

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

January 6, 2020

VIA ELECTRONIC MAIL ONLY

Mr. Lee Einer
507 S. Pacific St.
Las Vegas, NM 87701
Email: einerlee@yahoo.com

Re: Open Meetings Act Complaint – Las Vegas City Council

Dear Mr. Einer:

We have reviewed your complaint sent to us on July 31, 2018, alleging that the Las Vegas City Council (hereinafter “the Council”) violated the Open Meetings Act (“the OMA”), NMSA 1978, Sections 10-15-1 to -4 (1974, as amended through 2013). According to your complaint, the Council held meetings on March 27, 2018, and March 28, 2018, but failed to comply with the OMA’s notice and agenda requirements. We are also in receipt of the Council’s response to our inquiry regarding this matter which stated that the Council did not hold meetings on those dates and that the members of the Council were not present for those public hearings. *See* Letter dated August 21, 2018 (“Response”). Based on the facts available to us, we have concluded that the Council did not violate the OMA in the manner alleged by your complaint.

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 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”). To that end, all meetings of any public body that are “held for the purpose of formulating public policy” are subject to the requirements of OMA. Section 10-15-1(B). Specifically, OMA applies to all meetings consisting of at least a quorum of any public body. *Id.*

In this case, the Council has stated in response to our inquiry that a quorum was not present at the alleged meetings on March 27, 2018, and March 28, 2018. *See* Response (stating that “[t]he City

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Council was not present at any of the meetings”). Rather, these meetings were apparently held pursuant to Community Development Block Grant guidelines to solicit public input with respect to the City’s grant application. *Id.* Because the OMA applies only to meetings of a quorum of a public body and no quorum was present, the OMA did not apply to the City Council at these meetings. *See* NMSA 1978, § 10-15-1(B) (providing that “[a]ll meetings of a quorum” of a public body are subject to the OMA’s requirements). As a result, we find that the Council did not violate the OMA as alleged in your complaint.

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. If you have any questions regarding this determination or IPRA in general, please let us know.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Kreienkamp", is written over a light blue rectangular background.

John Kreienkamp
Assistant Attorney General

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Electronic Complaint Submission

Submission Detail

ECS Reference Number NMOAG-ECS-20180731-b175

Final Submit Date 7/31/2018 7:30:12 AM

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

Mr Lee Einer

Person

Address

[REDACTED]

Contact information

[REDACTED]
[REDACTED]

Complaint against

City of Las Vegas, NM

Public Body (Government Entity)

Address

1700 N. Grand Ave
Las Vegas, New Mexico 87701

Contact information

(505) 454-1401
www.lasvegasnm.gov

Complaint Specifics

Specific date(s) of OMA violation(s)	3-27-2018, 3-28-2018
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 was not published or posted in a place and manner accessible to the public
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
Other Violation	Tuesday, July 31, 2018 NMAG OMA COMPLAINT To Whom it May Concern: Please review the minutes attached to the agenda linked here- http://lasvegasnm.gov/July%2018,%202018%20Council%20Packet.pdf The City of Las Vegas called four public hearings to determine what Community Development Block Grant projects would be applied for. According to the June 20, 2018 minutes, those meetings were held on March 27 and 28, 2018, at 10 am and 5 pm. This is stated on page 10 of the June 20, 2018 minutes. On page 6 of the June 13, 2018 minutes, interim Community Development Director Virginia Marrujo stated that no members of the public attended these public hearings. I checked the city's website. No notice of the public hearings was posted on the city's website as required by the Open Meetings Act. I also checked for any posting of the public hearing dates, times and topics in the Las Vegas Optic, our primary newspaper in local circulation. I could find nothing there either. This is particularly concerning, not just because it is an apparent OMA violation, but because holding at least one public hearing is a requirement of the Community Development Block Grant program. The CDBG manual has a sample public notice form, and I believe at least ten days notice is required. So in addition to the OMA issue, the NMDFA may need to look at this issue as well.

Transaction

Documents

*** END OF COMPLAINT ***