

For Immediate Release:

March 17, 2020

Contact: Matt Baca -- (505) 270-7148

AG Balderas Issues Guidance to Public Entities Regarding Open Meetings Act and Inspection of Public Records Act Compliance During COVID-19 State of Emergency

Santa Fe, NM---Today, Attorney General Balderas issued the following guidance to public entities across the State of New Mexico regarding their ongoing obligations to comply with the Open Meetings Act (OMA) and the Inspection of Public Records Act (IPRA) during the state of emergency in New Mexico.

“The health and safety of New Mexican families is the number one priority across our State, but government must remain transparent and accountable, especially during a state of emergency,” said Attorney General Balderas. “All public entities should follow the guidance of public health officials and make any necessary adjustments to ensure compliance with our transparency laws during this time.”

The Office of the Attorney General advises all public entities subject to OMA to first and foremost follow the guidance of the Department of Health and other health officials to ensure the health and safety of both members of the entity and the public. Accordingly, the most prudent thing to do to ensure compliance with OMA would be to postpone any non-essential public meeting during the pendency of the state of emergency. If, however, a public entity has an emergency or time-sensitive matter to attend to, it may proceed with a virtual meeting under the following guidelines:

- Notice of the meeting must still comply with the mandates of OMA, and it should contain detailed information about how members of the public may attend and listen via telephone, live streaming, or other similar technologies---this should include such detail as relevant phone numbers, web addresses, etc.;
- While provided by alternative means, the public must have some form of access to the meeting to substitute for the access it would during any normally scheduled public meeting subject to OMA;
- Where possible, videoconference is the best alternative method of holding meetings;
- At the start of the meeting, the chairperson should announce the names of those members of the public entity participating remotely;
- All members of the public entity participating remotely must identify themselves whenever they speak and must be clearly audible to the other members of the public entity and to the public;
- The chairperson or person leading the meeting should suspend discussion if the audio or video is interrupted;
- All votes of the public entity should be by roll call vote;

- The public entity should produce and maintain a recording of the open session of the meeting.

To comply with IPRA, the Office of the Attorney General recommends that, first, agencies continue to satisfy IPRA's deadlines and fulfill IPRA requests however possible in light of Department of Health's recommendations and any order pursuant to the state of emergency. Of paramount importance, as is always the case, a public entity's records custodian should communicate promptly with the requesting party, however now regarding the circumstances of production in the context of the state of emergency.

Pursuant to public health guidelines during the state of emergency, public entities should suspend all in-person inspection of public records during the pendency of the state of emergency. Public entities should make every effort to comply with the mandates of IPRA by producing records electronically. If circumstances arise where records are not available electronically and cannot be produced in the timeframes mandated by IPRA, an agency may designate a request as excessively burdensome due to the state of emergency, and communicate to the requestor that the request will be fulfilled as required by IPRA when the state of emergency is lifted.

In short, IPRA very much still applies and all deadlines should be satisfied to the fullest extent possible. Where the state of emergency hampers or otherwise prohibits an entity's ability to respond, we reiterate that the entity nonetheless should communicate promptly with the requester to make alternative arrangements to allow for the inspection of records, in keeping with the spirit and intent of IPRA.

The Office of the Attorney General continues to be available to any public entity that has questions or concerns about OMA and IPRA compliance, and will also continue to take OMA and IPRA complaints during the state of emergency.

###