



OFFICE OF THE ARIZONA ATTORNEY GENERAL  
SOLICITOR GENERAL'S OFFICE  
GOVERNMENT ACCOUNTABILITY UNIT

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Via Email & By Certified Mail, Return Receipt Requested

Pima County Community College District  
c/o Susan Segal, District Counsel  
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Phoenix, AZ 85004  
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Re: Open Meeting Law and the Pima County Community College District

Board Members and Ms. Segal:

As you know, the Office of the Attorney General (the "Office") received a self-reported complaint alleging that the Pima County Community College District Governing Board (the "Board") violated Arizona's Open Meeting Law. The Office has concluded its review of the Board's self-reported complaint, and the Board's responses to the Office's request for additional information. As discussed below, the Office has determined Board Members Maria Garcia and Luis Gonzales violated the Open Meeting Law for two reasons. First, Ms. Garcia and Mr. Gonzales sent multiple email communications (collectively the "Email Communications")<sup>1</sup> that were addressed to a quorum of the Board and proposed legal action. *See* Board's July 29, 2021 Response ("Board's Response") at 1-4. Second, Ms. Garcia and Mr. Gonzales individually and collectively violated the Open Meeting Law by disclosing confidential executive session information to a third party that was not authorized to receive such information pursuant to A.R.S. § 38-431.03(B), (F). This disclosure of executive session information occurred in two separate instances: first, in the September 14, 2020 memorandum discussing "Diversity, inclusiveness and social justice,"<sup>2</sup> and second, the June 21, 2021 memorandum discussing the termination of a District employee.<sup>3</sup> Each of these instances disclosing executive session information constitutes an Open Meeting Law violation.

<sup>1</sup> These emails are included in the July 29, 2021 Board's Response at 2-4 and the Board's April 6, 2022 Supplemental Response.

<sup>2</sup> *See* Board's Complaint at 3-4.

<sup>3</sup> *See* Board's April 6, 2022 Supplemental Response Attachment 4 Metadata Screenshot.

The facts recited in this letter serve as a basis for this conclusion, 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.*

### **Violation for Email Communications Sent to A Quorum of the Board**

The Board's outside counsel filed a self-reported complaint that listed multiple email communications sent by Board Members Garcia and Gonzales that (1) were sent to a quorum of the Board and (2) expressed their opinions on matters that would foreseeably come before the Board for discussion and final legal action. Specifically, the Board's Complaint identified 8 email communications that were sent to a quorum of the Board that violated the Open Meeting Law. *See* Board's Response at 1-4; Board's Supplemental Response Attachment Titled December 6, 2021 Letter to General Counsel.

Under the Open Meeting Law, a "meeting" includes "[a] one-way electronic communication by one member of a public body that is sent to a quorum of the members of a public body and that proposes legal action;" it also includes an "exchange of electronic communications among a quorum of the members of a public body that involves a discussion, deliberation or the taking of legal action by the public body concerning a matter likely to come before the public body for action." A.R.S. § 38-431(4)(b). An email communication sent to a quorum of the public body that merely proposes that a matter be placed on a future agenda, *without more*, does not violate the OML. *See* Ariz. Att'y Gen Op. I05-004 at 9. However, where members of a public body "are parties to an exchange of e-mail communication that involve discussion, deliberations or taking legal action by a quorum of the public body concerning a matter that may foreseeably come before the public body for action, the communications constitute a meeting through technological devices under the OML." Ariz. Att'y Gen Op. I05-004 at 2; *see also* A.R.S. § 38-431(4).

Here, the Email Communications went beyond simply asking for a matter to be placed on a future Board agenda. Instead, the Email Communications expressed Ms. Garcia and Mr. Gonzales' opinions and interpretations on matters that would foreseeably come before the Board for future discussion or legal action. *See, e.g.*, June 21, 2021 Memorandum to General Counsel Jeffrey Silvyn (discussing that the termination of a District employee was improper and stating that they disagree with the Chancellor's decision).<sup>4</sup> These Email Communications essentially invited the Board to engage in a non-public discussion of a matter that could foreseeably come before the Board for future legal action, and expressed far more than simply asking the matter to be put on an agenda for discussion at a future meeting. Ultimately, the contents of the Email Communications should have been properly noticed and added to a meeting agenda so that the Board could address these matters in an open, public meeting rather than through emails to a quorum of the Board.

The Board's Response notes that Ms. Garcia and Mr. Gonzales believe that the Email Communications are permissible under A.R.S. § 38-431.09(B), which in relevant part, permits an *individual* member of a public body to "express[] an opinion or discuss[] an issue" through technological means that may come before the public body at a future meeting so long as such "discussion is *not principally directed at or directly given to* another member of the public

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<sup>4</sup> Board's Supplemental Response Attachment 3.

body.” A.R.S. § 38-431.09(B)(1) (emphasis added). Further, this exception does not apply where there is “collective deliberation to take legal action.” *See id.* at (B)(2). Here, the Email Communications plainly do not fall within the scope of A.R.S. § 38-431.09(B) as they were addressed to and principally directed at a quorum of the Board. Additionally, the Email Communications consist of collective deliberations between Ms. Garcia and Mr. Gonzales that propose the Board take legal action on various matters. *See, e.g.*, September 14, 2020 Memorandum Addressed to the Remaining Board Members and Chancellor Lambert (proposing legal action by stating that the Board needs to review its diversity efforts).<sup>5</sup> This conclusion is in keeping with the Legislature’s directive that the Open Meeting Law be construed in favor of open and public meetings. A.R.S. § 38-431.09(A). Accordingly, Ms. Garcia and Mr. Gonzales violated the Open Meeting Law by sending the Email Communications to a quorum of the Board.

The Board’s Response also included instances where District staff member Andrea Gauna was directed by Ms. Garcia to forward Email Communications to other Board Members. *See* Board’s Response at 2-4. By directing Ms. Gauna to forward these Email Communications to a quorum of the Board, Ms. Garcia violated the Open Meeting Law. *See* A.R.S. § 38-431.01(I).

#### **Violation for Disclosure of Confidential Executive Session Information**

Executive session minutes and the discussions held during executive session must remain confidential. *See* A.R.S. § 38-431.03(B), (F). The only persons that can receive executive session information are listed in A.R.S. § 38-431.03(B). Because executive session information is designated as confidential by statute, *see* A.R.S. § 38-431.03(B), (F), civil and criminal sanctions may apply due to its improper disclosure. *See, e.g.*, A.R.S. § 38-431.07; A.R.S. § 38-504(B); A.R.S. § 38-510.

Here, the metadata for the September 14, 2020 Memorandum (concerning efforts to diversify the District) and the June 21, 2021 Memorandum (concerning the termination of a District employee) both contain confidential executive session information. *See* Board’s Complaint at 5-6, Tab 9; Board’s Supplemental Response Attachment 3. The Board provided metadata for both the September 14, 2020 Memorandum and the June 21, 2021 Memorandum that shows that along with Ms. Garcia and Mr. Gonzales, a person called Soaring Hawk also authored and/or edited both of these memoranda. *See id.* As of the date of this letter, Soaring Hawk is not a current or former Board Member, and is otherwise not one of the persons or entities authorized to receive executive session information under A.R.S. § 38-431.03(B). *See* Board’s Complaint at 6.

Additionally, and of greater concern, it appears from the September 14, 2020 Memorandum and the June 21, 2021 Memorandum that members of the press and the public at large were copied on these memoranda. *See* Board’s Complaint at Tab 9 (addressing the memo to include “faculty, staff, student body, and county residents” among others); Board’s Supplemental Response Attachment 3 (“Our Constituents” listed as cc recipient). As stated above, confidential executive session information may not be released to any person or entity that is not listed in A.R.S. § 38-431.03(B). Because Ms. Garcia and Mr. Gonzales communicated

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<sup>5</sup> Board’s Complaint at 5-6, Tab 9.



and provided access to confidential executive session information to unauthorized persons, Ms. Garcia and Mr. Gonzales individually violated A.R.S. § 38-431.03(B), (F) for both the September 14, 2020 Memorandum and the June 21, 2021 Memorandum.

### Remedy

To remedy this violation, the Office considered the readily available records documenting whether the Board has had any recent open meeting violations, the Board's responses and documentation, the nature and scope of the violations found herein, and that Board Members Garcia and Gonzales did not respond to or provide affidavits addressing the questions asked in the Office's March 24, 2021 inquiry letter.

Having weighed these factors, and in order to resolve this matter, the Office now requires that the Board and relevant District staff attend an Open Meeting Law training conducted by the Arizona Ombudsman-Citizens' Aide, another pre-approved organization, or a pre-approved attorney within sixty days of receipt of this letter. This Open Meeting Law training should emphasize the confidential nature of executive session materials and the implications of using email and other technological communications involving Board business. Evidence of completion of such training shall be provided to the Office to be kept on file.

Additionally, the Board must share the contents of this violation letter (excluding any executive session information) with the public at the next practicable public meeting. Any statement read to the public regarding this matter must be pre-approved by the Office. The Office has noted this occurrence as a violation, which will be considered in determining the response to any further Open Meeting Law violations by the Board and its current members.

Further, any subsequent Open Meeting Law violations by Board Members Garcia and Gonzales proposing legal action to a quorum of the Board via email, and/or the disclosure of confidential executive session information will be considered knowing violations pursuant to A.R.S. § 38-431.07(A).

This letter relates solely to the disposition of the aforementioned Open Meeting Law complaint; it is not a formal opinion of the Attorney General's Office and should not be cited as authority in other matters.



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Open Meeting Law Enforcement Team