

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



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ATTORNEY GENERAL

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Deputy of Civil Affairs

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Deputy of Criminal Affairs

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Chief of Staff for Operations

SONYA CARRASCO-TRUJILLO
Chief of Staff for Policy and Public Affairs

October 4, 2016

Esther Abeyta
2419 William SE
Albuquerque, NM 87102
Email: sjnal@live.com

Re: Inspection of Public Records Act Complaint – Bernalillo County

Dear Ms. Abeyta:

This letter addresses the complaint that you filed with the Office of the Attorney General alleging that Bernalillo County Communication Services Division ("BCCSD") violated the Inspection of Public Records Act ("IPRA"), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2013) in connection with your IPRA Request.

With respect to your complaint, you allege that BCCSD did not provided some but not all the records you requested or otherwise did not provide documents that were responsive to your request. We have received BCCSD's response, wherein they responded to our office's inquiry and submitted supplementary records responsive to your original request. Our office has forwarded these records to you as well.

I have reviewed your complaint as well as the BCCSD's response and supporting documentation, and conclude that BCCSD has ultimately complied with the IPRA in responding to your IPRA request and have provided you with all records responsive to your request. As such, MVD is in substantive compliance with the IPRA. *See, Derringer v. State, 2003-NMCA-073, 133 N.M. 721.* Accordingly, we consider this matter closed. Thank you for affording our office this opportunity to be of assistance.

Sincerely,

A handwritten signature in blue ink that reads "Dylan K. Lange".

Dylan K. Lange
Assistant Attorney General

cc: Michael I. Garcia, Assistant County Attorney

INSPECTION OF PUBLIC RECORDS ACT ("IPRA") COMPLAINT FORM

New Mexico Office of the Attorney General

Open Government Division

YOUR CONTACT INFORMATION:

First Name: Esther Last Name: Abeyta

Address: [REDACTED]

City: [REDACTED] State: [REDACTED] Zip Code: [REDACTED]

Phone Number: [REDACTED]

Email: [REDACTED]

IPRA REQUEST TO THE PUBLIC BODY:

Name of the Public Body that is the subject of this complaint (including city/town, county or region, if applicable): Bernalillo County Communication Services Department
Catherine Lopez 2400 Broadway SE Albuquerque, New Mexico 87102
Format of IPRA Request: Written Oral

Date IPRA Request was Submitted to the Public Body: March 6, 2016 and
March 28, 2016

Date of all Responses Received from the Public Body: March 7, 2016 March 11, 2016 May 27, 2016 June 29, 2016
March 29, 2016 March 30, 2016

ALLEGED VIOLATIONS OF IPRA BY THE PUBLIC BODY: Please select from the following list the violations you allege the public body committed. Check all that apply.

RECORDS:

- No records were provided.
- The agency provided some but not all of the records responsive to the request.
- Records were provided, but they were not responsive to the request.
- The public body does not have custody or responsibility for the records, and the records custodian did not forward the request to the proper custodian.
- The request was for records in electronic format and although the records are available in electronic format, the copies of the public records were not provided in an electronic format.

DENIED REQUESTS TO INSPECT PUBLIC RECORDS

- Although some records were provided, the custodian did not include a written explanation for denying the production of exempt records or for redacting confidential information from records.
- No records were provided and the records custodian did not deliver or mail a written explanation to the requester within fifteen (15) calendar days after receiving the request that included a description of the records sought, the names and titles of each person responsible for denying the request, and a description of the reasons for the denial.

NOTICE

- Public body did not post in a conspicuous location at its administrative office or on the public body's website a notice setting forth: the rights of any person to inspect the public body's public records, the public body's responsibility to make public records available for inspection, the procedures for requesting inspection of public records, the procedures for requesting copies of public records, and/or reasonable fees for copying public records

DEADLINES (For purposes of deadlines imposed by the IPRA, the date the request is received is not counted)

- Inspection was not allowed within three (3) business days and the public body did not timely send a written "three-day letter" to the requester explaining when the records would be available or when the public body would respond to the request.
- The public body did not allow inspection or otherwise respond to the request within fifteen (15) calendar days from the date the custodian received the request.

FEES

- The public body charged fees in excess of \$1.00 per printed page for documents 11"X17" or smaller, or charged fees that exceeded the actual costs to copy the records.
- The public body did not provide a receipt upon request.

DETAILED EXPLANATION OF ALLEGED IPRA VIOLATIONS (Required): Please provide a description of the actions taken by the public body that violated the IPRA, including specific dates and why you believe the IPRA has been violated.

See Attached IPRA Letter Complaint
PDF attached March 6, 2016 IPRA Request and Record Custodian emails
PDF attached March 29, 2016 IPRA Request and Record Custodian emails

July 5, 2016

State of New Mexico Office of the Attorney General
Attn: Laverne Roller
408 Galisteo Street
Santa Fe, NM 87501

Sent via electronic mail to lrroller@nmag.gov

RE: Inspection of Public Records Complaint

Dear Ms. Laverne Roller,

Please accept my request for the Office of the Attorney General to investigate, a violation of a public body, Bernalillo County Communication Services Department for not disclosing, or notate the specific exemption under the law why an Inspection of Public Records (IPRA) document I requested has not being provided and is being withheld for public review by Bernalillo County Communication Services Department's Record Custodian Catherine R. Lopez.

On March 6, 2016 and March 28, 2016 I submitting an IPRA request via Bernalillo County Public Information Requests website <http://www.bernco.gov/Bernco-view/public-information-requests.aspx> for a copy of an Input Synopsis on the revised (June 2015) Sunport Boulevard Extension Environmental Assessment. A synopsis about a governmental affair which is in the public interest and will contribute significantly to the public understanding of the collected comments on the public hearing held by Bernalillo County Public Works.

Below is a history timeline of the emails and attached in PDF are the copies of my original IPRA request and emails I received from Bernalillo County Compliance Office IPRA Coordinator Brandi E. Sanchez and Bernalillo County Communication Service Department Record Custodian Catherine R. Lopez regarding two IPRA requests:

March 7, 2016 I received via email response from a Bernalillo County employee Brandi E. Sanchez on Behalf of Transparency my IPRA request on March 6, 2016 was received by the Bernalillo County Compliance Office and has been forwarded to the appropriate Record Custodian with the Bernalillo County Public Works Division for completion. The assigned Record Custodian will contact you on or before 3/10/2016. The expected date of completion will be on or before 3/22/2016. A reference Work Order #233191 was provided to me for any future correspondence to my IPRA request.

March 11, 2016 I received an email from Catherine R. Lopez of Bernalillo County Communication Services Department. Stating "the documents responsive to your request are still in draft format. The county hopes to have those documents ready to present to the public by mid-May 2016".

March 29, 2016 I received via email response from a Bernalillo County IPRA Coordinator Brandi E. Sanchez on Behalf of Transparency my IPRA March 28, 2016 request received by the Bernalillo County Compliance Office and has been forwarded to the appropriate Record Custodian with the Bernalillo County Public Works Division for completion. The assigned Record Custodian will contact you on or

before 4/1/2016. The expected date of completion will be on or before 4/13/2016. A reference Work Order #234828 was provide for any future correspondence to my IPRA request.

March 30, 2016 I received an email from Catherine R. Lopez Record Custodian of Bernalillo County Communication Services Department stating the Input Synopsis has been submitted to the New Mexico Department of Transportation for approval, but it has not yet been approved. Once the Input Synopsis is approved by NMDOT, it will be submitted to Federal Highway Administration for approval, at which point it will be made available to the public. This completes this IPRA request with the Public Works Division.

The previous IPRA request submitted for this same information still remains open as Bernalillo County will be forwarding to you the requested Input Synopsis for the Sunport Blvd project as soon as it becomes available.

May 27, 2016 I received another email from Catherine R. Lopez of Bernalillo County Communication Services Department. Stating The Sunport synopsis report is in the hands of the State at this time and should be turned over to the federal government next week. We are hoping that their review will not take longer than the end of June.

June 29, 2016 I received another email from Catherine R. Lopez of Bernalillo County Communication Services Department. Stating the New Mexico Department of Transportation has submitted the Sunport synopsis to the FHWA attorneys in Washington DC for their review on or around 6/13. The FHWA attorneys have 30 days to review the document.

Reasons Record Custodian Catherine R. Lopez violated the Inspection of Public Records Acts:

1. Ms. Lopez has not determined that the requested document(s) or any portions of the requested document(s) is exempt from disclosure, or notate the specific exemption under the law, statute or court rule why the document(s) I am requesting is not being provided.
2. Ms. Lopez stated on March 11, 2016 "the documents responsive to your request are still in draft format."
 - a. The Public Body of Bernalillo County Compliance Office Record Custodian Catherine Lopez on March 11, 2016 did not identify a law, statute or court rule that allows a public body to deny inspection of a record simply because it is a draft.
3. Ms. Lopez's email (see attachment dated March 30, 2016) states; "the Input Synopsis has been submitted to the New Mexico Department of Transportation for approval, but it has not yet been approved".
 - a. The Public Body of Bernalillo County Compliance Office Record Custodian Catherine Lopez on March 11, 2016 did not forward and/or notified the public body of my IPRA request and/or did not provide me with the procedures for requesting inspections of public records, including the contact information for the public body New Mexico Department of Transportation's custodian of public records; name, title and address. Completed my IPRA request without determine my IPRA requested document or any portions of the document I requested was exempt from disclosure, or notate the specific exemption under the law, statute or court rule why the document I am requesting under the Inspection of Public Records Act was not being provided and/or denied.

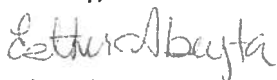
4. Recently on June 29, 2016 Ms. Lopez states in an email (see attachment dated March 6, 2016) the document (Input Synopsis) has being submitted by a New Mexico public body (New Mexico Department of Transportation to another public body (Federal Highway Administration attorneys) in Washington D.C. Ms. Lopez did not forward and/or notified the public bodies of my IPRA request dated March 6 and March 29, 2016 and/or did not provide me with the procedures for requesting inspections of public records, including the contact information for the public bodies custodian of public records; name, title and address. Public bodies' that are maintaining and reviewing the IPRA document(s) I requested on March 6 and March 29, 2016. Ms. Lopez has not determined that the requested IPRA document(s) or any portions of the requested document(s) is exempt from disclosure, or notate the specific exemption under the law, statute or court rule why the document(s) I am requesting is not being provided.

As your office reviews my IPRA complaint, please keep in mind the public body and record custodian in question refuses to disclose the requested document(s) violates the Inspection of Public Records Act. It appears the Record Custodian Catherine R. Lopez has acted arbitrarily and capriciously by improperly obstructing the disclosure of my IPRA request to other public bodies and is withholding or delaying me from receiving and/or viewing a public document. I a citizen of the public have submitted the proper information required by the Inspection of Public Records Act; Record Custodian has delayed, not permitted access and/or discloser of a public document(s).

The document(s) I am requesting is very pertinent about a governmental affair which is important to the community I live in of San Jose. The document(s) is necessary to the community's understanding of collected comments which Bernalillo County Public Works compiled into an Input Synopsis from a public hearing on held on August 5, 2015.

I would greatly appreciate the New Mexico Office of Attorney General Office assistance to help obtain access to the document(s) that are being withheld and must be disclosed under the Inspection of Public Records Acts. Thank you for your prompt attention on this matter. Should you have any questions please contact me at (505) 400-1669 or via email at sjna1@live.com

Sincerely,



Esther Abeyta

Enclosed:

Inspection of Public Records Act ("IPRA") Complaint form & written letter requesting IPRA Complaint
Electronic Mail PDF Attachments:

March 6, 2016 IPRA Request & Record Custodian emails reference Work Order #233191

March 29, 2016 IPRA Request & Record Custodian emails reference Work Order #234828

From: Brandi E. Sanchez
Sent: Tuesday, March 29, 2016 8:12:04 AM (UTC-07:00) Mountain Time (US & Canada)
To: bermcoview
Subject: FW: An IPRA request was submitted online

Brandi E. Sanchez
IPRA Coordinator/ AOII
Compliance Office
(505) 468-1384

-----Original Message-----
From: info@bermco.gov [mailto:info@bermco.gov]
Sent: Monday, March 28, 2016 6:15 PM
To: Brandi E. Sanchez
Subject: An IPRA request was submitted online

First Name:
Esther

Last Name:
Abeyta

Mailing Address:
2419 William SE

City:
Albuquerque

State:
New Mexico

Zip Code:
87102

Phone:

Phone:
(505)440-1669

Email:
sina1@live.com

Specific Request:
DATE: March 28, 2016

Dear Bernalillo County Public Information Department: This is a formal request under the New Mexico Inspection of Public Records Act to receive copies of the following documents/records from the Bernalillo County Public Works Department.

1. A copy of the Input Synopsis on the revised (June 2015) Sunport Boulevard Extension Environmental Assessment.

I request that one copy of these documents/records be made available to me for a reasonable fee for paper copies or if any of the documents/records are being held in electronic format or available for download, I wish to receive electronic copy at sina1@live.com or, if that not possible, on a compact disk. I agree to pay a request reasonable fee for paper copies but I prefer to be notified in advance if the excepted cost exceeds \$20.00.

Should you determine that the requested document(s) or any portion of the requested document(s) is exempt from disclosure, please notate the specific exemption under the law and explain why.

Please notify me when the document are available. I can be reached by phone at (505)440-1669 or by email at sina1@live.com

Thank you for your consideration, time and attention to this matter.

Sincerely,
Esther Abeyta
2419 William SE
Albuquerque, NM 87102
(505)440-1669
sina1@live.com

From: IT Service Desk [mailto:trackitsd@bermco.gov]

Sent: Tuesday, March 29, 2016 9:40 AM

To: Transparency <transparency@bermco.gov>

Subject: New WO#234828 FW: An IPRA request was submitted online

Priority 9 - PIO IPRA

Assignments:

Tuesday, March 29, 2016 8:16:25 AM by EmailRequestManagement - (Public)

Work Order created via E-mail Monitor Policy: Default

From: berncoview@bermco.gov

To: trackitsd@bermco.gov

CC:

Subject: FW: An IPRA request was submitted online

Information submitted 3/29/2016 8:16:24 AM by berncoview :

From: Brandi E. Sanchez On Behalf Of Transparency

Sent: Tuesday, March 29, 2016 10:01 AM

To: 'sjna1@live.com'

Cc: Catherine Lopez

Subject: FW: New WO#234828 FW: An IPRA request was submitted online

Good Morning Ms. Abeyta,

Thank you for submitting your recent Inspection of Public Records Request. Your request has been received by the Bernalillo County Compliance Office and has been forwarded to the appropriate Record Custodian with the Bernalillo County Public Works Division for completion.

The assigned Record Custodian will contact you on or before 4/1/2016. The expected date of completion will be on or before 4/13/2016.

Please reference Work Order #234828 in any future correspondence to this email.

Thank you,



Brandi E. Sanchez
IPRA Coordinator/ AOII

Compliance Office

415 Tijeras NW, First Floor, Albuquerque, NM 87102

Email: besanchez@bemco.gov

O: (505) 468-1384

www.bemco.gov

New WO#234828 FW: An IPRA request was submitted online



Catherine Lopez

Wed 2/30/2016 10:59 AM

To: 'sjna1@live.com'

Cc: Transparency (transparency@bernco.gov)

  Reply | v

Good morning, Ms. Abeyta.

The Input Synopsis has been submitted to the NMDOT for approval, but it has not yet been approved. They will not approve it until we submit the Categorical Exclusion for the Woodward Road project to NMDOT as well. Bernalillo County expects that to happen by the end of next week.

Once the Input Synopsis is approved by NMDOT, it will be submitted to Federal Highway Administration for approval, at which point it will be made available to the public. We estimate this to happen by mid-May, but since we have no control over the other agencies, this time frame could change.

This completes this IPRA request with the Public Works Division.

The previous IPRA request submitted for this same information still remains open as Bernalillo County will be forwarding to you the requested Input Synopsis for the Sunport Blvd project as soon as it becomes available.

Thank you.

Catherine R. Lopez
Communication Services Department
Bernalillo County
O: (505) 224-1641 C: (505) 259-0312

From: info@bermco.gov [mailto:info@bermco.gov]

Sent: Sunday, March 06, 2016 1:57 AM

To: Brandi E. Sanchez

Subject: An IPRA request was submitted online

First Name:
Esther

Last Name:
Abeyta

Mailing Address:
2419 William SE

City:
Albuquerque

State:
New Mexico

Zip Code:
87102

Phone:
(505) 440-1669

Email:
sina@live.com

Specific Request:
DATE: March 6, 2016

Specific Request:

DATE: March 6, 2016

Dear Bernalillo County Public Information Department; This is a formal request under the New Mexico Inspection of Public Records Act to receive copies of the following documents/records:

1. A copy of the Input Synopsis on the revised (June 2015) Sunport Boulevard Extension Environmental Assessment.

I request that one copy of these documents/records be made available to me for a reasonable fee for paper copies or if any of the documents/records are being held in electronic format or available for download, I wish to receive electronic copy at sjina1@live.com or, if that not possible, on a compact disk. I agree to pay a request reasonable fee for paper copies but I prefer to be notified in advance if the excepted cost exceeds \$20.00.

Should you determine that the requested document(s) or any portion of the requested document(s) is exempt from disclosure, please notate the specific exemption under the law and explain why.

Please notify me when the document are available, I can be reached by phone at (505)440-1669 or by email at sjina1@live.com

Thank you for your consideration, time and attention to this matter.

Sincerely,
Esther Abeyta
2419 William SE
Albuquerque, NM
87102

Comments:

Inmates Related Request: Enter Inmate's First Name, Last Name and DOB.
E-mail received with no Attachments

From: IT Service Desk [<mailto:trackitsd@bernco.gov>]
Sent: Monday, March 07, 2016 12:21 PM
To: Transparency <transparency@bernco.gov>
Subject: New WO#233191 IPRA Request

Priority :9 - PIO IPRA
Assignments :

Monday, March 07, 2016 8:23:25 AM by EmailRequestManagement - (Public)
Work Order created via E-mail Monitor Policy: Default

From: berncoview@bernco.gov
To: trackitsd@bernco.gov
CC:
Subject: FW: An IPRA request was submitted online

Information submitted 3/7/2016 8:23:25 AM by berncoview :

From: Brandi E. Sanchez
Sent: Monday, March 7, 2016 8:20:34 AM (UTC-07:00) Mountain Time (US & Canada)
To: berncoview
Subject: FW: An IPRA request was submitted online

Brandi E. Sanchez
IPRA Coordinator/ AOII
Compliance Office
(505) 468-1384

From: Brandi E. Sanchez On Behalf Of Transparency
Sent: Monday, March 07, 2016 12:48 PM
To: 'sjna@live.com'
Cc: Catherine Lopez
Subject: FW: New WO#233191 IPRA Request

Good Afternoon Ms. Abeyta,

Thank you for submitting your recent Inspection of Public Records Request. Your request has been received by the Bernalillo County Compliance Office and has been forwarded to the appropriate Record Custodian with the Bernalillo County Public Works Division for completion.

The assigned Record Custodian will contact you on or before 3/10/2016. The expected date of completion will be on or before 3/22/2016.

Please reference Work Order #233191 in any future correspondence to this email.

Thank you,



Brandi E. Sanchez
IPRA Coordinator / AOII

Compliance Office
415 Tijeras NW, First Floor, Albuquerque, NM 87102
Email: besanchez@bernco.gov
O: (505) 468-1384
www.bernco.gov

From: Catherine Lopez
Sent: Friday, March 11, 2016 3:59 PM
To: 'sjna@live.com' (sjna@live.com)
Subject: BernCo IPRA Request #233191

Good afternoon, Ms. Abeyta.

The documents responsive to your request are still in draft format.

The county hopes to have those documents ready to present to the public by mid-May 2016.

We will be in contact you again at that time.

Thank you.

Catherine R. Lopez
Communication Services Department
Bernalillo County
O: (505) 224-1641 C: (505) 259-0312

UPDATE | BernCo IPRA Request #233191



Catherine Lopez

Fri 5/27/2016 4:59 PM

To: 'sjna1@live.com' &

   Reply | v

Good afternoon, Ms. Abeyta.

The Support synopsis report is in the hands of the State at this time and should be turned over to the federal government next week.

We are hoping that their review will not take longer than the end of June.

We will keep you updated.

Thank you.

Catherine R. Lopez
Communication Services Department
Bernalillo County
O: (505) 224-1641 C: (505) 259-0312

FW: UPDATE | BernCo IPRA Request #233191



Catherine Lopez

Wed 6/29/2016 3:06 PM

To: sjna1@live.com

   Reply | v

Good afternoon, Ms. Abeyta.

The NMDOT has submitted the Support synopsis to the FHWA attorneys in Washington DC for their review and did so on or around 6/13. The FHWA attorneys have 30 days to review the document.

We will keep you updated as this progresses.

Thanks.

Catherine R. Lopez
Communication Services Department
Bernalillo County
O: (505) 224-1641 C: (505) 259-0312