

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



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**Open Government Division Advisory
During COVID-19 State of Public Health Emergency**

On March 11, 2020, Governor Michelle Lujan Grisham declared a state of emergency in New Mexico, issued under Executive Order 2020-004. The Attorney General, through the Open Government Division is statutorily tasked with enforcing the Open Meetings Act, NMSA 1978, NMSA 1978, §§ 10-15-1 to -4 (1974, as amended) and the Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 to -14 (1947, as amended). As such, Attorney General Balderas issues 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 Office of the Attorney General's Open Government Division (OGD) advises all public entities subject to the 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/cancel a public meeting. If, however, a board or commission has a time-sensitive matter to attend to, it may proceed with a virtual meeting, provided its notice of meeting contains detailed information (password, phone number, etc.) about how members of the public may attend and listen via telephone, live streaming or other similar technologies. More specifically, if a public body decides to proceed with a virtual meeting, it should:

- At the start of the meeting, the chair should announce the names of those members of the public body participating remotely.
- All members of the public body participating remotely must identify themselves whenever they speak and must be clearly audible to the other members of the public body and to the public.
- Members of the public should be afforded remote access, via live stream or other similar technology, if possible, or call-in number for listening by phone.
- Chair should suspend discussion if the audio or video is interrupted.
- All votes of the public body must be by roll call vote.

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

Additionally, we are assuming the public body's staff also would be working remotely; otherwise, the staff at least theoretically would have the ability to set up a physical location for the public to listen in. In sum, we believe OMA would require that public bodies cancel or reschedule their meetings whenever possible and opt for a virtual format only as a matter of last resort during the pendency of the public health emergency.

To maintain compliance with the Inspection of Public Records Act, OGD recommends that agencies in the first instance continue to satisfy IPRA's deadlines and fulfill IPRA requests electronically, if possible.

Pursuant to public health guidelines and the closure of many public entities' physical locations during the state of emergency, public entities should suspend all in-person inspection of public records during the pendency of the state of emergency. Acknowledging that there may be limited circumstances where records are not available electronically, an agency may designate a request as excessively burdensome or broad, which would allow an agency obtain more time to respond and/or compile documents. We also acknowledge there may be circumstances in which an agency may not be able to provide certain records because employees normally in possession of those records are working from home and do not have the requested records readily available.

In short, IPRA all deadlines should still be satisfied. Where the state of the public health emergency hampers an agency's ability to respond, we urge the agency nonetheless to communicate promptly with the requester to make alternative arrangements to allow for the inspection of records, in keeping with the general spirit of the law.

In addition, with respect to professional licenses issued under the Uniform Licensing Act, NMSA 1978, NMSA 1978, §§ 61-1-1 to -34 (1957, as amended), after consultation with OGD, we understand that the Boards & Commissions Division of the New Mexico Regulation and Licensing Department will be reaching out to the chairpersons of the various professional licensing boards administratively attached to RLD to get approval for the following:

- (1) Boards and Commissions staff will process renewals without the proof of continuing CE credit needed for renewal during the pendency of the public health emergency instituted by Executive Order 2020-004.
- (2) Licensees submitting renewals without the sufficient CE credits will be required to give notice to the board or commission through the notice procedures established by the Boards and Commissions Division dated March 16, 2020 (also attached hereto).
- (3) If all other license renewal requirements are met, licenses will be renewed without proof of CE credits.

(4) When the public health emergency is lifted, Boards and Commissions staff will send out a notice to licensees stating that the licensee has 3 to 6 months, depending upon the Board or Commission, to submit their proof of CE or be subject to discipline by the Board.

Without purporting to provide legal advice to outside entities, the OAG and OGD remain available to answer general questions regarding compliance with OMA and other laws of general application, as appropriate.