

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
ATTORNEY GENERAL

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July 31, 2017

Michael I. Garcia, Senior Assistant County Attorney  
Bernalillo County  
520 Lomas Blvd. NW, 4<sup>th</sup> Floor  
Albuquerque, NM 87102  
Email: [mikgarcia@bernco.gov](mailto:mikgarcia@bernco.gov)

**Re: Open Meetings Act Complaint by Pete Rivera**

Dear Mr. Garcia:

Thank you for providing a response to our letter of October 24, 2016, wherein, we conveyed our receipt of an Open Meetings Act (OMA) Complaint from Mr. Pete Rivera alleging violations of the Open Meetings Act Chapter 10, Article 15 §§ 10-15-1 to 10-15-4 as amended through 2013, NMSA (1978) on February 20, 2012, May 9, 2012, August 15, 2012, December 5, 2012 and January 13, 2016. More specifically, Mr. Rivera alleges OMA violations of improper notice of the meetings, final action being taken in a closed meeting, and creating a committee that established policy for the public body outside of an open meeting.

As a preliminary matter, I note that none of the above dates involved meetings by any Bernalillo County Board or Commission. I also note that no action by Board or Commission vote occurred on these dates. These dates do not appear on the County's website where all Meetings and Agendas can be found dating back to 2011, and likewise there are no minutes for these dates.

Section 10-15-1(B) of OMA provides:

B. All meetings of a quorum of members of any board, commission, administrative adjudicatory body or other policy making body of any state agency, any agency or authority of any county, municipality, district or any political subdivision, held for the purpose of formulating public policy, including the development of personnel policy, rules, regulations or ordinances, discussing public business or for the purpose of taking any action with the authority of or the delegated authority of any board, commission or other policy making body are declared to be public meetings open to the public at all times, except as

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otherwise provided in the constitution of New Mexico or the Open Meetings Act. NMSA 1978 § 10-15-1(B).

Hence, OMA applies to meetings of a quorum of members of a board or commission which meet for the purpose of forming public policy. Because the meetings complained of were not meetings by any Bernalillo County Board or Commission where a quorum of members of a board or commission met for the purpose of forming public policy, OMA is not applicable to these meetings. We therefore conclude that Bernalillo County did not violate the Open Meetings Act.

Sincerely,

*Audrey K. McKee*

Audrey K. McKee

Assistant Attorney General

Cc: Peter Rivera



**OPEN MEETING ACT ("OMA") COMPLAINT FORM**

New Mexico Office of the Attorney General  
Open Government Division

**Your Contact Information:**

First Name: Pete Last Name: Rivera

Address: [REDACTED]

City: [REDACTED] State: [REDACTED] Zip Code: [REDACTED]

Phone Number [REDACTED]

Email: [REDACTED]

Name of Public Body that is the Subject of this Complaint (including city/town, district, county or region, if applicable): Art DeLeCruz

Specific date(s) of OMA violation(s): 2.20.12 - 1.13.16  
The specific dates are on the files on DVD

**ALLEGED VIOLATIONS OF THE OMA BY THE PUBLIC BODY:** Please select from the following list the violations you allege the public body committed. Check all that apply.

**DEFICIENCIES IN NOTICE OF THE MEETING**

- Notice did not comply with the deadlines or procedures for meeting notices adopted by the public body, or with the reasonable notice requirement in the OMA
- Notice did not include date, time, and/or location of the meeting
- Notice was not published or posted in a place and manner accessible to the public
- Notice did not include an agenda or information on how the public may obtain a copy of the agenda
- A meeting was reconvened by the public body, but notice of the date, time, and place of the reconvened meeting was not placed on or near the door of the place where the original meeting was held or in at least one other location appropriate to provide public notice

**AGENDA**

- Agenda was not available seventy-two (72) hours prior to the meeting

- Agenda did not include a list of specific items the public body intended to discuss or transact at the meeting or the items listed and acted upon were not listed with reasonable specificity
- Public body took action on items that were not listed on the agenda
- In a reconvened meeting, the public body discussed or took action on items not appearing on the agenda of the original meeting

#### MINUTES

- The minutes did not contain the date, time, and/or place of meeting, the name of all members of the public body attending the meeting and those absent
- The minutes did not contain a description of the substance of all proposals considered during the meeting or a record of any decisions made and votes taken
- A draft copy of the minutes was not available within ten (10) working days of the meeting
- The minutes were not approved, amended, or disapproved at the next meeting where a quorum of the public body was present

#### CLOSED MEETINGS

- The public body did not follow the required closing procedures to close a meeting (e.g., did not list the items they were going to discuss in the motion to close, or the motion to close did not contain the provision of law permitting the closing of the meeting)
- The public body closed the meeting to discuss an issue not covered by one of OMA's exceptions
- Matters not stated in the motion to close were discussed in the closed session.
- Final action was taken by the public body in the closed meeting

#### CONDUCTING/DISCUSSING BUSINESS OUTSIDE OF AN OPEN MEETING

- A quorum of the public body formulated policy, discussed public business, or took action outside of an open meeting
- A "rolling quorum" was used to discuss public business (i.e., a quorum may exist even when the members are not physically present at the same place, such as discussing public business in a series of telephone or email conversations)



Pete Rivera 9-26-16

Our politicians and Art Delacruz on the Bridge Boulevard Corridor project, stated what you can do is have a democratic process and have those people that are willing to participate, to show up and participate are the ones that really care where the folks that were at those meetings. County needs to verify that notice has been provided to all FCC license broadcast stations and newspapers of the public meetings notice and hearing. Need to show documentation they actually receive public notices. No documents the project needs to be voided. Now the attorney general's office will have to determine was this a democratic process or not.

Files 3. Catherine Lopez press release to the media was sent out February 19 at 8:50 PM. There were 3 newspaper add in March 17 and 18th, in South Valley ink. I call them and she said they were publish in February, she made a mistake on the month. February 18 has the February 20 meeting on bridge boulevard. That is less and 72 hours before the meeting. Because of the press release. I believe someone put it in March newspaper because somebody did not put it in February 20 meeting. The article on Beautifying Bridge Blvd was published three days after the meeting. That meeting should be voided because of a violation and a criminal act. Did not find any other public meeting notices in the Albuquerque Journal. No broadcast stations notice found.

File 4. May 9-12 meetings article. The 3 articles on that dates of the meetings did not mention the public was invited on the 10-11 meetings. One article, the design team will come up with a concept for the boulevard during two all-day sessions Thursday and Friday. It was not clear if the public was invited because only 7 people attended Thursday meeting that is counting the staff. 2 of the articles only mentioned the 9-12 meetings, they do not mention the 10-11. Did not find any other public meeting notices in the Albuquerque Journal. No broadcast stations notice found. That meeting should be voided because that is a violation.

File 5. August 15 article. The articles just about the same thing they leave things out about the project. They did mention about the Town of Atrisco Grant-Merced, that there are having the same problem as the public. When you asked the County questions of the project, you get three different answers. Once they realized that you are against the project they start ignoring you. The second article on August 15 meeting the public was against the major issues of the project. The public started realizing their input was not even consider. If you look on the bottom of the article the roundabout was not even mention. The 3 public meetings that they had, no mention of the roundabout. No broadcast stations notice found.

File 5. The article on December 5-12 meeting, you can see in the article. Now they have all the major issues of the project. In addition, that is what they were trying to avoid in the newspapers, because now the public started to hear about it and they are coming out. That was the last public meeting before it went to the CPC hearing. No broadcast stations notice found.

Files 6. January 13-16 news 13, the Bridge construction project was on the news that morning of the meeting. The article never mentions it was a public hearing meeting, the article said it was public meeting. The article was less than 72 hours, and they are still leaving information out to get the public to attend the meetings. Did not find a newspaper article on the public hearing. That hearing should be voided because that is a violation.

Files 7. IPRA. I file. Timeline had a public hearing meeting schedule for August, but the public was against the project. They changed it to a public meeting. They need to prove they did not have to have a public hearing before it went to the CPC hearing. August Albuquerque Journal newspaper said public hearing. The other articles said public meetings.

Files 8. IPRA I file. They never verify the signs on the public meeting were on bridge boulevard, where the public can see them when driving on bridge. Where they on the side street where the public could not see them. They said there is no law that required them to have the signed up. Need to verify if that is true.

Files 9. Commissioner Art Delacruz formed his own steering committee, invited certain individuals from the community to help develop the plan. On the first 10-committee meetings, the public stopped coming to the meetings, only four or five attended. On the 12 steering committee, they brought in other group individuals to attend the meeting and pass the project. No articles notices were found that it was an open meeting, did they follow all the laws on close meetings. Delacruz and the staff knew the public was not being reached. They knew the public was against the project. They did not even address the concerns of the public. The only input that they considered was from the committee that Art Delacruz invited. Waylon Chavez was a steering committee member that brought in 2500 on a petition against the project. Tim Karpoff made a statement at the BCC hearing and we were hopeful that a lot of the steering committee members would reach out to their networks as well. That's why the petitions should count as the public input. Clara Pena a steering committee member was told from the committee that the Town of Atrisco Grant-Merced was not a legitimate group. Clara took it on her own and it took four months to verify they were a legitimate group.

Files 12-13. At the CPC hearing July 3, 2013 during the debate on the roundabouts and the project. That lasted over 20 minutes, they knew if they passed the project. They were taking the rights away from the public that they only could make a recommendation on what type of intersection they wanted. The staff was aware of the laws for federal funding. One, There is an extensive public process that required under federal law, and that would take into account whether or not the public is being heard. Two, Because this is a federal funding project. Based on the public's input if there is a large objection to this type of intersection generally that will not happen. The staff's jobs are position is that we have tried to notify every citizen or political jurisdiction within area. In the creation of a plan, we really like to have specific input, because we can work with that. We can try to incorporate that into the plan the public participate and have specific concern that we can address within the plan. I am sure those laws apply to the federal funding grant they receive to help develop the bridge boulevard corridor. They need to prove why that law does not apply to that project with documents.

This goes to the credibility of Art Delacruz and the staff. Public official have a duty to allow all members of the public to attend the public body's meetings. The OPEN MEETINGS ACT, the public official knows the way it is written they have a choice on the articles of the public meetings notices. He could advertise it with the specifics that would bring out the public. They could have the minimum of advertise in the articles were only a few people will attend the meetings. If he uses the minimum in the articles, then he knows he is not allowing all members of the public to attend the meetings. When they do not document the public's opinion when they are against the project. Then there taking their rights away from being heard on these projects. This way it is easier to pass these projects. Art Delacruz refused to answer my question on the IPRA. I filed on 1-25-16 about did you leave out the roundabouts and the major issues of the project. Because of the controversy on Candelaria and Rio Grande on the roundabout.

At the public hearing meeting on 1-13-16 Tim Karpoff and the staff, they did not lead Pete Rivera going on the official public record comments. This can be verified by asking Tim and the staff, and the public that did witness it that were at the meeting. Then that hearing should be voided because that is a violation. Files 12-13. Tim at the CPC hearing he did lie when he made this statement. So we had about 12. Steering committee meeting with four public meetings. Each of them had about a hundred people at each. I have more, but I believe there is enough information of violations and maybe criminal act that this project should be voided. This project should be investigated by the attorney general's office and a federal agency.

To Dylan Lange Attorney General Office

Fax 505-827-6478

9-29-16

Pete Rivera just letting you know I have not heard or received any documents from Art Delacruz, or public works. Have you received or heard from Delacruz. Let me know what the next procedure is on the violations. Inspection of public record and violation on the Gatewood sidewalk project.

I also sent you another refile on the 26th it was Monday on the bridge boulevard corridor project. Please let me know if you received it.

A handwritten signature in cursive script that reads "Pete Rivera". The signature is written in black ink and is positioned in the lower-left quadrant of the page.