

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

October 16, 2019

Citizens for an Open and Responsible Edgewood
Adrian Terry
P.O. Box 846
Edgewood, NM 87015

Re: Open Meetings Act Complaint – Town of Edgewood Council

Dear Mr. Terry:

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 Town of Edgewood Council (“the Council”). 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) (authorizing the Office of the Attorney General to enforce all provisions of the Open Meetings Act).

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). To that end, the OMA requires that all public bodies keep minutes of each meeting containing at least “the date, time and place of the meeting, the names of members in attendance and those absent, the substance of the proposals considered and a record of any decisions and votes taken that show how each member voted.” Section 10-15-1(G). While the OMA does not require public bodies to make an audio or video recording of its meetings, they must accommodate members of the public who wish to do so. *See* § 10-15-1(A) (providing that, “Reasonable efforts shall be made to accommodate the use of audio and video recording devices.”).

Your complaint alleges that, although previously audio recordings of meetings were posted online in a readily-usable file format, the Council has recently begun posting these recordings exclusively on YouTube. Notwithstanding that this may very well be inconvenient to some members of the public, and while providing meeting recordings to the public in an accessible file format may very well be a best practice for all public bodies, the fact remains that the OMA simply does not require

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the Council to keep audio recordings of its meetings, much less in a particular file format. For this reason, we conclude that you have not identified a violation of the OMA.

With that being said, we would note that several options remain available to the Citizens for an Open and Responsible Edgewood as it pertains to obtaining audio recordings of Council meetings. First, as noted previously, public bodies are required by the OMA to make reasonable accommodations for members of the public who wish to personally record open meetings. *See* § 10-15-1(A). This would allow the Citizens for an Open and Responsible Edgewood to potentially record Council meetings without having to rely upon the public body's provision of the audio file. Additionally, you may be able to obtain the audio file in a different file format through the Inspection of Public Records Act ("IPRA"), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2018), should the Council be maintaining the recording in the file format you request. *See* § 14-2-9(B) (requiring public bodies to "provide the electronic record in the file format in which it exists at the time of the request").

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,

A handwritten signature in blue ink, appearing to read "John Kreienkamp". The signature is stylized and cursive.

John Kreienkamp
Assistant Attorney General

U.S. Mail

March 27, 2019

Honorable Hector Balderas
New Mexico Attorney General's Office
P.O. Drawer 1508
Santa Fe, NM 87504



Re: Posting of Audio Recordings of Town Council Meetings on YouTube
Town of Edgewood

Mr. Attorney General:

I am a member of Citizens for an Open and Responsible Edgewood ("C.O.R.E."), which is a citizens' association comprised of residents and business owners in the Town of Edgewood ("Town"), as well as others who are affected or impacted by Town actions.

The fundamental purposes and objectives of C.O.R.E. include facilitating open and transparent governmental action, protecting the interests of local citizens, and preventing waste, fraud, and abuse.

This correspondence is sent in furtherance of these objectives.

Background

In January 2019, C.O.R.E. began making YouTube videos to inform Edgewood residents about important issues being considered, and actions being taken, by the Edgewood Town Council and the impact of these issues and decisions on the local community.

Some of the C.O.R.E. videos use clips from audio recordings of Town Council meetings, so our viewers can hear the deliberations and decisions of elected officials in their own words.

These audio recordings used to be available on the Town's website in a format that could be downloaded and saved by members of the public.

The Problem

In or about March 2019, the Town changed the format of the audio recordings of Council meetings, which are now only available through a link to YouTube; and, the recordings can only be heard or reviewed by using YouTube's platform.

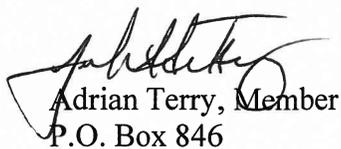
As a result of the change, audio recordings of Town Council meetings can no longer be downloaded or saved to a computer or other electronic device without additional effort and a requisite level of technical skill.

Moreover, it may also be the case that using, copying, or re-producing portions of recordings of Town meetings are subject to, or limited by, YouTube's rules or policies.

By way of this letter, we are requesting the Attorney General's Office to investigate whether it is legal, or appropriate, for a local government to use YouTube to post public information, including audio recordings of Town Council meetings, where YouTube's rules, policies, or community guidelines could limit access to, use of, or comments related to governmental actions.

Given that your office is responsible for ensuring open and responsible governmental action, including access to public information to ensure an informed electorate, we are asking you to defend and protect the interests of the public, including residents of Edgewood, by prohibiting the Town from posting recordings of its meetings exclusively on YouTube.

Respectfully Submitted,



Adrian Terry, Member
P.O. Box 846

Edgewood, NM 87015
(505) 336-1290

Citizens for an Open and Responsible Edgewood

cc: Governing Body, Town of Edgewood

C.O.R.E.
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Honorable Hector Balderas
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