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NEWS RELEASE

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DOJ ISSUES DETERMINATIONS PROTECTING PUBLIC'S RIGHT TO KNOW

Albuquerque, N.M. – The New Mexico Department of Justice (DOJ) issued several determinations late last week following complaints the New Mexico Foundation for Open Government (FOG) made to the DOJ concerning violations of the Open Meetings Act (OMA) and the Inspection of Public Records Act (IPRA).

The DOJ notified FOG it sent a letter to the Eastern New Mexico Board (ENMU) of Regents stating the regents violated the Open Meeting Act during their Jan. 17, 2024, meeting by taking a final action to approve a contract renewal for ENMU President/Chancellor James Johnston during a closed executive session.

FOG and Eastern New Mexico News Editor David Stevens filed complaints pointing out the violation after the regents' January meeting.

The DOJ's determination states that Johnston's contract is not valid as, "no vote appears to have occurred in open session. From this record it appears that the two voting actions taken during the closed session were in relation to the actions of (1) the Presidential contract renewal, and (2) the one faculty retention matter, respectively."

"As the DOJ pointed out, the ENMU Board of Regents took an invalid action by voting to approve the President's contract during a closed executive session," Melanie J. Majors, FOG executive director said. "These findings reaffirm FOG's position that open meetings are vital to the public's understanding of important issues,"

This was just one opinion DOJ issued on Friday that protects the public's right to know. In addition, the DOJ reversed its position on a complaint FOG filed in September 2023, concerning video footage from the Metropolitan Detention Center (MDC).

In December, the DOJ issued a letter to resolve the complaint, but last week "withdrew" that opinion.

In the new determination, the DOJ admits the original interpretation was “unwarranted” stating, “In the GCA’s previous disposition letter, the author suggested that a record possessed by a non-law enforcement agency which could be later forwarded to a law enforcement agency for a criminal investigation could be considered within the scope of the law enforcement records exception under NMSA 1978, 14-2-1.2. We conclude that such an expansive interpretation of the exception is unwarranted.”

In another determination, the DOJ agreed with FOG’s complaint of July 2023, that the Sixth Judicial District Attorney’s Office’s attempt to require a fee to redact a video is not permitted under IPRA. The DOJ wrote, “There is no legal authority permitting an expansion of the categories of costs that can be charged to the requester. Additionally, seeking costs may produce a chilling effect, wherein members of the public forego seeking information due to financial barriers, contrary to the stated public policy of IRPA.”

In its final letter, the DOJ ruled that a complaint FOG and the Santa Fe Reporter filed in May 2023, was unfounded and determined the Santa Fe County Commission did not violate the OMA.

As an advocate for transparency in government, FOG is a nonprofit, nonpartisan organization that serves the open government interests of the general public, the business community, elected officials, journalists and lawyers. Call the FOG hotline at 1-505-764-3750 for questions or concerns regarding Inspection of Public Records Act of the Open Meeting Act.

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