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December 8, 2020

Via Certified Mail

Ryan Green
Reno Airport Fire Fighters Association



**Re: Open Meeting Law Complaint, OAG File No. 13897-370
In the matter of Reno-Tahoe Airport Authority**

Dear Mr. Green:

The Office of the Attorney General ("OAG") is in receipt of your complaint ("Complaint") filed on May 13, 2020 alleging violations of the Open Meeting Law ("OML") by the Reno-Tahoe Airport Authority ("RTAA") based on public records requests of RTAA's meeting minutes and audio recordings for 11 public meetings held within the past year ("Complaint"). The Complaint alleges that RTAA violated the OML as follows:

ALLEGATION NO. 1: RTAA violated the OML by discouraging public oversight by threatening to charge for minutes and recordings of public meetings.

ALLEGATION NO. 2: RTAA willfully neglected their duty of making minutes or audio recordings of public meetings available within 30 days of public meetings.

ALLEGATION NO. 3: RTAA failed to take or keep minutes from committee meetings posted in accordance with the OML.

ALLEGATION NO. 4: RTAA holds closed meetings on a nearly weekly basis.

The OAG has statutory enforcement powers under the OML, and the authority to investigate and prosecute violations of the OML. Nevada Revised

Statutes (“NRS”) 241.037; NRS 241.039; and NRS 241.040. The OAG’s investigation of the Complaint included a review of the following: the Complaint and attachments (May 12, 2020 letter from the RTAA’s counsel to Mr. Green); the RTAA’s response to Complainant’s Open Meeting Law Complaint and all attachments thereto, including the RTAA’s May 7, 2020, May 12, 2020, and June 2, 2020 letters to Mr. Green responsive to the public records request, meeting minutes, agendas, and recordings of the RTAA’s board meetings, special meetings, and workshops between September 12, 2019 and April 10, 2020, the RTAA’s Declaration of Emergency; and the RTAA’s website.¹

After investigating the Complaint, the OAG determines that the Board did not violate the OML as alleged in the Complaint.

FACTUAL BACKGROUND

The Reno-Tahoe Airport Authority is a “public body” as defined in NRS 241.015(4) and therefore is subject to the OML.

On April 25, 2020, Mr. Green served his first public records request to the RTAA for “an electronic copy of the documents provided at the Board Retreat on November 4, 2019”. On May 4, 2020, the RTAA sent a letter to Mr. Green acknowledging receipt of his first public records request. On May 7, 2020, the RTAA sent a letter to Mr. Green providing a link to the requested documents.

Concurrently, on May 5, 2020, Mr. Green served a second public records request to the RTAA for the following:

1. An electronic copy of the documents provided at the Board Retreat on November 4, 2019;
2. Reno-Tahoe Airport Authority Board Minutes, audio and/or video, and all documentation from the following open meetings:
 - i. March 12, 2019 Board Workshop;
 - ii. September 12, 2019 Board Workshop;
 - iii. November 4, 2019 Board Retreat;
 - iv. February 21, 2020 Transition Committee Meeting;
 - v. March 10, 2020 CEO Land Development;
 - vi. March 12, 2020 Board Meeting;
 - vii. March 12, 2020 Public Safety Committee Meeting;

¹ The website viewed by the OAG for this Complaint was <https://www.renoairport.com/airport-authority>.

- viii. March 12, 2020 Board Workshop;
- ix. March 13, 2020 Special Meeting; and
- x. March 27, 2020 Special Meeting.

On May 12, 2020, the RTAA, through its counsel, responded to the remainder of Mr. Green's public records request, indicating that because of the COVID-19 crisis, they would attempt to provide the requested information by June 15, 2020. The RTAA's response to Mr. Green's second public records request further stated that pursuant to NRS Chapter 239, it was authorized to charge for copies and extraordinary use of staff time and would provide an estimate and request payment before further processing, if required.

On June 2, 2020, the RTAA sent a letter to Mr. Green providing a link to the documents responsive to the second public records request.²

LEGAL ANALYSIS

A. The RTAA may not charge fees or costs associated with minutes and recordings of public meetings.

The OML clearly states that minutes of public meetings are public records. NRS 241.035(2). Public records requests are governed by NRS Chapter 239. *See generally*, NRS 239.001 *et seq.* A governmental entity generally may charge a fee for providing a copy of a public record, and such fee must not exceed the actual cost to the governmental entity to provide the copy of the public record unless a specific fee is set by a statute or regulation. NRS 239.052. Notably, a governmental entity may not charge a fee for providing a copy of a public record if a specific statute or regulation requires the governmental entity to provide the copy without charge. *Id.* In that regard, the OML specifically prohibits a governmental entity from charging fees for copies of the minutes or audio recording of a public meeting and must provide the same at no charge. NRS 241.035.

In the present case, in response to Mr. Green's public records request, the RTAA sent a responsive letter indicating that "[p]ursuant to NRS 239, the RTAA is authorized to charge for copies and extraordinary use of staff time, and we will provide an estimate and request prior payment before further processing, if required." However, under NRS 241.035, RTAA must provide copies of its minutes or audio recordings of its public meeting at no charge.

² The RTAA's letter notes that it was unable to locate an audio file responsive to RAFFA's request for audio and/or video from the September 12, 2019 Board Workshop.

Based on the information reviewed by the OAG, including the RTAA's response to Mr. Green's records request, the RTAA did not charge Mr. Green any fees when it provided the documents responsive to the public records. Accordingly, the OAG does not find that the RTAA violated the OML in this regard, as no fees were assessed with the public records request. However, the OAG cautions that the OML strictly prohibits a governmental entity from charging a fee for copies of meeting minutes or audio recordings of public meetings.³

B. The RTAA has a duty under the OML to make minutes or audio recordings of public meetings available within 30 working days of public meetings.

The OML is also clear that minutes or an audio recording of a public meeting must be made available for inspection by the public within 30 working days after adjournment of the meeting. NRS 241.035(2). However, as also noted above, the OML declares that minutes of public meetings are public records. *Id.* Under NRS Chapter 239, upon receipt from a person to inspect, copy, or receive a copy of a public record, a governmental entity must, not later than the end of the fifth business day after the date such request was received, respond to the public records request. NRS 239.0107. Moreover, under NRS 239.0107(1)(c), if the governmental entity is unable to make the public record available by the end of the fifth business day after receipt of the request, it may provide the requesting person in writing notice of the fact that the governmental entity is unable to make the public record available by that date and the earliest date and time which the governmental entity reasonable believes the record will be available. NRS 239.0107(1)(c)(1).

While NRS 241.035 provides that minutes or an audio recording of a meeting must be made available for inspection by the public within 30 working days after the meeting, meeting minutes and audio recordings are statutorily designated as public records, and therefore public bodies may rely on the process delineated under NRS Chapter 239 for responding to public records requests. Here, Mr. Green submitted a public records request on May 5, 2020, receipt of which was acknowledged by the RTAA in its response letter dated May 12, 2020, within the five-business-day time limit delineated in NRS 239.0107. In response to the public records request, the RTAA asserted that on May 7, 2020, it provided the information requested by RAFFA regarding

³ The RTAA's response to the public records request by the RAFFA asserts that pursuant to NRS 239, it is authorized to charge for "extraordinary use of staff time". Notably, however, NRS 239.055, which previously allowed for an additional fee when "extraordinary use of personnel or resources" was required, was repealed during the 2019 Legislative Session.

“an electronic copy of the documents provided at the Board Retreat on November 4, 2019”. As to the balance of the public records requested, the RTAA indicated that the information was being collected and that the RTAA would attempt to provide the information by June 15, 2020. The RTAA provided the documents requested by RAFFA on June 2, 2020. Given the State of Emergency currently faced by the State of Nevada, the OAG finds it reasonable for the RTAA to have provided the responsive documents within 30 days of receipt of the public records request.⁴

Furthermore, the OAG notes that under the “Public Meeting Information” tab of the RTAA’s website, the RTAA posts Agenda/Meeting Materials as well as Minutes to its meetings, which appear to be accessible to the public free of charge. Accordingly, the OAG does not find that the RTAA violated the OML.

C. The RTAA is required to keep written minutes of each of its meetings.

The OML requires that public bodies keep written minutes of each of their meetings, which must include the items listed in NRS 241.035(1)(a)-(e). Generally, a public body must approve the minutes of a meeting within 45 days after the meeting or at the next meeting of the public body, whichever occurs later, unless good cause is shown. NRS 241.035(1).

Here, there is no evidence that the RTAA failed in taking or keeping minutes from committee meetings. Instead, the OAG received copies of the meeting minutes and agendas that were requested under the at-issue public records request. Further, upon the OAG’s review of the RTAA website, minutes of the public body’s various meetings, including those of subcommittees, are posted on under the “Public Meeting Information” tab. Accordingly, the OAG finds no OML violation as the records provided by the RTAA show that it is complying with its statutory obligations under NRS Chapter 241 to keep and maintain minutes of its public meetings.

D. The RTAA is able to hold closed meetings and confer with its counsel under certain conditions.

⁴ The OAG notes that its analysis regarding compliance with NRS Chapter 239 requirements is only relevant to the extent it relates to compliance with the OML’s requirements to provide certain records to the public. The OAG does not have jurisdiction in this venue to adjudicate whether there has been a violation of NRS Chapter 239 and is not opining as such.

In general, the OML requires that all meetings of public bodies be open and public, and all persons be able to attend any meeting of the public body. NRS 241.020(1). However, the OML provides specific exclusions from the definition of a “meeting”. See NRS 241.015(3)(b). Specifically, included in the enumerated exclusions of the definition of “meeting” are gatherings where the public body: (1) receives “information from the attorney employed or retained by the public body regarding potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction or advisory power and to deliberate toward a decision on the matter, or both”; or (2) receives “training regarding the legal obligations of the public body, including, without limitation, training conducted by an attorney employee or retained by the public body, the Office of the Attorney General or the Commission on Ethics, if at the gathering the members do not deliberate toward a decision or action on any matter over which the public body has supervision, control, jurisdiction or advisory power.” NRS 241.015(3)(b)(2)-(3).

Here, while Mr. Green asserts there are a “concerning number” of closed meetings, there is no evidence that the RTAA conducted closed meetings outside the exceptions of the definition of a meeting as stated under NRS 241.015(3)(b). However, the OAG reminds the RTAA that the Legislature specifically declared that all public bodies exist to aid in the conduct of the people’s business, and in that regard, the Legislature intended that the actions of all public bodies be taken openly and that their deliberations be conducted openly. NRS 241.010.

CONCLUSION

Upon investigating the present Complaint, the OAG does not find a violation of the OML by the Reno-Tahoe Airport, as stated above. The OAG will be closing its file in this matter.

Sincerely,

AARON D. FORD
Attorney General

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