

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

January 31, 2020

VIA ELECTRONIC MAIL ONLY

Gayla Boomer
2108 San Pablo Rd. NE
Rio Rancho, NM 87144
Email: gboomer102@aol.com

Re: Open Meetings Act Complaint – Child Protective Services Task Force

Dear Ms. Boomer:

This letter addresses the complaint you filed with the Office of the Attorney General alleging that the Child Protective Services Task Force (hereinafter the “Task Force”) of the New Mexico Children, Youth & Families Department violated the Open Meetings Act (“OMA”), NMSA 1978, Sections 10-15-1 to -4 (1974, as amended through 2013). More specifically, you alleged that the Task Force violated OMA in connection with its “Executive Meeting” held on or about December 19, 2019. Having carefully considered the relevant facts and applicable law, we conclude that your complaint has not identified a violation of the OMA because the Task Force is not legally subject to the requirements of the statute.

Background

The Child Protective Services Task Force was created pursuant to House Joint Memorial 10 from the 2019 Legislative Session. *See* H.J.M. 10, 54th Leg., 1st Sess. (N.M. 2019), *available at* <https://www.nmlegis.gov/Sessions/19%20Regular/final/HJM010.pdf>. That memorial requested the Secretary of the Children, Youth & Families Department (“CYFD”) to convene a task force for the purpose of making recommendations to generally improve “the safety and well-being of children in the care of the child protective services system.” *Id.* Although the Task Force was requested to produce these recommendations, House Joint Memorial 10 did not obligate CYFD to follow or adopt the Task Force’s recommendations, nor did it vest the Task Force itself with any final authority over any issues or policies. Similarly, House Joint Memorial 10 did not specify the number of members that would comprise the Task Force, although it did direct CYFD’s Secretary

to include a number of enumerated participants (such as “two kinship caregivers” and “an expert representative of law enforcement”). *Id.*

Your complaint alleges that the Task Force violated OMA in connection with its December 19, 2019 meeting, when it held a self-described “Executive Meeting” to discuss “internal education, strategy and planning for deliverables.” Your complaint states that this meeting was closed the public. Our disposition of your complaint – and our opinion of whether the Task Force violated OMA – depends on the fundamental question of whether the passage of House Joint Memorial 10 renders the Task Force subject to OMA.

Analysis

In New Mexico, the Open Meetings Act provides the public with access to “the *greatest possible information* regarding the affairs of government and the official acts of those officers and employees who represent them.” Section 10-15-1(A) (emphasis added). *See also Kleinberg v. Bd. of Educ. of Albuquerque Pub. Sch.*, 1988-NMCA-014, ¶ 18, 107 N.M. 38, 42, 751 P.2d 722, 726 (noting that “the public policy of this state, as expressed in the Act, is to conduct the public's business in the open, allowing persons, so desiring, to attend and listen to the proceedings”). In line with the public policy behind the statute, OMA is broadly construed in favor of transparency. *See New Mexico State Inv. Council v. Weinstein*, 2016-NMCA-069, ¶ 73 (explaining that courts “construe the OMA’s provisions broadly and their exceptions narrowly” in accordance with the public policy underlying the statute) and Attorney General’s Open Meetings Act Compliance Guide, p. 7 (8th ed. 2015) (“OMA Guide”) (noting that “doubt as to the proper course of action should be resolved in favor of openness whenever possible”).

By its terms, the Open Meetings Act applies to any “public body.” *See* § 10-15-1(A) (providing that “All meetings of any public body except the legislature and the courts shall be public meetings, and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings.”). OMA itself effectively provides a definition for the term “public body” in Section 10-15-1(B), where the statute provides that it applies to “[a]ll meetings of a quorum of members of any board, commission, administrative adjudicatory body or other policymaking body of any state agency or any agency or authority of any county, municipality, district or political subdivision.” Although the term may be defined slightly differently for the purposes of other statutes,¹ a particular entity must satisfy the definition set forth in Section 10-15-1(B) in order to be legally subject to OMA’s requirements.

With regard to this analysis, we find two clear distinctions between the Task Force and a “public body” as that term is defined in OMA. First, the Task Force is not a “policymaking” entity because it holds a purely advisory role and exists only to make recommendations to real policymakers. Section 10-15-1(B). Although our Office has previously embraced an expansive interpretation of

¹ See, for example, Section 14-2-6(F) (defining “public body” as “the executive, legislative and judicial branches of state governments and all advisory boards, commissions, committees or entities created by the constitution or any branch of government that receives any public funding, including political subdivisions, special taxing districts, school districts and institutions of higher education”).

the word “policymaking” to include all public bodies possessing even small amounts of “decision-making authority,” we have consistently opined that purely advisory bodies are not generally subject to OMA. *See* N.M. Att’y Gen. Op. 90-27 (1990) (concluding that the City of Las Cruces Selection Advisory Committee was a policymaking body subject to the requirements of OMA because it possessed the authority to narrow the field of contract bidders and “eliminate, select, and rank certain professional firms before providing them to the full council for final approval”). *See also* OMA Guide, p. 8 (explaining that, “Meetings of a committee of a public body ... may not be subject to the provisions of the Act if the committee engages solely in fact-finding, simply executes the policy decisions or final actions of the public body and does not otherwise act as a policymaking body.”).

In this case, we can discern nothing in House Joint Memorial 10 that would vest the Task Force with any policymaking or decision-making authority of any kind. The Task Force’s recommendations are not binding on CYFD or any other policymaker, nor do they have any binding effect on the public at large. Further, OMA effectively prohibits any public body from taking any action in the absence of a quorum. *See* § 10-15-1(B). Because House Joint Memorial 10 does not specify the number of members to be appointed to the task force, but rather generally requests that CYFD create it, it is impossible to discern what a quorum of its members would constitute. For these reasons, our opinion is that the Task Force lacks policymaking authority and therefore does not satisfy the definition of a public body for the purposes of OMA.

This conclusion is consistent with our Office’s longstanding observation, stated most prominently in our OMA Guide, that an entity lacking in policymaking authority may still constitute a public body for the purposes of OMA if the legislature should so require. *See* OMA Guide, p. 8-9 (explaining that, “A committee created by statute is a public body subject to the Open Meetings Act because the legislature considered the committee’s functions important enough to provide it with a separate existence as a public body, and because the committee is not simply created by a public body as a means to carry out that body’s business.”). *Id.* House Joint Memorial 10 merely requested that CYFD create a task force, as opposed to legislatively creating a public body separate from CYFD. *See* H.J.M. 10, 54th Leg., 1st Sess. (N.M. 2019). Thus, we cannot interpret the statute as legally binding on the Task Force. Section 10-15-1(B).

Conclusion

Because it is our opinion that the Task Force is not a “public body” as that term is defined in the Open Meetings Act, we must conclude that the meetings of the Task Force are not legally subject to the requirements of the statute. However, we would note that, although it is not legally obligated to do so, the Task Force could, in the interest of transparency, voluntarily choose to abide by OMA. In any event, we conclude that your complaint has not identified a violation of OMA, and we consider this matter closed.

The Office of the Attorney General appreciates you bringing possible violations to this office and will welcome any further complaints you may submit. If you have any concerns in the future, please do not hesitate to contact us. Additionally, the OMA Guide is available on the website of the Office of the Attorney General at www.nmag.gov.

Gayla Boomer
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Sincerely,

A handwritten signature in blue ink, appearing to read "John Kreienkamp". The signature is written in a cursive style with a large, looping "K" and "P".

John Kreienkamp
Assistant Attorney General

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

Electronic Complaint Submission

Submission Detail

ECS Reference Number NMOAG-ECS-20191216-b126

Final Submit Date 12/16/2019 7:06:32 PM

Disclosure of your complaint: This complaint is a public record, thus available under provisions of the NM Inspection of Public Records Act.

Disclosure to other entities: This complaint, its content, and other information may be disclosed to other law enforcement and regulatory agencies.

I understand this complaint and any submitted documents are public record and may be shared with other law enforcement and regulatory agencies.

DECLARATION: By submitting this form, I attest that the information in this complaint is true and accurate to the best of my knowledge. I further understand that by submitting this form I may be called to testify as a witness in this matter.

I understand declaration statement.

The New Mexico Office of the Attorney General cannot give legal advice regarding this complaint and will not act as your personal attorney. If you have questions regarding your rights please contact a private attorney.

Submission of this complaint is not confirmation that an investigation will be initiated.

Complaint Detail

Complaint Type Open Meetings (OMA) Complaint

Retained Attorney

Parties

Complainant

Gayla Boomer

Person

Address

2108 San Pablo Rd NE
Rio Rancho, New Mexico

Contact information

gboomer102@aol.com
(708) 955-8083

Complaint against

Child Protective Services Task Force Meeting (CYFD) - Executive Committee meeting closed to public

Public Body (Government Entity)

Address

P.O. Drawer 5160
Santa Fe, NM 87502-5160, New Mexico 87502-5160

Contact information

If this is a policy developing body, why do they need to be trained? If this is a public task force, can they legally close the meeting to the public? Child Protective Services Task Force Meeting, Dec. 19th For Immediate Release 12.16.2019 CHILD PROTECTIVE SERVICES TASK FORCE Executive Meeting Thursday, December 19, 2019 @6:00 PM to 7:30 PM The HJM-10 Task Force will have its 2nd meeting on Thursday, December 19, 2019. This meeting will be an Executive Session for Task Force Members, focusing on internal education, strategy and planning for deliverables. We will review topics that arise out of the first Launch Meeting and identify projects moving forward. Future meetings will be open to members of the public. ###

Complaint Specifics

Specific date(s) of OMA violation(s)	12/19/2019
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
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

Transaction

Documents

*** END OF COMPLAINT ***
