

1 OFFICE OF THE ATTORNEY GENERAL
2 STATE OF NEVADA

3
4 In the matter of:
5 CITY COUNCIL OF BOULDER CITY
6

OAG FILE NO.: 13897-243
**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

7
8 **BACKGROUND**

9 Ainsworth Hunt, Neal Siniakin, Rose Ann Rabiola Miele, Richard Stevens, Linda
10 Barnett, and Adele Sherwood filed complaints (Complaints) with the Office of the Attorney
11 General (OAG) alleging violations of the Nevada Open Meeting Law (OML) by the City
12 Council of Boulder City (Council). The Complaints allege that the Council violated the
13 OML as follows:

14 **ALLEGATION:** The Council failed to timely provide supporting materials to
15 members of the public for its September 20, 2017 and September 26, 2017 meetings
16 (Meetings).

17 The OAG has statutory enforcement powers under the OML and the authority to
18 investigate and prosecute violations of the OML. Nevada Revised Statutes (NRS) 241.037;
19 NRS 241.039; NRS 241.040. The OAG's investigation of the Complaints included a review
20 of the following: the Complaints; the Council's Response and Supplemental Response to the
21 Complaints from the Boulder City Office of the City Attorney; the Council's agendas and
22 staff reports from the Meetings; video recordings of the Council's Meetings; and email
23 correspondence between representatives of the Boulder City Clerk's Office (Clerk's Office),
24 members of the public, and members of the personnel division of Boulder City.

25 After investigating the Complaints, the OAG determines that the Council violated
26 the OML by failing to timely provide the supporting materials for its September 20, 2017
27 meeting to members of the public and by failing to make a copy of the supporting materials
28 for the September 20, 2017 meeting available at the meeting. On the basis of the

1 allegations contained in the Complaint, the OAG finds no violation of the OML in
2 connection with the Council's September 26, 2017 meeting.

3 FINDINGS OF FACT

4 1. The Council is a "public body" as defined in NRS 241.015(4) and is subject to
5 the OML.

6 2. On September 20, 2017, at 8:00 a.m., the Council held a Special Meeting to
7 interview the final candidates for the position of City Attorney of Boulder City (City Attorney
8 Candidates).

9 3. The Council's agenda for its September 20, 2017 meeting included two items
10 related to the selection of a new City Attorney:

11 a. "For possible action: Interview of the final candidates for the position
12 of City Attorney;" and

13 b. "For possible action: Discussion and possible staff directive to provide
14 a conditional offer of employment and negotiate an employment
15 agreement in connection with the City Attorney position."

16 4. On September 20, 2017, at approximately 7:30 a.m., Neal Siniakin met with
17 the City Clerk of Boulder City, Lorene Krumm, and requested copies of the resumes for the
18 four City Attorney Candidates (Resumes). City Clerk Krumm stated that she did not have
19 the requested Resumes and would provide them to Mr. Siniakin when she received them.

20 5. Prior to the start of the September 20, 2017 meeting, the Council members
21 were provided meeting binders which included, among other items, the interview questions
22 and Resumes.

23 6. After Mayor Woodbury called the September 20, 2017 meeting to order, Mr.
24 Siniakin requested the Resumes from the Council. Linda Barnett followed with a request
25 for the Resumes. Adele Sherwood, along with other members of the public, raised their
26 hands in response to Mr. Siniakin's inquiry as to whether any other members of the public
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1 wished to obtain a copy of the Resumes.¹ Neither City Clerk Krumm nor any
2 representatives of the Council provided Mr. Siniakin, Ms. Barnett, Ms. Sherwood, or other
3 members of the public with the requested Resumes.

4 7. The Council held a public comment period at the start of its September 20,
5 2017 meeting. During his allotted public comment time, Mr. Siniakin again requested the
6 Resumes. Neither City Clerk Krumm nor any representatives of the Council provided Mr.
7 Siniakin with the requested Resumes.

8 8. Ainsworth Hunt also provided public comment to the Council as part of which
9 he requested the Resumes of the City Attorney Candidates. Neither City Clerk Krumm
10 nor any representatives of the Council provided Mr. Hunt with the requested Resumes.

11 9. During the September 20, 2017 meeting, Mayor Woodbury explained the City
12 Attorney interview and selection process. Mayor Woodbury acknowledged that the Council
13 members were in possession of the applications, Resumes, and writing samples of the City
14 Attorney Candidates.

15 10. The Council proceeded with interviewing the City Attorney Candidates.
16 Following introductory statements by the City Attorney Candidates, and a question and
17 answer period with the City Attorney Candidates, the Council members took the matter
18 under advisement and postponed taking action on the selection of the City Attorney until
19 its September 26, 2017 meeting.

20 11. On September 26, 2017, at 12:24 p.m., Deputy City Clerk Tami McKay
21 emailed the resumes of City Attorney Candidates Steven Morris, Gordon Goolsby, and
22 Christopher Davis to Mr. Siniakin. Deputy City Clerk McKay informed Mr. Siniakin that
23 the city of Boulder City had not received a resume from City Attorney Candidate Christi
24 Kindel.

25 . . .

27 ¹ A review of the Complaints does not reveal whether Ms. Rabiola Miele or Mr.
28 Stevens requested the Resumes, either through verbal requests or by raising their hands
in response to Mr. Siniakin's inquiry.

1 12. On September 26, 2017, at 2:52 p.m., Mr. Siniakin emailed a copy of City
2 Attorney Candidate Kindel's resume to Deputy City Clerk McKay.

3 13. At the start of the Council's September 26, 2017 meeting, City Clerk Krumm
4 and Deputy City Clerk McKay made multiple copies of the Resumes of all four City
5 Attorney Candidates available to the public.

6 14. Following discussion and deliberation by the Council members, the Council
7 voted to appoint Steven Morris as the City Attorney of Boulder City.

8 LEGAL STANDARDS AND CONCLUSIONS OF LAW

9 **The Resumes of the City Attorney Candidates Constituted Supporting Materials**
10 **for the Council Meetings and the Council failed to timely provide the Resumes to**
11 **the Public or to make a copy of the Resumes available to the Public during the**
12 **Council's September 20, 2017 Meeting.**

13 A. **The Resumes constituted Supporting Materials pursuant to the OML**

14 Supporting materials include all "written material that is directly related to and
15 necessary for members of the public body to consider an agenda item." Nev. Atty. Gen. Op.
16 09-021 at 4 (2009). A public body is not excused from its requirement to provide supporting
17 materials to the public "if supporting materials are provided privately to members of the
18 public body rather than through the public board or council packet." *Id.* at 3.

19 Here, the Resumes constituted supporting materials for the Council's Meetings. In
20 its Response and Supplemental Response to the Complaints, the Council acknowledges
21 that the Council members received the Resumes prior to the September 20, 2017 meeting.
22 However, the Council contends that it was not required to include the Resumes in the
23 supporting materials. The Resumes were directly related to and necessary for the Council
24 members to competently conduct Candidate interviews and to potentially appoint Boulder
25 City's new City Attorney, both actions which were noticed on the agenda. A review of the
26 Council's discussion and deliberation into the selection of Boulder City's new City Attorney
27 demonstrates the importance that the Council placed on the experience and backgrounds
28 of the City Attorney Candidates. The information regarding each City Attorney
Candidate's experience and background is included on the Resumes. As such, the Resumes

1 constituted supporting materials for both Meetings. That Council staff provided the
2 Resumes to the Council members in private meeting binders rather than the published
3 supporting materials does nothing to diminish the nature of the Resumes as essential
4 support materials for both the September 20 and 26, 2017 Council meetings, given the
5 items included on the agenda.

6 **B. The Council failed to timely provide the Supporting Materials for its**
7 **September 20, 2017 Meeting to the Public upon Request**

8 Nevada Revised Statute 241.020 governs open and public meetings and it requires
9 that public bodies shall provide, upon request, at least one copy of any supporting materials
10 provided to the members of the public body for items on an agenda.² NRS 241.020(6)(c). If
11 the supporting materials for a meeting are provided to the members of a public body at the
12 meeting, they must also be available at the meeting to requesting members of the public at
13 the same time the materials are provided to the members. NRS 241.020(7).

14 Here, the Council failed to timely provide the public with the supporting materials
15 for its September 20, 2017 meeting. Specifically, the Council failed to timely provide the
16 Resumes³ to members of the public upon request. Based on Mayor Woodbury's comments
17 during the September 20, 2017 meeting, as well as the affidavits from City Clerk Krumm
18 and Deputy City Clerk McKay, the Council members received the Resumes prior to their
19

20 ² The public body is not required to provide the following supporting materials:
21 materials which are "submitted to the public body pursuant to a nondisclosure or
22 confidentiality agreement which relates to proprietary information;" materials which
23 pertain to "the closed portion of such a meeting of the public body;" or materials which are
"declared confidential by law, unless otherwise agreed to by each person whose interest is
being protected under the order of confidentiality." NRS 241.020(6)(c)(1-3).

24 ³ Based on the Complaints and the Council's Responses to Complaints, it is unclear
25 whether the Council received City Attorney Candidate Kindel's resume at its September
26 20, 2017 meeting. City Clerk Krumm's affidavit states that the Council never received a
27 resume from Ms. Kindel while Mayor Woodbury's comments during the September 20, 2017
28 meeting indicate that the Council members were in possession of the resumes for all four
City Attorney Candidates. However, the fact that the Council members received the
resumes for the 3 remaining City Attorney Candidates at the September 20, 2017 meeting
is not disputed.

1 September 20, 2017 meeting in their meeting binders. The Resumes do not fall under any
2 of the exceptions in NRS 241.020(6)(c) that would render them confidential. As such, the
3 Council was required to provide a copy of the Resumes, at the same time that the Resumes
4 were provided to the Council members, to the public upon request. Although Mr. Siniakin,
5 Ms. Barnett, Ms. Sherwood, and Mr. Hunt all requested the Resumes during the Council's
6 September 20, 2017 meeting, the Council failed to provide the requesting parties with the
7 Resumes. Therefore, the Council violated the OML's requirement to provide a copy of all
8 supporting materials for a meeting to the public upon request.

9 Moreover, the Council was not excused from providing the Resumes to the public at
10 the time the Council members received the Resumes for the September 20, 2017 meeting,
11 by treating the Resumes as a request under the Nevada Public Records Act (NPR),
12 contained in NRS 239, rather than as supporting materials subject to the provisions of the
13 OML in NRS 241. In support of its Response to the Complaints, the Council submitted an
14 affidavit from City Clerk Krumm in which she explains that the Clerk's Office treated Mr.
15 Siniakin's request for the Resumes as a public records request, rather than a request for
16 supporting materials. Although NRS 239.0107 provides a governmental entity, such as the
17 Council, with five business days to issue its response to a public records request, it does not
18 preempt or otherwise negate the OML's requirement to make supporting materials
19 available to requesting members of the public at the same time the materials are provided
20 to the members.

21 Additionally, the Council was not excused from providing the supporting materials
22 to the public based on the fact that they were not "direct requests." The Council contends
23 that it was not required to provide the Resumes to members of the public because,
24 notwithstanding Mr. Siniakin's request to City Clerk Krumm, no members of the public
25 "directly requested" the Resumes from Mayor Woodbury, Acting City Manager Scott
26 Hansen, City Clerk Krumm, or Deputy City Clerk McKay. Although NRS 241.020(2)
27 requires public bodies to include on the published public meeting notice the name and
28 contact person from whom a member of the public may request the supporting materials

1 for a meeting, the OML does not require members of the public to follow a specific procedure
2 to request and obtain supporting materials. Rather, NRS 241.020(7) requires public bodies
3 to make a copy of supporting materials available, *upon request*, at the same time the
4 supporting materials are provided to the members of the public body. As the Council
5 members received the Resumes before or at the time of the September 20, 2017 meeting,
6 the Council was required to make a copy of the Resumes available to members of the public
7 requesting them at the same time the members received the Resumes.

8 Mr. Siniakin made his request for the Resumes directly to City Clerk Krumm, and
9 he, along with Ms. Barnett, Ms. Sherwood, and Mr. Hunt, also requested the Resumes from
10 the Council during public comment. The Council's contention that it did not violate the
11 OML because it did not receive any "direct requests" from the public for the Resumes
12 incorrectly assumes that public requests for meeting support materials must be written or
13 otherwise formalized. This is not supported by law. Because Mr. Siniakin, Ms. Barnett,
14 Ms. Sherwood, and Mr. Hunt verbally requested the resumes, which is an adequate request
15 under the law, the Council violated the OML by failing to provide the Resumes to these
16 individuals at the time the Council members received the Resumes prior to or at the time
17 of the Council's September 20, 2017 meeting.

18 The OAG is not in receipt of any complaints alleging that the Council failed to
19 provide the Resumes, or any other supporting materials, from its September 26, 2017
20 meeting, upon request by a member of the public. Consequently, on the basis of the
21 allegations contained in the Complaint, the OAG concludes that the Council did not violate
22 the OML's requirement regarding providing supporting materials to the public during its
23 September 26, 2017 meeting.

24 **C. The Council failed to make a Copy of the Supporting Materials**
25 **available at the September 20, 2017 Meeting**

26 Public bodies shall make at least one copy of supporting materials available to the
27 public at the meeting to which the materials pertain. NRS 241.020(6).

28 . . .

1 Here, the Council's Responses to the Complaints, as well as the affidavits from City
2 Clerk Krumm and Deputy City Clerk McKay, indicate that the Council failed to make a
3 copy of the Resumes available to the public during the September 20, 2017 meeting. As
4 such, the Council violated the OML's requirement to make a copy of the supporting
5 materials available to the public at its September 20, 2017 meeting.

6 The Council made multiple copies of the Resumes available to the public during its
7 September 26, 2017 meeting. Therefore, the Council complied with the OML's requirement
8 to make a copy of the supporting materials available to the public during its September 26,
9 2017 meeting.

10 SUMMARY AND INCLUSION OF AGENDA ITEM

11 If the Attorney General investigates a potential OML violation and makes findings
12 of fact and conclusions of law that a public body has taken action in violation of the OML,
13 "the public body must include an item on the next agenda posted for a meeting of the public
14 body which acknowledges the findings of fact and conclusions of law." NRS 241.0395. The
15 public body must treat the opinion of the Attorney General as supporting material for the
16 agenda item in question for the purpose of NRS 241.020. *Id.*

17 Here, upon investigating the present Complaint, the OAG makes a findings of fact
18 and conclusions of law that in association with its September 20, 2017 meeting, the Council
19 violated the OML by failing to make the Resume support materials available to the public
20 upon request, as required by NRS 241.020(7), and available generally, as required by NRS
21 241.020(6). Therefore, the Council must place an item on the agenda of its next Council

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1 Meeting in which the Council acknowledges the present Findings of Fact and Conclusions
2 of Law ("Opinion") which results from the OAG investigation in the matter of Attorney
3 General File No. 13897-243. The Council must also include the OAG Opinion in the
4 supporting materials for its next meeting.^{4 5}

5 DATED: February 14, 2018.

6 ADAM PAUL LAXALT
7 Attorney General

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9 By: 
10 CAROLINE BATEMAN
11 Chief Deputy Attorney General
12 Bureau of Gaming and Government Affairs
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18 ⁴ In its response to the Complaint, the Council, by and through its counsel, states
19 that it took remedial action to correct any OML violations from its September 20, 2017 by
20 providing the Resumes and other supporting materials from the September 20, 2017
21 meeting, to the members of the public who directly requested the materials and by making
22 copies of the Resumes available to the public prior to the September 26, 2017 meeting.
23 However, NRS 241.0365(1) provides that a public body may take action to correct alleged
24 violations of the OML within 30 days of the alleged violations by including an item on the
25 agenda regarding the intent to take corrective action. In this matter, the Council did not
26 include an item on its agenda regarding the correction of an OML violation, nor did it take
27 any action as a body to correct the OML violations. As such, the OAG requires
28 acknowledgment of the findings of fact and conclusions of law on the agenda of the Council's
next meeting in conformity with NRS 241.0395.

⁵ The Council did not take action to select Mr. Morris as its new City Attorney until
its September 26, 2017 meeting. The Council made the Resumes and other supporting
materials available to the members of the public prior to the September 26, 2017 meeting.
As such, the OAG will not move to void the Council's action selecting Mr. Morris as the City
Attorney of Boulder City.