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# City may have broken law twice in search

TexNewMex 3:58 p.m. MDT September 24, 2016



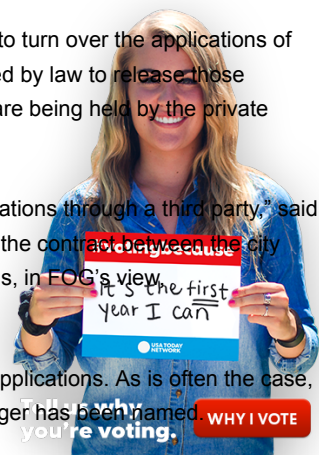
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If the New Mexico Foundation for Open Government is correct, the city of Las Cruces has violated both the state's open meetings law and its open records law in trying to find a new city manager.

The violation of the open records law came months ago when the city refused to turn over the applications of those who had sought the job. City officials concede that they would be required by law to release those applications if they had them. But, they argue that as long as the applications are being held by the private company conducting the search, the law doesn't apply.

and the search firm is not relevant. If the records are otherwise public, a contractual provision keeping them confidential is, in FOG's view, unenforceable. "A public entity shouldn't be able to skirt that requirement by running the applications through a third party," said Greg Williams, president of the FOG board of directors and an attorney. "Also, the contract between the city and the search firm is not relevant. If the records are otherwise public, a contractual provision keeping them confidential is, in FOG's view, unenforceable."

The issue is now in district court. Haussamen Publications, which publishes NMPolitics.net, has sued for release of the applications. As is often the case, the court process is moving slower than the hiring process. But, it will still be an important case even after the new manager has been named.



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"If the court sides with defendants in this case, it will encourage state government to hide public records in the hands of private entities," attorney C.J. McElhinney explained.

Not content with merely violating the state's open records law, the city then proceeded to violate the open meetings law by selecting the next city manager in a closed session.

At least, that is what was announced in a press release Monday afternoon naming Stuart Ed of El Paso as the next city manager. Since then, it has become less clear whether the decision was as definitive as the press release suggested.

If the press release was accurate, that was a violation of the open meetings law, said FOG Director Susan Boe.

"This certainly reads like a decision or action to me," said Boe, after reading the release. "... It's a final decision to make an offer. It should have been made in open session."

Since then, there have been conflicting reports from council members as to what was actually said and done at the closed meeting. Some are insisting that the city was premature in announcing its selection of Ed, and that no decision was made at all.

We would love to clear it all up and tell you what we saw and heard at the meeting, but we can't, because it was closed. And so we're left with multiple he-said, she-said.

One of two things happened here, and neither is good for the city. Either they made a decision to hire Ed, which would have been a violation of the open meetings act; or they came away from the meeting so confused and disjointed that they announced a decision that hadn't been made.

And that is exactly why important decisions like this must be made in open session. When the seven different members of the City Council come out of a closed door meeting with seven different versions of what happened in the meeting, it doesn't build confidence in whatever final decision is made.

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