



Attorney General of New Mexico

GARY K. KING
Attorney General

ALBERT J. LAMA
Chief Deputy Attorney General

May 6, 2010

Ms. Casandra Fresquez, City Clerk
City of Las Vegas
1700 N. Grand Ave.
Las Vegas, NM 87701-4731

**Re: Determination of Inspection of Public Records Act and Open Meetings Act
Complaint-Mr. Lee Einer**

Dear Ms. Fresquez:

This determination addresses the complaint that Mr. Einer filed with our office alleging that the City of Las Vegas ("City") violated the Inspection of Public Records Act, ("IPRA"), NMSA 1978, Section 14-2-1 through 14-2-12 and the Open Meetings Act, ("OMA"), NMSA 1978, Section 10-15-1 through 10-15-4. The specific allegations included: (1) the City did not disclose requested emails of the Mayor pursuant to IPRA and (2) based on Mayor emails that Mr. Einer received from other sources not including the City, the Mayor established rolling quorums by communicating with a quorum of city councilors by email and discussing public business issues in violation of OMA.

We no longer need to address the IPRA allegation because the City has released all of the Mayor's emails that had been sent from his personal email account to at least three councilors, following receipt of my letter to the City dated July 31, 2009. In that letter I explained that it was our interpretation that the Mayor's emails, without regard to the email account he used, were public records subject to disclosure if they related to and discussed public business. While the City did not agree with my interpretation, it nevertheless released the requested documents to Mr. Einer.

Mr. Einer's March 2, 2009 complaint alleges that the Mayor violated the OMA by establishing a rolling quorum on several occasions through the emails he sent to councilors from his personal email account. As discussed below, it appears that the City may have violated the OMA.

Pursuant to OMA, Section 10-15-1(B), meetings of a quorum of a public body must be open if the body is discussing public business, formulating public policy or taking any authorized action. In reviewing the Mayor's emails I looked for any one of these three factors in determining whether the above statute had been violated.

The City Council is composed of five persons. Consequently, three members of the Council is a quorum. Under Section 10-15-1(B), three members of the Council may not formulate public policy, take action or discuss public business among themselves outside of a public meeting. A meeting of a quorum may exist for purposes of the OMA even if the members are not present together at the same time and place. Members of a public body may not circumvent the OMA's requirements by taking action or discussing public business in a series of one-on-one conversations by telephone, regular mail or email. See Attorney General's Open Meetings Act Compliance Guide, Example 4, p.9 (6th ed. 2008). One-way email communications by a member of a public body for informational purposes or email exchanges involving less than a quorum of the public body do not violate OMA.

Several of the Mayor's email messages made available for our review appear to be one way communications intended to provide information to other Council members and City staff. For example, on January 23 and 28, 2009, the Mayor sent email messages to two or more members of the Council regarding the placement of the Utility Director on administrative leave. There is no indication that the Council members responded to the Mayor, and, at least facially, the messages do not reveal a discussion of public business among a quorum. The messages, by themselves, do not suggest a violation of OMA.

In contrast, the Mayor's email messages responding to communications by other Council members amount to a discussion of public business among a quorum. On February 6, Councilor Feldman sent an email message to the Mayor and Councilor Moore requesting evidence and reasons from the Mayor about why the Mayor suspended the Utility Director. The Mayor sent a response to Councilor Feldman reiterating the reasons for the suspension that the Mayor had provided previously in a public meeting. The Mayor copied Councilors Moore and Madrid on the response. Because it involved a quorum of the Council members, this exchange constituted a private meeting of the Council in violation of OMA.

Similarly, on February 12, 2009, Councilor Moore initiated an email exchange with the Mayor by inquiring about the procedure the Mayor would employ in hiring the new city manager. The Mayor made a brief response about waiting for background checks before bringing names to the Council. Councilor Moore's discussion involved her desire to have the Council more involved in the process. Because Councilor Moore and the Mayor copied a quorum of the Council as they discussed this public business, this also violates Section 10-15-1(B) of the OMA.

Ms. Cassandra Fresquez, City Clerk

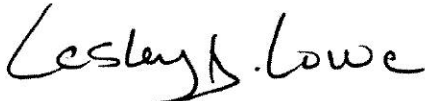
May 6, 2010

Page 3 of 3

Mr. Einer in his complaint dated March 23, 2009 brought to our attention a memo from Carlos Quinones, Las Vegas City Attorney, to all Councilors dated March 9, 2009. In this memo, Mr. Quinones advised the Council about email communication and responsibilities under the OMA, and he also discussed the possibility of a Councilor disclosing confidential information to the press in violation of the Code of Ethics. This email discussion is not in violation of OMA. The City's attorney can communicate with Council members on a one-on-one basis, and there would only be a violation of OMA if there was evidence that there was a discussion of this public business among a quorum of the Council members. The information available to us at this time does not show that any Council member responded to the attorney's email.

The City can cure the above two OMA violations by summarizing the discussion of the material in the emails of February 6, 2009 and February 12, 2009 at a subsequent public meeting. See Section 10-15-3(B). Please provide me with the minutes of the meeting reflecting the corrective action. If you have questions about the matters discussed in this letter, or about OMA in general, do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Lesley J. Lowe". The signature is written in a cursive, flowing style.

LESLEY J. LOWE
Assistant Attorney General

cc: Mr. Lee Einer, Las Vegas Optic