



OFFICE OF THE ARIZONA ATTORNEY GENERAL

KRIS MAYES
ATTORNEY GENERAL

SOLICITOR GENERAL'S OFFICE
OPEN MEETING LAW ENFORCEMENT TEAM

Mary M. Curtin
Senior Litigation Counsel
(602) 542-3333

February 21, 2025

VIA U.S. MAIL & EMAIL

Prescott City Council
c/o Joseph D. Young, City Attorney
201 North Montezuma Street, Suite 332
Prescott, Arizona 86301
Joseph.young@prescott-az.gov

Re: Disposition of Open Meeting Law Investigations
Investigation Nos. OML2023-0137; OML2023-0144 (Consolidated)

Dear Councilmembers:

As you know, the Office of the Attorney General received several complaints alleging Open Meeting Law ("OML") violations by various members of the Prescott City Council ("Council").

The Office has reviewed the events discussed below and the Council's October 9, 2024 consolidated response to the Office's August 21 and September 11, 2024 Inquiry Letters ("Response"). For the reasons set forth herein, we find no OML violations with respect to any of the allegations raised in the complaints.

The facts recited in this letter serve as a basis for these conclusions, but are not administrative findings of fact and are not made for purposes other than those set forth in A.R.S. §§ 38-431 *et seq.*

Allegations

A. OML2023-0137

In October and November 2023, the Office received three separate complaints from Prescott City Councilmember Brandon Montoya alleging OML violations by the Prescott Mayor Phil Goode and Councilmember Cathey Rusing. The complaints generally arise out of the then-

City Manager's October 24, 2023 termination of the City's Airport Director and the Council's response thereto.

Specifically, Councilmember Montoya alleges that:

- Councilmember Rusing improperly disclosed confidential executive session information at an October 24, 2023 Study Session;¹
- Prior to a Council meeting on October 26, 2023, Councilmember Rusing's husband texted Councilmember Montoya to "join his wife and three other members in terminating the employment of the City Manager," which, according to Councilmember Montoya, shows that these Councilmembers had been discussing this issue outside of a public meeting; and
- Mayor Goode improperly discussed a non-agendized topic at the Council's October 26, 2023 meeting.

B. OML2023-0144

Shortly after we received Councilmember Montoya's complaints, we received another complaint from a Prescott resident.

Complainant contends that Councilmember Montoya improperly shared confidential executive session information with a member of the public, [REDACTED], on two occasions. First, complainant alleges that Councilmember Montoya shared with [REDACTED] confidential information from the Council's November 22, 2022 executive session discussion regarding a "personnel matter."

Second, complainant alleges that, on March 19 and 20, 2023, Councilmember Montoya shared information regarding candidates for the City Manager position, which was later discussed in a "Special Executive Session on March 21, 2023." See March 21, 2023 Special Executive Session Agenda Item 4(A) ("Discuss and Consider Respondents to the City's Recruitment for the Position of City Manager and Select Prospects for Further Consideration, Pursuant to A.R.S. § 38-431.03 (A)(1)"). It is unclear whether any of the information allegedly disclosed to [REDACTED] on March 19 and 20 was discussed in executive session prior to its disclosure.

Analysis

A. Improper Disclosure of Executive Session Information

The OML prohibits the disclosure of confidential executive session information. A.R.S. § 38-431.03(B). Specifically, the "minutes of and discussions made at executive sessions" must be

¹ The Complainant states this disclosure occurred at an October 26, 2023 study session but the complaint was received on October 25, 2023. We understand the study session at issue to be the one that occurred on October 24, 2023.

kept confidential. *Id.* The complaints allege that both Councilmembers Montoya and Rusing improperly disclosed executive session information.

1. Councilmember Montoya

Complainant contends that Councilmember Montoya improperly shared confidential executive session information with a member of the public, [REDACTED], on two occasions.

First, complainant alleges that Councilmember Montoya shared with [REDACTED] confidential information from the Council's November 22, 2022 executive session discussion regarding a "personnel matter." The agenda for that November 22 executive session reflects that the Council met to "Discuss and Consider a Personnel Matter Related to an Allegation of Workplace Policy Violation, Pursuant to A.R.S. § 38-431.03(A)(1)." Complainant does not explain specifically what she believes Councilmember Montoya disclosed, except that the executive session generally involved a "hostile work environment claim" against the Mayor.

Second, complainant alleges that, on March 19 and 20, 2023, Councilmember Montoya shared information regarding candidates for the City Manager position, which was later discussed in a "Special Executive Session on March 21, 2023." *See* March 21, 2023 Special Executive Session Agenda Item 4(A) ("Discuss and Consider Respondents to the City's Recruitment for the Position of City Manager and Select Prospects for Further Consideration, Pursuant to A.R.S. § 38-431.03 (A)(1)"). In support of her allegations, complainant includes (1) a March 19 email from [REDACTED] to Complainant purporting to state "Brandon's" (Councilmember Montoya's) preference for the City Manager positions and (2) a screenshot of a March 20 text exchange with [REDACTED] in which [REDACTED] claims to have gone "through the whole list of applicants" with Councilmember Montoya.

In its Response, the Council confirmed that (1) the City did not locate any responsive communications from City-owned email accounts regarding the November 22, 2022 executive session; (2) Councilmembers were instructed to provide any other responsive emails or text messages from their personal devices and all indicated that they have no responsive documents; and (3) the City's Human Resources Director provided Councilmembers with a booklet containing information on each City Manager applicant on March 17, 2023, prior to the March 21 Executive Session at issue.

Thus, as to the allegations arising from the November 22, 2022 executive session, we conclude that there is insufficient evidence to conclude that an OML violation occurred. The allegations are vague as to what specifically was shared, and all Councilmembers deny having communicated with [REDACTED] on this topic.

As the remaining allegations, the City's Response confirms that the information regarding City Manager candidates (including their identity and prior experience) was provided to Councilmembers outside of an executive session, and, therefore, was not the sort of information which the OML requires be kept confidential. *See* A.R.S. § 38-431.03(B) ("[m]inutes of and discussions made at executive sessions shall be kept confidential[.]").

We conclude that Councilmember Montoya did not violate OML.

2. Councilmember Rusing

Councilmember Montoya contends that Councilmember Rusing disclosed confidential executive session information during an October 24, 2023 Council Study Session. Councilmember Montoya does not identify which of Councilmember Rusing's comments during the almost ninety-minute meeting contained confidential information, only that they "divulged details of an Executive Session meeting that had occurred earlier in the day."

Based on our review of the recording and the confidential executive session minutes of the October 24, 2023 executive session, we believe that the comments at issue in Councilmember Montoya's complaint occur about 37 minutes into the Study Session.² At that point, Councilmember Rusing asked to hear from the former Prescott Airport Director [REDACTED] regarding "how we got to this point" with the developers of airport-adjacent subdivision Deep Well Ranch and the City's "negotiations trying to avoid a lawsuit" with that developer. Councilmember Rusing further hypothesizes that Director [REDACTED] was terminated for "speaking out" during executive session.³ Councilmember Rusing did not disclose what Director [REDACTED] said during the earlier Executive Session.

We conclude that these very general comments do not disclose confidential executive session information.

First, Councilmember Rusing's reference to the fact that there was an executive session and [REDACTED] participated therein is not itself confidential. A.R.S. § 38-431.03(B) (only "minutes of and discussions made at executive sessions" must be kept confidential). *Id.*

Second, Councilmember Rusing's comments that the City was "trying to avoid litigation" with a developer also do not appear to disclose any specific information that was discussed in the October 24, 2023 executive session or was otherwise confidential. The fact that the City was trying to avoid litigation was not a confidential fact discussed at the October 24, 2023 executive session. Furthermore, by October 2023, it was generally known that the Deep Well Ranch developers believed that the City's proposed Airport Overlay District (which contemplated the City's acquisition of some land) violated their 2017 development agreement with the City.⁴

Because Councilmember Rusing did not disclose any "discussions made" at the October 24, 2023 executive session, we find no OML violation.

² See Video Recording of October 24, 2023 Prescott City Council Study Session, available at <https://www.youtube.com/watch?v=pSoFzFL0WDw> (last accessed February 11, 2025)

³ At the October 26, 2023 special meeting, Mayor Goode stated that the Airport Director was terminated in between the October 24 Executive Session and Study Session, not during the executive session. The City's Response confirms that the termination itself was not confidential executive session information.

⁴ See, e.g., AZBEX, *Prescott P&Z Recommends Airport Overlay*, (Dec. 16, 2022), available at <https://azbex.com/local-news/prescott-pz-recommends-airport-overlay/>

B. Non-Public Discussion of City Business

Councilmember Montoya provided a screenshot of the text purported to be from [REDACTED], Councilmember Rusing's husband. The relevant part reads: "There were several topics/issues I wanted to discuss. But my main reason for reaching out today was the firing of [REDACTED]. I feel that the actions by [REDACTED] are unacceptable. I know that Cathey, Connie and Phil agree."⁵ Complainant characterizes this text as Mr. Rusing "urging me to join his wife and three other members in termination the employment of the City Manager." Though the complaint does not explain why Councilmember Montoya believes that this text message from non-Councilmember violates OML, presumably Councilmember Montoya is concerned that Mr. Rusing's assertion of "Cathey, Connie and Phil[s]" agreement evidences their non-public discussion of City business.

A "meeting" is a "gathering, in person or through technological devices, of a quorum of the members of a public body at which they discuss, propose or take legal action, including any deliberations by a quorum with respect to that action." A.R.S. § 38-341(4)(a). "All meetings of any public body shall be public meetings[.]" A.R.S. § 38-431.01(A). We decline to find that the Councilmembers violated the OML's public meeting requirement, for two reasons.

First, all relevant Councilmembers have denied that any such conversations ever occurred. Email correspondence produced by the City shows that the Councilmembers *received* communications in support of and against [REDACTED] termination from constituents. And while Councilmembers sometimes responded to a constituent indicating their agreement or disagreement with that constituent's position, there are no emails which show that a quorum of the Council was copied on those responses, or otherwise suggest that Councilmembers were discussing this topic privately.

Second, even if Mayor Goode and Councilmembers Rusing and Cantelme had been engaged in such discussions, these three Councilmembers do not constitute a quorum of the seven-member Council and, therefore, those discussions would not be a "meeting." A.R.S. § 38-431(4)(a) (defining "meeting" as a "gathering, in person or through technological devices, of a quorum of the members of a public body at which they discuss, propose or take legal action, including any deliberations by a quorum with respect to that action"); Prescott City Charter, art. II, § 16 (a majority of the City Council is a quorum).

Of course, Councilmembers cannot "circumvent the purposes of" the OML by intentionally engaging in discussions and deliberations between less than a majority of the members of the Council. Ariz. Att'y Gen. Op. 75-8, at p. 7. But Mr. Rusing's text message does not suggest that (1) the three councilmembers had been engaged in intentionally iterative discussions on this topic or (2) that he is acting at the direction of Councilmember Rusing for the purpose of getting Councilmember Montoya's agreement to terminate the City Manager.

⁵ We understand that "Connie" is Councilmember Connie Cantelme and "Phil" is Mayor Phil Goode.

Because there is no evidence that a quorum (splintered or otherwise) of the Council discussed the termination of [REDACTED] outside of a properly noticed public meeting, we find no violation.

C. Discussion of Non-Agendized Topics

The notice and agenda for the Council's October 26, 2023 meeting included Agenda Item 4(A): "discussion or consideration of employment of the City Manager pursuant to A.R.S. 38-431.03(A)(1)." The meeting was originally noticed for as an executive session, but changed to an open meeting at the election of the City Manager. Section 38-431.03(A)(1) permits an employee to elect to have their otherwise confidential personnel discussions in a public meeting.

Mayor Goode expressed a desire to discuss the provision of the City Charter which governs termination of the City Manager and, specifically, how one of the ballot initiatives (Ballot Proposition 469) on the City's November 7, 2023 ballot might change that process. He also outlined certain "goals" for the meeting, including reviewing relevant portions of the current City Charter and Proposition, and establishing definitions of "cause" and "at-will employment."

Whether in executive session or an open meeting, a public body can discuss only those matters listed on the agenda and "other matters related thereto." A.R.S. § 38-431.02(H). The "other matters" must be reasonably related to an item specifically listed on the agenda. *Thurston v. City of Phoenix*, 157 Ariz. 343, 344 (App. 1998).

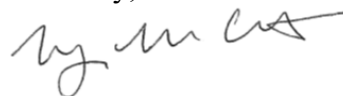
We need not decide whether the topics that Mayor Goode proposed for discussion were within or "reasonably related to" Agenda Item 4(A) because no such discussion occurred. Once Mayor Goode proposed the additional topics for discussion, Councilmember Moore objected on the grounds that the proposed discussion would be outside the scope of the meeting's agenda. Councilmember Montoya then moved to adjourn, which was seconded and the meeting ended without further discussion.

Because there was no discussion, there is no OML violation.

Conclusion

This letter relates solely to the disposition of the aforementioned Open Meeting Law complaints, and does not relate to any non-OML matters. The facts recited in this letter are not administrative findings of fact and are not made for purposes other than those set forth in A.R.S. §§ 38-431 *et seq.* This is not a formal opinion of the Attorney General's Office and should not be cited as authority in other matters.

Sincerely,



Mary M. Curtin
Senior Litigation Counsel