

January 10, 2025

OPINION  
OF  
RAÚL TORREZ  
Attorney General

Opinion No. 2025-01

To: The Honorable William F. Lang, New Mexico State Ethics Commission

Re: Attorney General Opinion - Open Meetings Act Requirements for State Ethics Commission Meetings

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### **Questions**

If, during closed session, the State Ethics Commission discusses whether to authorize a civil action against a person—in circumstances where the Commission does not believe that alerting the person to the action would be likely to induce the alteration or destruction of evidence—does the Open Meetings Act’s “reasonable specificity” requirement, NMSA 1978 Section 10-15-1(I)(1), require that the Commission specify the target defendant’s name in the meeting agenda?

If yes, does Section 10-16G-13’s confidentiality-of-records provisions create an exception to Section 10-15-1(I)(1)’s requirement that the Commission specify the target defendant’s name in the meeting agenda?

### **Answers**

No, the Open Meetings Act’s “reasonable specificity” requirement for meeting agendas does not necessarily require the State Ethics Commission to specify the target defendant’s name.

Section 10-16G-13 does not represent an exception to the Open Meetings Act’s “reasonable specificity” requirement for meeting agendas but is nevertheless relevant to the question of what level of specificity is “reasonable” for the purposes of meeting agendas.

### **Background**

The issues presented by this opinion request arise out of the language of two separate statutes: the Open Meetings Act (“OMA”), NMSA 1978, Sections 10-15-1 to -4 (1974, as amended through 2013), and the State Ethics Commission Act, NMSA 1978, Sections 10-16G-1 to -16 (2019, as amended through 2021). In interpreting each of these statutes, we begin with the basic principles of statutory interpretation. “The principal command of statutory construction is that the court should determine and effectuate the intent of the legislature.” *State v. Ogden*, 1994-NMSC-029, ¶

24, 118 N.M. 234; *see also* NMSA 1978, § 12-2A-18(A)(1) (providing that “[a] statute or rule is construed, if possible, to . . . give effect to its objective and purpose”). The plain language of a statute “is the primary, essential source of its meaning.” Section 12-2A-19. That being said, we will reject a strictly literal interpretation if it leads to an absurd result. *See Inv. Co. of the Sw. v. Reese*, 1994-NMSC-051, ¶ 13, 117 N.M. 655 (noting that “the Court must look beyond the four corners of the statute” in cases where “the literal meaning leads to conclusions that are unjust or nonsensical”).

The OMA 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 also Kleinberg v. Bd. of Educ. of Albuquerque Pub. Sch.*, 1988-NMCA-014, ¶ 18, 107 N.M. 38 (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”). In line with the public policy behind the statute, the OMA is broadly construed in favor of transparency. *See* Attorney General’s Open Meetings Act Compliance Guide, p. 7 (8<sup>th</sup> ed. 2015) (“OMA Guide”) (noting that “doubt as to the proper course of action should be resolved in favor of openness whenever possible”).

Prior to holding any meeting, any public body is required by the OMA to provide the public an agenda “containing a list of specific items of business to be discussed or transacted at the meeting or information on how the public may obtain a copy of such an agenda.” Section 10-15-1(F). Similarly, before a public body may enter into closed session, an individual member must make a motion to do so that specifies both the applicable OMA exception and “the subject to be discussed . . . with reasonable specificity.” Section 10-15-1(I)(1). Together, these requirements ensure “that interested members of the public are given reasonable notice about the topics a public body plans on discussing or addressing at a meeting.” OMA Guide, p. 17.

Although to date no New Mexico appellate court has addressed the question of precisely how specific an agenda item must be in order to comport with Section 10-15-1(F) and Section 10-15-1(I)(1), our Office has addressed this issue repeatedly in resolving complaints submitted by members of the public. For instance, we have previously opined that the phrase “limited personnel matters” is insufficient for a meeting agenda because, by itself, it identifies neither the individual who is the subject of the discussion nor the type of action or issue the public body is considering. *See* N.M. Atty. Gen. Letter to Kevin Gick, University of New Mexico, at 4 (Aug. 8, 2018) (concluding that “to satisfy the reasonable specificity requirement, the public body must list the specific individual employee to be discussed”). Similarly, we have also expressed our view that, to discuss the purchase, acquisition, or disposal of real property rights in closed session pursuant to Section 10-15-1(H)(8), the public body must provide some description of which property rights are at issue. *See* N.M. Atty. Gen. Letter to Tanya Mangum (Apr. 29, 2019) (concluding that the agenda item for “discussion of the purchase, acquisition or disposal of real property” did not “rise to the level of reasonable specificity because no public member could possibly know which real property the Town intended to discuss based on the agenda”).

Notwithstanding these previous conclusions, however, it is apparent from the text of both Section 10-15-1(F) and Section 10-15-1(I)(1) that the OMA’s specificity requirement is at least somewhat flexible and dependent on the circumstances. Notably, the OMA does not require strict or perfect

specificity but instead “reasonable” specificity. In the past, when interpreting the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2019), our Court of Appeals explained that the word “reasonable” involves “an objective, under-the-circumstances approach” that involves considering all of the applicable “facts and circumstances.” *Franklin v. N.M. Dep’t of Pub. Safety*, 2022-NMCA-058, ¶ 7. This objective, fact-specific analysis is perhaps even more appropriate for the OMA, since New Mexico’s appellate courts have emphasized that this statute “requires substantial, not strict, compliance.” *Parkview Cmty. Ditch Ass’n v. Peper*, 2014-NMCA-049, ¶ 14.

### **Analysis**

#### **The OMA’s “reasonable specificity” requirement for meeting agendas does not necessarily require the State Ethics Commission to specify the target defendant’s name.**

With the above principles in mind, we turn to the question of the agenda specificity required of the State Ethics Commission when considering whether to authorize a civil action. Pursuant to Section 10-16G-9 of the State Ethics Commission Act, the Commission has the statutory authority to file civil actions in court to enforce a number of state laws, including (but not limited to) the Governmental Conduct Act, NMSA 1978, Sections 10-16-1 to -18 (1967, as amended through 2019), the Financial Disclosure Act, NMSA 1978, Sections 10-16A-1 to -9 (1993, as amended through 2019), and the Gift Act, NMSA 1978, Sections 10-16B-1 to -5 (2007, as amended through 2019). These matters may be brought before the Commission by any person “who has actual knowledge of the alleged ethics violation” through the filing of a complaint. Section 10-16G-10(A).

As a general matter, the Commission’s records related to alleged ethics violations are confidential until the Commission’s general counsel has made a finding of probable cause. *See* § 10-16G-13(C) and § 10-16G-10(G); *see also* 1.8.3.16(A) NMAC. To that end, the State Ethics Commission Act specifically authorizes the Commission to “petition a district court to issue subpoenas *under seal* requiring the attendance of witnesses and the production of books, records, documents or other evidence relevant or material to an investigation.” Section 10-16G-5(C)(2). *See also* 1.8.3.16(A)(2) NMAC. Thus, in situations where the Commission is considering initiating an enforcement action but has not yet found probable cause, the State Ethics Commission Act would appear to require the matter to remain confidential until the Commission makes its decision.

Given the language of the State Ethics Commission Act with respect to the confidentiality of complaints and investigations, we conclude that the OMA’s “reasonable specificity” requirement does not necessarily require that the Commission specify a target defendant’s name in a meeting agenda when considering the initiation of a civil action. Looking to the applicable “facts and circumstances,” *Franklin*, 2022-NMCA-058, ¶ 7, we think it would be “reasonable” for the Commission to list the administrative cause number (if available) or the general statute under which the enforcement action might proceed. Neither Section 10-15-1(F) nor Section 10-15-1(I)(1) requires absolute specificity on the part of public bodies, and in our view stating either (or ideally both) the administrative cause number and the general statute would provide reasonable notice to the public of “the topics . . . [the] public body plans on discussing or addressing at a meeting.” OMA Guide, p. 17.

**Section 10-16G-13 does not represent an exception to the OMA’s “reasonable specificity” requirement for meeting agendas but is nevertheless relevant to the question of what level of specificity is “reasonable” for the purposes of meeting agenda.**

With respect to your second question, we would note that Section 10-16G-13’s confidentiality-of-records provisions do not necessarily represent an exception to OMA’s reasonable specificity requirement. Because OMA’s requirement is one of reasonableness, dependent on the applicable facts and circumstances, its reasonable specificity requirement is flexible enough to consider the confidentiality conferred by Section 10-16G-13. Interpreted properly, this confidentiality is entirely consistent with Section 10-15-1(F) and Section 10-15-1(I)(1).

### **Conclusion**

In light of the foregoing, we conclude that the OMA’s “reasonable specificity” requirement for meeting agendas does not necessarily require the State Ethics Commission to specify the target defendant’s name. Further, while Section 10-16G-13 does not represent an exception to the OMA’s “reasonable specificity” requirement for meeting agendas, it is nevertheless relevant to the question of what level of specificity is “reasonable” for the purposes of meeting agendas.

Please note that this opinion is a public document and is not protected by the attorney-client privilege. It will be published on our website and made available to the general public.

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ATTORNEY GENERAL