

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

August 30, 2019

VIA ELECTRONIC MAIL ONLY

Lenora Chavez
P.O. Box 1983
Albuquerque, NM 87103
Email: chavezlenora57@gmail.com

Re: Open Meetings Act Complaint – Office of the Governor

Dear Ms. Chavez:

The Office of the Attorney General, Open Government Division (“OGD”) has received your complaint alleging violations of the Open Meetings Act (“OMA”), NMSA 1978, Sections 10-15-1 to -4 (2013) by the Office of the Governor (“the Governor”) and the PERA Solvency Task Force (the “Task Force”). The OGD is charged with enforcement of the OMA and in that capacity has reviewed the facts and allegations in your complaint. *See* NMSA 1978, § 10-15-3(B).

The Open Meetings Act is intended to provide 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). The OMA is applicable to any action taken by “any board, commission, committee or other *policymaking* body.” Section 10-15-3(A) (emphasis added). However, it does not necessarily apply to all actions taken by every public employee or governmental agency; it must be a public body that has policymaking authority. *See* Attorney General’s Open Meetings Act Compliance Guide, p. 8-9 (8th ed. 2015).

Based on the facts you have provided to us, this case involves a meeting of the Task Force on April 17, 2019. We understand the Task Force is an advisory body created by Governor Lujan Grisham’s Executive Order 2019-005 (February 18, 2019).¹ While the Task Force is charged with making “recommendations” as to future PERA solvency, it does not have

¹ Available online at https://www.governor.state.nm.us/wp-content/uploads/2019/02/EO_2019-004.pdf.

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any direct policymaking authority. *See* Executive Order 2019-005, p. 4-5. Therefore, as a purely advisory body, the Task Force is not subject to the OMA. For this reason, we conclude that your complaint has not identified a violation of the 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.

Sincerely,



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-20190427-dc99
Final Submit Date	4/27/2019 8:02:37 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

Ms. Lenora Chavez

Person

[REDACTED]

[REDACTED]@gmail.com
(505) 831-0108

Complaint against

State of New Mexico - Governor of New Mexico

Public Body (Government Entity)

Address

State Capital Building , Suite 400
Santa Fe, New Mexico 87501

Contact information

diego.arencon@state.nm.us
(505) 476-2220

Complaint Specifics

Specific date(s) of OMA violation(s)	April 17, 2019
Deficiencies in notice of the meeting	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
Agenda	Agenda was not available seventy-two (72) hours prior to the meeting
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



OPENMEETINGACTCOMPLAINT4172019.pdf

Complaint on Open Meetings Act 4172019

Comments

Open Meeting Act 10-15-1 A and B

*** END OF COMPLAINT ***

April 27, 2019

Dear Attorney General Hector Balderas,

My name is Lenora Chavez. I am a retired member of PERA. On February 20, 2019 at least 20 retirees met with Mr. Diego Arencon on the 4th of the round house and he personally stated and invited all retirees to the Solvency meetings. I went to the PERA Task Force meeting on April 17, 2019 in Santa Fe at the Governor's office. I drove up from Albuquerque. The meeting was supposed to be open to the public, but I was not allowed to attend the meeting. I recognized a man that was allowed to attend the meeting even though he is not a member of the task force. His name is Greg Trujillo and I know who he is because I see him at the PERA board meetings which I attend, he is a PERA employee and he handles all the technical issues for the board meetings.

When I was not allowed to go into the meeting I waited and when they came out Diego Arencon the man that is the chair and was appointed by the governor told us that it was a mistake that we were not allowed in the meeting and it would not happen next time. The task force is discussing public policy issues that can affect me personally. They are going to make recommendations for changes to PERA benefits and I should be permitted to listen to them discuss the issues.

I voted for both you and Michelle Lujan Grisham. When she was elected, she said her government would be transparent. It is only 4 months since she was put in office and she allowed a closed meeting of her task force. This is not right. This is the governor's task force, but it is for the people. Every member of the task force is a policy member body. What are they hiding? When she was a candidate Governor Lujan Grisham pledged for transparency as a priority when she was in TV debate with Steve Pearce on October 30, 2018. She called it a culture of openness. Holding the task force meetings closed is not a culture of openness.

I am requesting that you act quickly to make sure I and anyone else who wants to can attend the task force meetings to listen while they discuss these important matters that affect so many NMPERA members. I also request that you penalize the task force chairman Mr. Diego Arencon for not allowing us to attend the meeting that is a serious violation of the open meetings law that you enforce.

Thank you

Lenora Chavez - Retired PERA member

chavezlenora57@gmail.com

(505)831-0108

cc - Governor Lujan Grisham

Joe Monahan

KRQE News

KOAT News

Santa Fe New Mexican