



OFFICE OF THE ARIZONA ATTORNEY GENERAL

SOLICITOR GENERAL'S OFFICE  
GOVERNMENT ACCOUNTABILITY UNIT

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April 14, 2022

Via Email & By Certified Mail, Return Receipt Requested

Gilbert Town Council  
c/o Christopher Payne, Town Attorney  
50 E. Civic Center Dr.  
Gilbert, AZ 85296  
[chris.payne@gilbertaz.gov](mailto:chris.payne@gilbertaz.gov)

Re: Open Meeting Law and the Gilbert Town Council

Councilmembers and Mr. Payne:

As you know, the Office of the Attorney General (the "Office") received a complaint alleging that the Gilbert Town Council (the "Council") violated Arizona's Open Meeting Law. The Office has concluded its review of the allegation and determined that there was an Open Meeting Law violation in connection with email communications between a quorum of the Council. 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**

The complaint alleged that on May 17, 2021, Mayor Brigette Peterson sent an email, *see* the Office's September 30, 2021 Letter Exhibit A, to the entire Council concerning the Gilbert Public Safety Training Facility ("PSTF") logo. The Office noted that the email specifically asked Councilmembers for their opinions on whether spending Town funds on the logo was appropriate. Additionally, the Council's response contained an email from Councilmember Scott Anderson that responded to the Mayor's original email and was sent to all Councilmembers. *See* Council's Response at 3.

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[; and/or 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 emails from Mayor Peterson and Councilmember Anderson constituted more than simply asking to have the PSTF logo on a future Council agenda. Mayor Peterson’s email asked the Council what their thoughts were on spending public funds on a logo and whether this was an appropriate use of town funds; this email essentially invited the Council to engage in a non-public discussion of a matter that could foreseeably come before the Council for future legal action. Further, the response email from Councilmember Anderson expressed more than simply asking the matter to be discussed at a future meeting. Accordingly, these emails violated the Open Meeting Law.

#### **Remedy**

To remedy this violation, the Office considered the readily available records documenting whether the Council has had any recent open meeting violations, the Council’s response, and that the Council attended Open Meeting Law training during its retreat in November 2021.

Having weighed these factors, and in order to resolve this matter, the Office has determined that the Council must share the contents of this violation letter 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 Council and its current members.

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.



Katherine Jessen  
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Open Meeting Law Enforcement Team