



STATE OF NEBRASKA  
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**DOUGLAS J. PETERSON**  
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October 24, 2022

Via email at [REDACTED]  
Nathan Arentsen  
[REDACTED]

RE: *File No. 22-M-126; Nebraska Children's Commission; Nathan Arentsen,  
Complainant*

Dear Mr. Arentsen:

This letter is in response to your complaint alleging violations of the Nebraska Open Meetings Act ("Act"), Neb. Rev. Stat. §§ 84-1407 to 84-1414 (2014, Supp. 2021), amended 2022 Neb. Laws LBs 742, 908, and 922, by the Nebraska Children's Commission ("Commission"). In accordance with our normal procedure with respect to such complaints, we sent a copy of your complaint to Monika E. Gross, Executive Director of the Foster Care Review Office, and requested a response. On June 16, 2022, we received a response to your complaint from Ms. Gross. We have completed our review of your complaint, and our findings and conclusions are set out below.

### **BACKGROUND & ALLEGED VIOLATIONS**

Our understanding of the facts in this case is based upon your complaint, the information contained in Ms. Gross's response, and the agenda and minutes to the meeting at issue.

In 2012, the Legislature created the Commission "as a high-level leadership body to monitor and evaluate the child welfare and juvenile justice systems." Neb. Rev. Stat. § 43-4202(1) (Cum. Supp. 2020). The Governor appoints fifteen voting members. § 43-4202(2)(a). The Commission has additional nonvoting, ex officio members who "may

attend commission meetings and participate in the discussions of the commission, provide information to the commission on the policies, programs, and processes within their areas of expertise, and gather information for the commission.” § 43-4202(2)(b). The Commission may also “hire staff to carry out the responsibilities of the commission.” § 43-4202(3).

On April 19, 2022, the Commission held a regular meeting at the Lancaster County Extension Office in Lincoln. According to the minutes, twenty persons were present at the meeting: Ten voting Commission members; six ex officio Commission members; two staff members; and two non-member guests. The meeting agenda included item 10–“Strategic Priorities (Action Item)” and item 13–“Public Comment.” As characterized by Ms. Gross, during agenda item 10, the Commission discussed “strategic priorities” for research and policy development pursuant to the express legislative intent when the Commission was created. § 43-4201(2). Ms. Gross states that to “facilitate” the discussion of strategic priorities, “the Commission divided into four small groups of 5 or 6 members each with each small group occupying a different corner of the room for the discussion.” Ms. Gross states that the small group discussion lasted for approximately fifteen minutes and then representatives from each group summarized the group’s discussion for the entire Commission. You allege that prior to the strategic priorities exercise, Laura Opfer, a Commission staff member, “repeatedly” encouraged Ivy Svoboda to “participate in the Commission’s proceedings at any time,” and personally invited Ms. Svoboda to be a member of one of the Commission’s “Strategic Priorities” subgroups. Ms. Gross explains that Ms. Svoboda is the executive director of the Nebraska Alliance of Child Advocacy Centers and that under § 43-4203(6), the Commission is required to work with child advocacy centers across the state. Ms. Gross indicates Ms. Svoboda was publicly invited to participate in the small groups.

According to your complaint, because the subgroups were “scattered throughout the meeting hall . . . members of the public sitting in the public seating area would not be able to hear the respective subgroups’ discussions.” Consequently, you sought to participate in one of the small group discussions, but allege that you were “repeatedly denied” by Commission staff member Adam Anderson of the same opportunity extended to Ms. Svoboda. You admit, however, that you were ultimately permitted to join a small group discussion by Ms. Opfer.

Later in the meeting, you asked Mr. Anderson to distribute to the Commission, either prior to or during your public comment, materials you had prepared. Mr. Anderson denied your request. Ms. Gross explains that Mr. Anderson denied your request “because [the materials] were not Commission documents and Mr. Anderson did not want to appear to endorse any written materials brought to the Commission meeting by [you] nor did he want it to appear that the Commission endorsed any of [your] materials.” In your complaint, you note that during the public comment period, you were allowed to ask the full Commission whether you could distribute your materials and every Commission

member agreed to receive your materials, which you then distributed. You were thanked for your public comment and the meeting adjourned at 2:39 p.m.

Your complaint alleged two violations of the Act by the Commission and its staff,<sup>1</sup> restated as follows:

1. The Commission secretly invited a specific member of the public to hear the discussion and testimony presented at the Commission's meeting, while discouraging you of the same.
2. The Commission secretly invited a specific member of the public to attend and speak at the Commission's meeting, while discouraging you of the same.

### DISCUSSION

The Act is a statutory commitment to openness in government. *Wasikowski v. Nebraska Quality Jobs Bd.*, 264 Neb. 403, 418, 648 N.W.2d 756, 768 (2002). Through the Act, "the Legislature has declared that 'the formation of public policy is public business and may not be conducted in secret.'" *Schauer v. Grooms*, 280 Neb. 426, 442, 786 N.W.2d 909, 923 (2010). As a result, the Act's intent is "to allow citizens to exercise their democratic privilege of attending and speaking at meetings of public bodies." *Id.* Therefore, "open meetings laws should be broadly interpreted and liberally construed to obtain their objective of openness in favor of the public." *Id.* at 441, 786 N.W.2d at 922.

The information we received indicates that the Commission publicly, not secretly, invited Ms. Svoboda to participate at its meeting pursuant to its statutory authorization to "work with . . . child advocacy centers." § 43-4203(6). Furthermore, while perhaps not immediately, you were granted access to the small group discussion, and were subsequently allowed to speak and distribute your prepared materials to the Commission during the public comment period. Thus, regarding the specific allegations in your complaint, we find no violation of the Act.

However, the Commission's "Strategic Priorities" exercise raises a concern of its own. According to the minutes, during this exercise "[m]embers discussed the role the Commission will take regarding LB1173." As described by Ms. Gross, four small groups were formed and separated into each corner of the meeting hall to discuss strategic priorities for the Commission. Then, each group reported back to the whole Commission through a representative on specific priorities and policy recommendations resulting from the small group discussion.

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<sup>1</sup> Please note that only members of the public body are subject to the criminal penalties set out in § 84-1414 of the Act.

Under the Act, meetings are defined 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 . . . .” § 84-1409(2) (emphasis added). Public bodies subject to the Act include “all study or advisory committees of the executive department . . . whether having continuing existence or appointed as special committees with limited existence . . . .” § 84-1409(1)(a)(iv). Subcommittees of public bodies are not subject to the Act unless there is a quorum present or the subcommittee is “holding hearings, making policy, or taking formal action on behalf of their parent body . . . .” § 84-1409(1)(b). A public body may close their meetings when approved by a majority of its voting members only when “clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting.” § 84-1410(1). We are, however, unaware of any provision in the Act that would allow a public body to break into subgroups for the purpose of holding separate discussions during the course of an open meeting.

Ms. Gross represents that “at no time” were you “prevented from hearing or observing the small group discussions as they took place.” While the small group exercise may have been conducted during an open meeting, we disagree that the exercise was entirely “public.” The four groups were “occupying a different corner of the room for their discussion,” which necessarily implies isolation from each other. Thus, because the four small group discussions occurred simultaneously, a member of the public could have listened, at most, to only one small group to the exclusion of the other three.

Although we question the propriety of the small group exercise, there is nothing to suggest that the Commission intended to circumvent the Act. Thus, we find no violation with respect to the strategic priorities exercise as conducted on April 19, 2022. With that said, we reiterate that “[i]t is well settled that the purpose of the [Act] is to ensure public policy is formulated at open meetings.” *Dossett v. First State Bank, Loomis, NE*, 261 Neb. 959, 963, 627 N.W.2d 131, 136 (2001). Therefore, we will suggest to the Commission, as a best practice moving forward, to conduct all similar exercises in full conformity with the Act.

## CONCLUSION

We find no violation of the Open Meetings Act pertaining to the matters raised in your complaint. However, as discussed above, in order to ensure the public has the opportunity to be exposed to, and informed of, the rationale of government decisions (such as the development and adoption of strategic priorities for the Commission), we advise the Commission to conduct all future strategic priority sessions, or the like, in conformity with the requirements of the Act.

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Since no further action will be taken by this office with respect to this matter, we are closing our file. If you disagree with our analysis, you may wish to consult with your private attorney to determine what additional remedies, if any, may be available to you under the Open Meetings Act.

Sincerely,

DOUGLAS J. PETERSON  
Attorney General



Darrin Schultz  
Assistant Attorney General

c: Monika E. Gross (via email only)  
80-007-30