

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

December 23, 2020

Ms. Robin G. Wakeland
2305 Calle Luminoso
Santa Fe, NM 87505
Email: rgw4036@yahoo.com

Re: Inspection of Public Records Act Complaint – City of Santa Fe

Dear Ms. Wakeland:

The Office of the Attorney General, Open Government Division (“OGD”) has received your complaint alleging violations of the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2019) (“IPRA”), by the City of Santa Fe (the “City”). The OGD is charged with enforcement of the IPRA and in that capacity has reviewed the facts and allegations in your complaint. *See* NMSA 1978, § 14-2-12(A).

In New Mexico, “all persons are entitled to the *greatest possible information* regarding the affairs of government and the official acts of public officers and employees.” Section 14-2-5. *See also Republican Party of New Mexico v. New Mexico Taxation & Revenue Dep’t*, 2012-NMSC-026, ¶ 38, 283 P.3d 853, 867 (observing “IPRA’s guiding purpose of promoting government transparency”). This vital public policy is reflected in the Inspection of Public Records Act, which is broadly written to give individuals the right to inspect all “public records” with only limited and specifically enumerated exceptions. *See* § 14-2-1(A) (setting forth eight narrow exceptions to disclosure). In line with IPRA’s purpose, courts employ a “presumption in favor of the right to inspect.” Attorney General’s Inspection of Public Records Act Compliance Guide, p. 7 (8th ed. 2015) (“IPRA Guide”).

Your complaint alleges that the City failed to timely respond to your records request dated February 28, 2020, and that it further violated IPRA by failing to provide you with responsive records. However, the documentation you provided to us shows that the City responded to your request on March 2, 2020, one business day later, stating in relevant part that “no report was generated” that would be responsive to your request. This response, sent well within the three business days required by IPRA, was clearly timely. *See* § 14-2-8(D). Further, we interpret the City’s response to say that it did not possess records responsive to your request.

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There are no reported New Mexico cases addressing a challenge to a public body's claim that records requested under IPRA do not exist. However, courts outside New Mexico addressing the issue under laws similar to IPRA have uniformly concluded that a public body's assertion that it does not hold or possess a requested public record is accepted as true, absent evidence that the public body failed to conduct an adequate search or otherwise acted in bad faith. *See e.g., Kozol v. Washington State Dep't of Corrections*, 366 P.3d 933 (Wash. Ct. App. 2016) (public records law only required access to records that existed, "not nonexistent records that one believes should exist") and *Smith Butz, LLC v. Pennsylvania Dep't of Env'tl. Prot.*, 142 A.3d 941, 945 (Pa. Commw. Ct. 2016) (without "competent evidence" that a public body "acted in bad faith or that the...records exist," the court will accept as true the public body's assertion that the public records do not exist.). Therefore, in the absence of any evidence to the contrary, we must accept as true the City's assertion that no responsive records exist, and we consider this matter closed.

The Office of the Attorney General appreciates you bringing possible violations to this office and will welcome any further complaints you may submit. If you have any concerns in the future, please do not hesitate to contact us. Additionally, our IPRA Guide is available on the website of the Office of the Attorney General at www.nmag.gov.

Sincerely,



John Kreienkamp

Assistant Attorney General

Enclosure:

cc: Erin McSherry, Esq.
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