



August 30, 2024

VIA ELECTRONIC MAIL ONLY

Mayor Eric Enriquez (eenriquez@lascruces.gov)
Mayor Pro Tem, Johana Bencomo (jbencomo@lascruces.gov)
Brad Douglas, City Attorney (cityattorney@lascruces.gov)
City of Las Cruces
City Hall
700 N. Main St.
Las Cruces, NM 88004

Re: Complaint No.: NMDOJ-ECS-20240329-2493
Complaint Date: March 29, 2024
Filers: Algernon D’Ammassa
Respondent: City of Las Cruces City Council
Type: Open Meetings Act Complaint

Dear Mayor Enriquez and Mayor Pro Tem Bencomo:

The Government Counsel and Accountability Division (“GCA”) of the New Mexico Department of Justice (“NMDOJ”) received a complaint on March 29, 2024, alleging violations of the Open Meetings Act (the “OMA”) by the Las Cruces City Council (“City Council”). The alleged violations are related to the City Council’s process for recruiting and hiring a new city manager. The NMDOJ is concerned that the City Council’s process may have been non-compliant with the OMA.

As discussed further below, to assist in its evaluation of possible OMA violations, the GCA would like City Council to provide more information about the meetings City Council held in the selection of its new city manager. **Please provide a response to this letter answering the individual enumerated requests for information within seven (7) days of receipt. Please consider any request for a public record within this document as a request made pursuant to the Inspection of Public Records Act.**

I. OPEN MEETINGS ACT AUTHORITY

The Legislature’s requirement of open meetings is grounded in the public’s right to government transparency. “[I]t is declared to be public policy of this state,” the Legislature stated in the OMA, “that all persons are entitled to the greatest possible information regarding the affairs

of government and the official acts of those officers and employees who represent them.” NMSA 1978, § 10-15-1(A) (2013).

Section 10-15-1(B) of OMA states that any discussion of public business within the delegated authority of a public board or commission must take place in an open meeting. Expressly included “within the delegated authority” of a public body is the “formulat[ion] of public policy, including, importantly for purposes of this letter, “the development of personnel policy[.]”

II. MATERIALS REVIEWED

Our evaluation of the Complaint has included a review of the following documents:

- a. Mr. D’Ammassa’s complaint, which included an email string between Mandy Guss, Communications Director for the City of Las Cruces, and Mr. D’Ammassa, between March 21, 2024, and March 25, 2024.
- b. The meeting agendas for the two closed City Council meetings on March 18, 2024, and March 20, 2024, and the regular City Council meeting on April 1, 2024.
- c. The video recording of City Council’s April 1, 2024, regular City Council meeting.
- d. Copies of press releases from the City Council dated February 28, 2024, March 19, 2024, and March 21, 2024.
- e. Resolution 24-100 - City Council Action and Executive Summary.
- f. Two published articles by Mr. D’Ammassa in the Las Cruces Bulletin: “City denies violating open meetings law,” dated March 28, 2024, and “Las Cruces councilors approve contract for new city manager,” dated April 1, 2024.

III. TIMELINE OF CITY COUNCIL’S ACTIONS ON HIRING NEW CITY MANAGER

Our office developed the following relevant timeline based on the materials we reviewed:

Feb. 28, 2024: The City issues a press release stating that former City Manager Ifo Pili was resigning and explaining that the City was accepting “internal” applications beginning that day.

March 18, 2024: Council meets in closed session; invokes OMA’s “personnel matters” exception. The closed session is not reported out until April 1, 2024.

March 19, 2024: The City issues a press release stating that City Council selected three finalists at its March 18, 2024, closed session. The press release also stated that the Council decided to select the new city manager from applicants already employed by the City.

March 20, 2024: Council again meets in closed session; again invoking OMA's "personnel matters" exception. The closed session is not reported out until April 1, 2024, at which time Mayor Enriquez states that the meeting lasted from 10:49 am to 5:18 pm and included three individuals who were presumably the finalists: David Sedillos, Sonia Delgado, and Ikani Taumoepeau.

March 21, 2024: The City issues a press release stating that a "tentative offer" has been made to Ikani Taumoepeau to start beginning April 1, 2024. The press release states that the "proposed contract will be voted on by City Council at its April 1, 2024, regular meeting."

April 1, 2024: At a regular City Council meeting, City Council approves Resolution No. 24-100, which approves the employment agreement for Ikani Taumoepeau as city manager. Also on April 1, 2024, Mayor Enriquez reports out the two closed sessions City Council held on March 18, 2024, and March 20, 2024.

IV. POSSIBLE OMA VIOLATIONS

1. City Council's Decision to Limit the Scope of its City Manager Search to Internal Candidates.

Our review of the above-referenced materials demonstrate that City Council may have decided outside of a public meeting to limit the scope of the city manager search to only internal candidates rather than a national search. The City's Communications Director Mandy Guss was quoted by the Las Cruces Bulletin as explaining that "[t]he city manager hiring process was suggested by Ifo [Pili, the outgoing city manager], who spoke individually with the city council members and got their OK to move forward." Mr. D'Amassa inquired about this via email with Ms. Guss, asking her "with how many council members did Mr. Pili speak, outside of a noticed meeting, regarding his preference for an internal hire versus a search?" In response, Ms. Guss stated that she did not know how many councilors Mr. Pili had spoken with, but she claimed that "there was no rolling quorum as no policy was voted on."

2. March 18, 2024, Closed Session Decision to Narrow Candidate Field to Three Candidates.

The information we have reviewed, including the City's own March 19, 2024, press release, indicates that City Council decided in its closed session on March 18, 2024, to select a group of three finalists from the original nine internal candidates. . In his remarks to City Council at its April 1, 2024, open meeting, City Assistant Human Resources Director also stated that the March 18 closed meeting included "discussion of the internal hiring process."

Certain public business, including "limited personnel matters," may be discussed in closed session settings, but final actions must be taken in an open meeting. NMSA 1978, § 10-15-1(B). "Limited personnel matters" specifically means "the discussion of hiring, promotion, demotion, dismissal, assignment, or resignation of or consideration of complaints or charges against any *individual public employee*[" (emphasis added). Additionally, after a separately-scheduled

closed meeting is completed, “the minutes of the next open meeting . . . 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.” NMSA 1978, § 10-15-1(J).

3. March 20, 2024, Closed Session to Select Ikani Taumoepeau as City Manager.

As already mentioned above, discussion on limited personnel matters can properly take place in closed session provided any final actions are taken in an open meeting. In this case, however, it appears that City Council did not simply discuss the three finalists on March 20, 2024; it selected a candidate and took steps to move forward with that candidate before taking any final action in an open meeting. That information that supports this conclusion includes:

- a. March 21, 2024: The City of Las Cruces issued a press release with the headline “Las Cruces City Council Selects Ikani Taumoepeau to Serve as City Manager.” The press release states that City Council “has made a tentative offer” to Mr. Taumoepeau. You are quoted as saying that “[t]he decision was not easy[.]” (emphasis added).
- b. At the April 1, 2024, City Council meeting, during consideration of Resolution 24-100, it was clear that the employment agreement between the City and Mr. Taumoepeau had already been negotiated. The contract was drafted and ready for Council approval at the April 1, 2024, meeting, before Council had discussed the selection of Mr. Taumoepeau. (In fact, Council never publicly discussed the selection of Mr. Taumoepeau; only the employment agreement.)
- c. At City Council’s April 1, 2024, meeting, City Assistant Director for Human Resources J.C. Borrego made a presentation that included a bullet point stating that “City Council’s candidate is Ikani Taumoepeau.”

V. REQUEST FOR ADDITIONAL INFORMATION AND DOCUMENTATION

Request No. 1: Please provide an explanation of how City Council decided to limit its search for a new city manager to internal candidates.

Request No. 2: If Mr. Pili communicated in writing (via email, text or otherwise) with any Council members or City employees about the decision to limit the search to internal candidates, please provide copies of those communications.

Request No. 3. Please provide evidence that the March 18, 2024, closed session was properly noticed per OMA’s requirements that a draft agenda be posted by least seventy-two hours prior to the meeting.

Request No. 4: On March 18, 2024, City Council records show that there was a regular City Council meeting held at 1:00 pm, immediately following the March 18 closed session. The agenda and the minutes of that regular meeting do not show that the statement required by NMSA

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1978, § 10-15-1(J) was made at that meeting. Please explain why City Council did not make the required statement until its April 1, 2024, regular meeting.

Request No. 5: Please explain when any final actions relating to the selection of the city manager that were discussed at the March 18, 2024, closed session were not taken in open session by City Council.

Request No. 6: Please provide evidence that the March 20, 2024, closed session was properly noticed per OMA's requirements that a draft agenda be posted by least seventy-two hours prior to the meeting.

Request No. 7: Please explain the decisions that City Council made during its March 20, 2024, closed session that resulted in an employment contract being drafted and presented at Council's regular April 1, 2024 meeting.

Request No. 8: Please provide copies of any communications (emails, texts, or otherwise) between, on the one hand, City Council or City human resources staff and, on the other hand, Mr. Taumoepeau during the period of March 20, 2024, to April 1, 2024.

To the extent this letter requests public information, please consider it a formal written records request. **Please provide a response to this letter answering the individual enumerated requests within seven (7) days of receipt.**

Sincerely,

A handwritten signature in black ink, appearing to read 'Blaine Moffatt', with a long horizontal flourish extending to the right.

Blaine Moffatt
Director
Government Counsel and Accountability Division

Cc: Algernon D'Amassa (algernon@lascrucesbulletin.com)