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Office of the Attorney General

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November 18, 2025

Via email at: [REDACTED]
Bryan Schmit

RE: *Public Records and Open Meetings Matters Involving the Omaha Public Power District*
Our File No. 20251141

Dear Mr. Schmit:

This letter is in response to your public records petition received by this office on November 3, 2025. You have asked us to review the Omaha Public Power District's (OPPD) failure to disclose public records related to Risk Pre-Committee meetings on June 11, 2025, and September 9, 2025. Additionally, you asked our office to review whether OPPD violated the Open Meetings Act (OMA), Neb. Rev. Stat. §§ 84-1407 through 84-1414 (2024), at its September 9, 2025, Risk Pre-Committee meeting. We have considered your petition, its attached documents, and information provided to us by OPPD General Counsel Stephen M. Bruckner, in accordance with the Nebraska Public Record Statutes (NPRS), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2024), and the OMA. We have completed our review, and our findings are detailed below.

PUBLIC RECORDS MATTER

On October 1, 2025, you submitted a public records request to OPPD seeking "[r]ecordings of the prior two Risk Pre-Committee meetings" and "[c]opies of any handouts, chat messages, or minutes from [the] prior two Risk Pre-Committee meetings." On October 7, 2025, an attorney for OPPD, Karsen Sims, responded to your request. She provided you with agendas and summaries of direction from the Risk Pre-Committee meetings. Ms. Sims stated that these documents constituted "[a]ll responsive records" related to your request.

Less than twenty minutes later, you emailed Ms. Sims and (1) requested confirmation that the Risk Pre-Committee meetings were not recorded, (2) questioned whether OPPD had “presentation materials such as power point slides or similar,” and (3) asked whether OPPD had withheld any responsive records. The next day, Ms. Sims confirmed that “no records were withheld and there [were] no additional records available.”

On November 3, 2025, you petitioned our office and asserted that, based on the summaries of direction provided, OPPD had “numerous reports, slide decks, dashboards, and policy documents” that it failed to produce or identify as withheld. Your petition sets out sixteen categories of public records you claim “exist and were not provided,” and asked our office to review OPPD’s purported withholdings.

Following a review of your petition, the undersigned contacted OPPD’s General Counsel about its response. According to Mr. Bruckner, OPPD interpreted your October 1 request as seeking four types of documents: (1) recordings, (2) copies of handouts, (3) chat messages, and (4) minutes. Mr. Bruckner informed our office that Risk Pre-Committee meetings were not recorded. Thus, neither recordings nor saved chat messages exist. He further explained that since the meetings were virtual, no handouts were provided. Finally, he asserted that the Risk Pre-Committee does not record minutes; however, it does create a “summary of direction” after each meeting that broadly recounts meeting discussions. OPPD provided you with these summaries on October 7. Accordingly, OPPD asserts that all documents responsive to your October 1 request were provided. We agree.

Mr. Bruckner further explained that OPPD’s counsel interpreted your October 7 email simply as seeking confirmation that no responsive records were withheld. Upon review, counsel understands this email to be a separate public records request seeking “presentation materials such as power point slides or similar” from the two relevant Risk Pre-Committee meetings. OPPD expressed its regret for misinterpreting your email. While OPPD did not initially respond appropriately to your October 7 public records request, we understand that this error has now been corrected. After you submitted your petition to our office, OPPD searched for records in response to your October 7 request. We understand that Ms. Sims provided you with an updated response on November 14, 2025.

OPEN MEETINGS MATTER

You have also asked our office to review whether OPPD violated the OMA at its September 9, 2025, Risk Pre-Committee meeting. Your complaint focuses on the attendees named in the summary of directions. That document identifies that five of the eight OPPD Board Members were present at the meeting. Your complaint asserts that a meeting of the public body therefore occurred without the requisite “public notice, public access, and minutes.”

Neb. Rev. Stat. § 84-1409(2) defines a meeting of a public body as “all regular, special, or called meetings, formal or informal, of any public body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body.” The presence of a majority of the members of a public body is necessary for a meeting to occur. 1975-76 Rep. Att’y Gen. 150 (Opinion No. 116, dated August 29, 1975). The meeting of a subcommittee of a public body is not subject to the OMA “unless a quorum of the public body attends a subcommittee meeting or unless such subcommittees are holding hearings, making policy, or taking formal action on behalf of their parent body.” Neb. Rev. Stat. § 84-1409(1)(b).

According to Mr. Bruckner, your complaint is the result of a typographical error by OPPD. He clarified that only four OPPD Board Members are appointed to the Risk Committee: Amanda Boger, Mary Spurgeon, Eric Williams, and Craig Moody. The summary of direction lists those four Board Members, along with “Director Cole.” Mr. Bruckner explained that OPPD does not have a Board Member with the last name “Cole.” Rather, “Matt Core” is the current Chair of the OPPD Board of Directors. Mr. Bruckner explained that an OPPD staff member by the name of “Matt Cole” was present at the September 9 Risk Pre-Committee meeting. “Matt Core” was not. The staff member was erroneously labeled as a director in the document. Accordingly, the September 9 meeting lacked a quorum of the OPPD Board Members, and no meeting subject to the OMA occurred. Mr. Bruckner indicated that any employee present at the meeting could provide an affidavit confirming the attendees.

Finally, your complaint observed that a quorum of OPPD board members received an email containing the summary of directions from the September 9 Risk Pre-Committee meeting. You asked our office to review the legality of this communication under the OMA. Under Neb. Rev. Stat. § 84-1410(4), no “email, fax, or other electronic communication shall be used for the purpose of circumventing the requirements of the act.” A single email from an OPPD staff member to a quorum of board members broadly summarizing a subcommittee meeting is not a meeting of a public body under the OMA. No meeting of a public body occurs when there is no meaningful communication between board members, and there are no board member interactions or policy-making discussions. See *Schauer v. Grooms*, 280 Neb. 426, 447, 786 N.W.2d 909, 926 (2010).¹

¹ Our conclusion is consistent with previous opinions of this office in which we determined that “members of a public body can communicate with other members of that body by electronic means, even if that communication is directed to a quorum of the body, so long as there is no course of communication which becomes sufficiently involved so as to evidence an intent or purpose to circumvent the [OMA].” See Op. Att’y Gen. No. 04007 (March 8, 2004) at 3.

CONCLUSION

OPPD provided you with all its records responsive to your October 1 request. While it did not appropriately respond to your supplemental October 7 request, it has since corrected this mistake. We find that OPPD did not violate the OMA. No quorum was present at the September 9, 2025, Risk Pre-Committee meeting. And Board Members collectively receiving a single staff email does not constitute a meeting under the OMA. Accordingly, since OPPD has provided you all responsive records and no violation of the OMA occurred, no further action by this office is necessary at this time and we are closing this file. If you disagree with the conclusions reached above, you may wish to discuss this matter with a private attorney to determine what additional remedies, if any, are available to you.

Sincerely,

MIKE HILGERS
Attorney General



Ben Kinnison
Assistant Attorney General

c: Stephen M. Bruckner (via email only)
Karsen E. Sims (via email only)

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