

**Sunshine Laws - OMA/IPRA  
Tips for Avoiding Complaints**

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**NEW MEXICO OPEN MEETINGS ACT –  
NMSA 1978, CHAPTER 10, ARTICLE 15**

**TIPS:**

- Compliance Guide – Provided by the Office of the New Mexico Attorney General
- Check the edition – Eighth Edition 2015
- Known as a “sunshine law”
- Attorney General is authorized to enforce the provisions of the Act

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**IS IT A MEETING OR JUST SOCIAL?**

“The formation of public policy or the conduct of business by vote shall not be conducted in closed meetings.” – NMSA 1978, 10-15-1 (A)

**Tips:**

- NMSA 1978, 10-15-1 (B)
- Quorum of Board members; and
- Held for the purpose of:
  - formulating public policy**, including development of personnel policy, rules, regulations or ordinances; or
  - discussing public business for the purpose of taking action within the **authority or delegated authority** of the Board.

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### UNABLE TO ATTEND?

"If allowed by law or rule of the public body, a member...may participate in a meeting... by means of a conference telephone or other similar communication equipment..." NMSA 1978, 10-15-1 (C)

**TIPS:**

- Difficult or impossible to attend in person;
- All Board members can hear each other; and
- Members of the public can hear any member who speaks during the meeting.

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### PUBLIC NOTICE OF MEETING

"Any meetings at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs and at which a majority or quorum of the body is in attendance, and any closed meetings, shall be held only after reasonable notice to the public." NMSA 1978, 10-15-1 (D)

**TIPS:**

- Annually determine reasonable notice
  - 10 days – regular meeting
  - 3 days – special meeting
  - Emergency
- Post reasonable notice determination
- Resolution vs Policy

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### PUBLIC NOTICE OF AGENDA

"Meeting notices shall include 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..." NMSA 1978, 10-15-1 (F)

**TIPS:**

- Agenda included with the notice or how to obtain an agenda
- 72 hours prior to the meeting
- Posted on website, if one is maintained
- Specific items of business to be discussed or transacted at the meeting

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**REASONABLE SPECIFICITY OF AGENDA ITEMS**

- “The requirement for a list of specific items of business ensures that interested members of the public are given reasonable notice about the topics a public body plans on discussing or addressing at a meeting.”
- “A public body should avoid describing agenda items in general, broad or vague terms, which might be interpreted as an attempt to mislead the public about the business the public body intends to transact. This is an especially important consideration when a public body intends to act on an agenda item.”

*Open Meetings Act Compliance Guide (Eighth Edition 2015) page 17*

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**CAN THE BOARD DELETE AGENDA ITEMS?**

- “[I]n order to avoid confusion in future meetings where the Board intends not to discuss a matter listed on the agenda—particularly when listed under the executive session – we recommend the Board consider its agenda to delete items that it does not intend to discuss.”

*NM Gaming Control Board (OMA Complaint 02-01-2016)*

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**LONG MEETING? CONSIDER A RECESS!**

“A public body may recess and reconvene a meeting to a day subsequent to that stated in the meeting notice...” NMSA 1978, 10-15-1 (E)

**TIPS:**

- Prior to recessing:
  - Specify the date, time and place the meeting will continue
- After recessing:
  - Post notice of the date, time and place for the reconvened meeting on or near the door of the original meeting and at least one other location
- Only matters appearing on the original agenda may be discussed

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**EXCEPTIONS - CLOSED MEETING**

NMSA 1978, § 10-15-1 (H) (1)-(10) of the Act prescribes the circumstances under which certain meetings, or portions of meetings, are **not** subject to open meetings and **minute-taking** requirements of the OMA.

**TIPS:**

- Reasonable notice - NMSBA, 1978, § 10-15-1 (D);
- Agenda within 72 hours with items to be discussed or transacted - NMSBA, 1978, § 10-15-1 (F)
- Open meeting closed: majority vote, recorded in minutes, state authority for closure and subject(s) to be discussed with reasonable specificity
- Closed meeting: notice and information included in minutes of next meeting

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**COMMON CLOSED MEETING – LIMITED PERSONNEL MATTERS**

NMSA 1978 § 10 -15-1 (H)(2):

- “Limited personnel matters; ...means the discussion of **hiring, promotion, demotion, dismissal, assignment or resignation of or the investigation or consideration of complaints or charges against any individual public employee;**
- provided further that this Subsection is not to be construed as to exempt **final actions** on personnel from being taken at open public meetings; nor does it preclude an aggrieved public employee from **demanding a public hearing.**”

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**REASONABLE SPECIFICITY – LIMITED PERSONNEL MATTERS**

- In *Belen Consolidated School District Board Re: Open Meetings Act Complaint*, the NMAGO concluded that “limited personnel matters” was an **insufficient description** in a closed session agenda item “because it does not provide the public with adequate notice of what business the Board is discussing.” November 20, 2015, Page 2.

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**COMMON CLOSED MEETING –  
ATTORNEY-CLIENT PRIVILEGE**

NMSA 1978 § 10 -15-1 (H)(7):

- “meetings subject to the *attorney-client privilege* pertaining to threatened or pending litigation in which the public body is or may become a participant;”

**TIPS:**

Generally, the public body’s attorney should be present.. either in person or by telephone. In certain limited situations, it may be permissible for a public body to... discuss legal advice about litigation that is given by letter or other written memorandum. In all cases... discussion must involve communications between the public body and its attorney.” *Open Meetings Act Compliance Guide* (Eighth Edition 2015) page 17

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**FOLLOWING COMPLETION OF CLOSED  
SESSION**

“Following completion of any closed meeting, the minutes of the open meeting that was closed, or the minutes of the next open meeting if the closed meeting was separately scheduled, shall state that the matters discussed in the closed meeting were limited only to those specified in the motion for closure or in the notice of the separate closed meeting. This statement shall be approved by the public body under Subsection G of this section as part of the minutes.” NMSA 1987, 10-15-1 (J)

**TIPS:**

- Include statement as an item on the agenda: “The matters discussed in the closed meeting were limited to those stated in the motion to close the meeting. This statement shall be recorded in the minutes of the meeting as required by Section 10-15-1 (J) of the New Mexico Open Meetings Act.”

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**AGENDA EXAMPLE**

- Executive Session - The Board may elect to go into executive session for reasons permitted in the *New Mexico Open Meetings Act*.
  - Limited Personnel Matters* as permitted under Section 10-15-1(H)(2), specifically to discuss candidates the Board may consider to hire as superintendent.
- Report on Executive Session – “The matters discussed in the closed meeting were limited to those stated in the motion to close the meeting. This statement shall be recorded in the minutes of the meeting as required by Section 10-15-1 (J) of the New Mexico Open Meetings Act”.
- Consider taking Action Regarding Executive Session Topic
  - Consider hiring a superintendent.

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## MEETING MINUTES

"The board...shall keep written minutes of all its meetings." NMSA 1978, 10-15-1 (G)

### TIPS:

- Date, time and place of meeting
- Names of members attending and absent
- Substance of the proposals considered and a record of decisions
- Votes taken and how each member voted
- Draft minutes available to the public within 10 days
- Approved at the next meeting where a quorum is present
- Not official until approved

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## THE OPEN MEETINGS ACT

- The Open Meetings Act is located at NMSA 1978, Sections 10-15-1 to 10-15-4.
- The New Mexico Open Meeting Act Compliance Guide is published by the NM Attorney General. The 2015 is available at:  
<http://www.nmag.gov/uploads/files/Publications/ComplianceGuides/Open%20Meetings%20Act%20Compliance%20Guide%202015.pdf>.

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## NEW MEXICO INSPECTION OF PUBLIC RECORDS ACT— NMSA 1978, CHAPTER 14, ARTICLE 2

### TIPS:

- Compliance Guide – Provided by the Office of the New Mexico Attorney General
- Check the edition – Eighth Edition 2015
- Known as a "sunshine law"
- Attorney General and District Attorneys are authorized to enforce the provisions of the Act

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### RIGHT TO INSPECT PUBLIC RECORDS

Exceptions:

- Letters of reference concerning employment, licensing or permits
- Letters or memorandums which are matters of opinion in personnel files or students' cumulative files
- As otherwise provided by law

**TIPS:**

Records created by Board members are subject to inspection by the public – including emails

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### PRESUMPTION IN FAVOR OF INSPECTION

- Merely declaring documents to be confidential by policy will not exclude them from inspection;
- Custodian must be prepared to show the law, court rule or constitutional privilege that makes a record exempt from inspection;
- An exception does not require matters to be kept confidential – the District may release information, unless it's a violation of another law.

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### RECORDS THAT ARE LIKELY TO BE REQUESTED BY THE PRESS...

- Sent or received from a personal account
- Text messages from a personal phone
- Social media accounts
- Travel expenses
- Per diem and mileage

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**TIMELINE TO PROVIDE REQUESTED RECORDS**

- Written request must provide name, address and telephone number of the person seeking access to the records and the records sought
- Records must be available within 3 business days or the custodian must explain in writing when the records will be available
- Not later than 15 days

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**TIPS**

- Avoid using private email account for Board related business
- Avoid using text messaging for Board related business
- Write emails as if they will be a newspaper headline – because they could be
- Provide requested documents quickly
- Avoid deleting comments you disagree with on your social media if you use it as a platform to share Board business

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**PUBLIC OFFICIALS USE FACEBOOK AND TWITTER**

- Davidson v. Loudoun County Board of Supervisors* – Declaratory Judgment
- Knight First Amendment Institute v. Trump* (1:17-cv-05205) - Filed July 11, 2017

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## INSPECTION OF PUBLIC RECORDS ACT (IPRA)

- The Inspection of Public Records Act is located at NMSA 1978, Sections 14-2-1 to 14-2-11.
- The New Mexico Inspection of Public Records Act Compliance Guide is published by the NM Attorney General. The 2015 Guide is available at:  
<http://www.nmag.gov/uploads/files/Publications/ComplianceGuides/Inspection%20of%20Public%20Records%20Compliance%20Guide%202015.pdf>.

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*The information in this presentation was prepared by Walsh Gallegos Treviño Russo & Kyle P.C. It is intended to be used for general information only and is not to be considered specific legal advice. If specific legal advice is sought, consult an attorney.*

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