

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
ATTORNEY GENERAL

---

December 2, 2020

**VIA ELECTRONIC MAIL ONLY**

City of Belen Council  
Dorothy Flores, City Clerk  
100 South Main Street  
Belen, NM 87002-3636  
Email: [Dorothy.Flores@belen-nm.gov](mailto:Dorothy.Flores@belen-nm.gov)

**Re: Self-reported Violation of the Open Meetings Act Complaint – City of Belen Council**

Dear Ms. Flores:

Thank you for informing the Office of the Attorney General of a potential violation of the Open Meetings Act (hereinafter “OMA”), NMSA 1978, Sections 10-15-1 to -4 (1974, as amended through 2013), by the City of Belen Council (the “Council”). Specifically, the Council self-reported that it engaged in a rolling quorum, in violation of OMA, in February 2020. Having carefully reviewed this report and the supporting documentation, we do not believe that the emails provided to us by the Council establish a violation of OMA. We appreciate, however, the Council’s willingness to admit its possible error, and we encourage it to remain cognizant of its statutory responsibilities moving forward.

As outlined in the Council’s report to our Office, the City of Belen Police Chief sent an email to all five members of the Council on February 18, 2020, requesting that it hold a “town hall style meeting” on a future date to be determined. The Police Chief’s email asked if any Council members were opposed to such a public meeting and stated that he would soon communicate to them a possible meeting date. Later that day, in an email sent to all of the other members of the Council, one member responded by stating as follows:

I think anytime that we can bring the community together to discuss an important issue, we should. Open dialogue may also help the public understand the current

status of the department and the strides being made to address crime in Belen.  
Thank you for offering to do this.

Two days later, one additional member of the Council replied privately to the Police Chief, in an email that does not appear to have been sent to the other Council members, expressing his support for holding a town hall meeting but stating nothing further. The Council has stated to us that no further emails were sent among its members, although the City Mayor emailed the staff requesting that they caution the other members of the Council “not to ‘reply all’ to an email.”

As you are aware, the Open Meetings Act provides that all discussions of public business must take place after notice has been provided to the public. *See* § 10-15-1(D) (providing that, “Any meetings at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs and at which a majority or quorum of the body is in attendance, and any closed meetings, shall be held only after reasonable notice to the public.”). In practice, this means that a public body violates the statute whenever a quorum discusses public business without providing prior notice to the public.

It is possible for a quorum of a public body to effectively discuss public business among one another without actually being physically present at the same time and place. This is more commonly referred to as a “rolling quorum,” which is by definition a violation of OMA because it involves a discussion amongst a quorum outside of a properly-noticed meeting. A rolling quorum consists of a series of individual discussions among members of a public body that, taken together, involve a quorum and relate to public business. *See* La. Att’y Gen. Op. No. 12-0177 (2012) (describing the rolling quorum as “a device used to circumvent the Open Meetings Law so as to allow a quorum of a public body to discuss an issue through the use of multiple discussions of less than a quorum”) and R. I. Att’y Gen. Op. No. 05-01 (2005) (explaining that a rolling quorum “typically involves the situation where public business is conducted in a series of individual encounters that may not constitute a quorum, but which collectively do so”). Our OMA Guide provides an example: “if three members of a five member board discuss public business in a series of telephone or email conversations, the discussion is a meeting of a quorum.” OMA Guide, p. 8.

Here, it is readily apparent that the emails provided to us by the Council do not rise to the level of a rolling quorum. The first email was sent by the Police Chief, not a member of the Council, and only one actual member of the Council responded to the other members (“reply all”). Although one further member replied, it is our understanding that he did so privately to the Police Chief, and even if he had responded to the remaining members of the Council this still would have represented communications from only two out of the Council’s five members. In other words, a quorum of the Council did not communicate.

In addition, irrespective of how many members participated in this discussion, the emails provided to us by the Council likely did not constitute, for the purposes of OMA, a discussion of public business. We think it is highly unlikely that a court would conclude that scheduling a future meeting constitutes the “formulation of public policy” so as to violate the Open Meetings Act.

Section 10-15-1(A). While a conversation about scheduling certainly and easily could drift into a discussion of substantive public business (and in this case the one Council member's email referring to "the strides being made to address crime in Belen" might have done so), in general an email proposing a meeting and requesting issues to place on the agenda is not a discussion of public business. As a result, even outside of the number of discussion participants, we do not find that the emails provided to us by the Council constituted a rolling quorum in violation of OMA.

Although we have not found that the emails provided to us constitute an OMA violation, we offer a note of caution to the Council. The City Mayor was correct, at least generally, that it is unwise for a quorum of members of a public body to exchange emails with one another, even on such a relatively benign issue as scheduling a future meeting. If nothing else, such communications may give rise to the appearance of a violation. They may also give rise to an actual violation of OMA, which would occur if the conversation drifted into any matter of public business. For both of these reasons, the best practice is for a member of a public body to respond only privately to an email sent from staff to the public body as a whole. Staff should also consider sending such emails with the members of the public body blind carbon copied ("bcc'd").

In any case, we commend the Council for erring on the side of transparency and reporting this matter to our Office. We encourage the Council to continue to act in accordance with both the textual requirements and the spirit of the Open Meetings Act. Finally, we suggest the Council consider disclosing these particular communications at its meeting.

If you have any questions, please do not hesitate to contact us. Additionally, our OMA Guide is available on the website of the Office of the Attorney General at [www.nmag.gov](http://www.nmag.gov).

Sincerely,



John Kreienkamp  
Assistant Attorney General

Enclosure

cc: Jerah R. Cordova, Mayor  
[jerah.cordova@belen-nm.gov](mailto:jerah.cordova@belen-nm.gov)