



# CITY OF ALBUQUERQUE

## City Council

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May 14, 2015

### FOR IMMEDIATE RELEASE

**CONTACT:** Albuquerque City Councilor Dan Lewis, 615-6507

Recently, there have been concerns raised about the meetings that individual members of the City Council had with representatives of the Department of Justice and the independent, court-appointed federal Monitor last Monday.

These meetings ***did not*** violate the Open Meetings Act, as explained in the attached statement by the Council's legal advisor.

The reason the meetings took place and the speculations surrounding the meetings were solely caused by the Department of Justice and their disdain for the Albuquerque City Council.

The fact of the matter is that the Department of Justice is responsible for the situation we find ourselves in. When Councilors raised questions about the size of the financial commitment the City was being asked to make for the Monitor, the City Council requested that Dr. Ginger appear before the Council in an open public meeting to answer its questions. The DOJ objected, and unilaterally prohibited Dr. Ginger from appearing before the Council. Their rationale was apparently that they felt it would be untoward and demeaning for the Monitor to appear before the City Council to answer questions about his taxpayer funded costs and his future work plan.

In doing so, the DOJ seriously misunderstood both the intention of the Council when it requested to speak with the Monitor, as well as the role that the Council plays as the governing body of the City of Albuquerque. The Council's intention in requesting that Dr. Ginger speak with them during a televised and open City Council meeting was not to berate him or question the work that he was appointed by the federal court to do – it was simply to respectfully ask those questions in a forum where the public could hear the answers. The request was made to ensure that the court appointed Monitor appeared before the people's elected representatives at a public meeting – a regular City Council meeting.

The briefings on Monday were the closest interaction that the DOJ would allow between the Council and the Monitor. In the future, my sincere hope is that the Department of Justice will stop treating the Monitor with kid gloves and instead insist that he make himself available to the Council during regular Council meetings, and not in briefings of the kind that took place last Monday.

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**CITY OF ALBUQUERQUE  
CITY COUNCIL**

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**MEMORANDUM**

**TO:** Jon Zaman, Director of City Council Services

**FROM:** Chris Melendrez Esq., Sr. Policy Analyst Legal & Land Use

**SUBJECT:** Application of Open Meetings Requirements to Certain Councilor Briefings

**DATE:** May 14, 2015

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**ISSUE**

Are informational briefings with individual Councilors, or with pairs of Councilors, and the independent court-appointed monitor subject to the New Mexico Open Meetings Act?

**ANSWER**

No, the New Mexico Open Meetings Act (the "Act") does not prevent, or apply to, informational briefings of less than a quorum of Councilors.

**ANALYSIS**

The New Mexico Open Meetings Act applies only to "meetings of a quorum [of Councilors] . . . held for the purpose of formulating public policy . . . discussing public business, or for the purpose of taking any action within the [Council's] authority . . ." NMSA 1978 § 10-15-1(B) (emphasis added). Although informational briefings with less than a quorum of Councilors may involve the discussions of public business as contemplated by the Act, per the Act's plain language, briefings with less than a quorum of Councilors clearly fall outside of the Act's purview. NMSA 1978 § 10-15-1(B).

The Act's plain language is the primary guide in deciphering its requirements, and the legislature's intent. *Pub. Serv. Co. of New Mexico v. New Mexico Pub. Util. Comm'n*, 1999-NMSC-040, ¶ 18, 128 N.M. 309, 992 P.2d 860 (internal citations omitted). Meaning beyond the plain language will not be read in if it makes sense as written. *Id.* Here, the Act states that it applies only to a "quorum." Per the City Council's rules, "[a] majority of the members of the City Council . . . constitute(s) a quorum." CITY COUNCIL RULES OF PROCEDURE, ART. 1 § 7. The Albuquerque City Council is a nine-member body, in which case a minimum of five members

The New Mexico Supreme Court has recognized that a primary purpose of the Open Meetings Act is to prevent “decision making in secret.” See *Gutierrez v. City of Albuquerque*, 1981-NMSC-061, ¶9, 96 N.M. 398, 631 P.2d 304. No Council decision making occurs at informal, informational briefings of less than a quorum of Councilors. The Court has also recognized with assurance, that the Act does “not intend to impair or impede the effective workings of [the City],” nor should it be interpreted to “give third parties an opportunity to take advantage of legal technicalities.” *Id.* ¶¶ 12-13. Compliance with the Act occurs when it “has been sufficiently followed so as to carry out the intent for which it was adopted and serve [its] purpose.” *Id.* ¶ 14.

Accordingly, per the plain language of the Act, and per the interpretations and analysis in the Attorney General’s Guide as to the purpose and intent of the Act, informational briefings of less than a quorum of Councilors are specifically exempted from the Act so long as information gleaned is not discussed among a quorum outside of an open meeting. The briefings do not present the Council with an opportunity to make decisions outside of an open meeting, or for discussion among a quorum outside of an open meeting. Thus, the New Mexico Open Meetings Act does not prevent, or apply to, informational briefings with individual Councilors, or with pairs of Councilors, and the independent court-appointed monitor.