on the issue. In its response, the Council states one of its rules for public comment is individuals are not allowed to speak on current agenda items or items appearing on the pending agenda list. The Council states it believes it would be a violation of the Act to not have such a rule. However, there is nothing in the Act which would prohibit public comment on current or future agenda items. In fact, many public bodies only allow public comment on current agenda items. However, the resolution was placed on the agenda for the March 15, 2021, Council meeting, and public comment was allowed at that time. As public comment was permitted on the resolution, this effectively cures any alleged violation.

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### CONCLUSION

For the reasons stated above, we do not believe the Council has violated the Open Meetings Act with respect to the issues raised in your complaint. If you disagree with the analysis we have set out above, you may wish to contact your private attorney to determine what additional remedies, if any, are available to you under the Open Meetings Act.

Sincerely,

DOUGLAS J. PETERSON  
Attorney General

  
Laura A. Nigro  
Assistant Attorney General

cc: Yohance Christie

35-222-29