

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS

ATTORNEY GENERAL

TANIA MAESTAS  
Deputy of Civil Affairs

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

SHARON PINO  
Deputy of Criminal Affairs

March 1, 2017

Harold Bailey, Ph.D, President  
Albuquerque NAACP  
1408 San Pablo NE  
Albuquerque, NM 87110

**Re: Inspection of Public Records Act Complaint – Children, Youth and Families  
Department**

Dear Dr. Bailey:

We have reviewed your complaint dated August 24, 2016 alleging that the New Mexico Children, Youth and Families Department (“CYFD”) violated the Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 to -12 (as amended through 2013) (“IPRA”), by failing to provide any records in response to your request to inspect public records. We also have reviewed CYFD’s response to our inquiry regarding the complaint. *See* email from Kathleen Hardy, CYFD Public Records Custodian (Oct. 4, 2016) (“CYFD’s Response”) (copy enclosed). For the same reasons discussed in our determination dated February 28, 2017, regarding your similar IPRA complaint against the New Mexico Office of the Governor (NMOG), we are unable to conclude that CYFD violated IPRA, as you allege.

According to the complaint, you, on behalf of the Albuquerque NAACP, submitted a request, dated June 30, 2016, for “the racial, ethnic and gender statistics of exempt and non-exempt employees” in NMOG, the Chief of Staff’s Office, the Public Education Department (Santa Fe Offices only), CYFD (Santa Fe Offices only), and the State Personnel Office. This appears to be the same inspection request at issue in your earlier complaint to this office regarding NMOG.

According to CYFD’s Response, its records custodian acknowledged the request on July 6, 2016, and stated that you would hear back from CYFD “by or before July 15, 2016.” Email to Harold Bailey from Kathleen Hardy, CYFD Public Records Custodian (July 6, 2016). On July 14, 2016, CYFD informed you that “[o]ur personnel division has completed their search for any reports containing the aggregate information requested (racial, ethnic, and gender breakdowns, correlated with job and position categories, solely for the Santa Fe offices of CYFD). We have no responsive records.” Email to Harold Bailey from Kathleen Hardy, CYFD Public Records Custodian (July 14, 2016).

Dr. Harold Bailey

March 1, 2017

Page 2

In our determination regarding your complaint against NMOG, we concluded that NMOG did not violate IPRA when it informed you that it had no public records that responded to your request. *See* letter to Dr. Harold Bailey, Ph.D from Dylan K. Lange (Feb. 28, 2017). The same conclusion applies here. As we stated in our determination regarding NMOG, IPRA requires a public body to respond to an inspection request by providing access to responsive public records that exist at the time of the request. IPRA does not require a public body to create a new public record in response to an inspection request by compiling previously un-compiled information or otherwise organizing information from its files as directed by the requester. Accordingly, we conclude, as we did with respect to NMOG, that, barring additional information suggesting that CYFD acted in bad faith or with the intent to evade its obligations under IPRA, CYFD did not violate IPRA when it notified you that it had no records responsive to your request.

For your reference, a copy of our determination regarding your earlier complaint against NMOG is enclosed. If you have any questions about this matter, please let me know.

Sincerely,



Dylan K. Lange  
Assistant Attorney General

Enclos.

cc: Kathleen Hardy, CYFD Public Records Custodian

INSPECTION OF PUBLIC RECORDS ACT ("IPRA") COMPLAINT FORM  
New Mexico Office of the Attorney General  
Open Government Division

**YOUR CONTACT INFORMATION:**

First Name: Harold Last Name: Bailey  
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): Children Youth + Families Dept Sec. Monique Jacobson  
Format of IPRA Request:  Written  Oral  
Date IPRA Request was Submitted to the Public Body: June 30, 2016  
Date of all Responses Received from the Public Body: July 18, 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

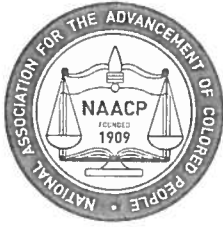
\_\_\_ The public body charged fees in excess of \$1.00 per printed page for documents 11"X17" or smaller, or charged fees that exceeded the actual costs to copy the records.

\_\_\_ 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.

the public body children youth + families Sec. monique Jacobson refused to produce requested records and specific information.





WWW.NAACP.ORG

NAACP

August 24, 2016

Hector Balderas  
Attorney General of New Mexico  
408 Galisteo Street  
Villagra Bldg.  
Santa Fe, New Mexico 87501

Re: Formal Complaint against Secretary Monique Jacobson, CYFD

Dear Attorney General Balderas,

This letter is an official Letter of Complaint against the named official as outlined in the attached document.

The Albuquerque NAACP and others are forced to move the Attorney General's Office to act on behalf of New Mexico Taxpayers.

The specificity needed to ground such a charge is well documented. No elected or appointed official should be allowed to misuse their official authority to violate the intent and spirit of Equal Employment Opportunity and Affirmative Action laws and principles. The absence of African Americans, Asian Americans, Native Americans, Hispanics and Minority Women in different levels of government will further substantiate stated claims.

The NAACP and others will wait for your response and action.

Thank you for your attention in this important matter of "public concern."

Respectfully,

Harold Bailey, Ph.D.  
President  
Albuquerque NAACP  
1408 San Pablo NE  
Albuquerque, New Mexico 87110  
505.908.0796

## **Complaint of Racial, Ethnic and Gender Discrimination and Lack of Compliance with the Intent and Spirit of Equal Employment Opportunity and Affirmative Action Laws**

### **Identified Official:**

- Secretary Monique Jacobson, CYFD

### **Action /Remedies Sought:**

- Compel the Secretary to produce statistical data related to the number of African Americans, Native Americans, Asian Americans, Hispanics and Women employees, including exempt and non-exempt.
- If the data establishes a “prima facie” case, a written and public reprimand is sought.
- Suggest that those in positions of authority and responsible for fair hiring practices attend diversity and sensitivity training.

### **This Complaint is predicated on the following assertions:**

1. New Mexico State Government operates on taxpayer dollars and other public funding and should be held accountable when elected and appointed officials refuse to embrace diversity and inclusion in its workforce.

2. Elected and appointed officials should not have “immunity” of any kind to evade public scrutiny and inspection of documents that reflect their hiring and appointment practices.
3. New Mexico is a Multi-Cultural State and the State Workforce should reflect a proportionate number of minorities and women at all levels.
4. The Albuquerque NAACP held its First Annual Civil Rights and Diversity Conference on November 20th, 21st, 2015. A Resolution came from that Conference that sought a Workforce Assessment Review of New Mexico State Government;
5. A meeting was held on May 19, 2016 with representatives from the Coalition Group made up of Ralph Arellanes, President of LULAC and Chairman of the Hispano Round Table, Dr. Rev. Charles Becknell, Sr. President Southern Christian Leadership Conference (SCLC), Margaret Montoya, former Law Professor, Dr. Harold Bailey, President, Albuquerque NAACP; Representatives from the Attorney General’s Office; Sonya-Carrasco-Trujillo, Esq., Chief of Staff For Policy and Public Affairs, Julia Anderson, Deputy Chief of Staff For Policy and Public Affairs; and State Personnel Director Justin Najaka and



Michael Heitz, General Counsel, Children Youth and families Department; and

6. State Personnel Director, Justin Najaka, stated to the Coalition Group that he would produce requested statistical data within a two week time period. The Coalition Group never received such documents as promised.
7. Albuquerque NAACP President Dr. Harold Bailey filed an Inspection of Public Records Request on June 30, 2016, seeking the racial, ethnic and gender statistics of exempt and non-exempt employees in the Governor's Office, Chief of Staff, Children Youth and Families Department ( Santa Fe Offices Only), Public Education Department ( Santa Fe Offices Only) and the State Personnel Office; and
8. NAACP President Dr. Harold Bailey received an email from State Personnel's Custodian of Public Records, Ms. Armida Zamora, on July 14, 2016, stating that the requested documents will be made available for review and inspection on July 15, 2016; and
9. On July 14, 2016, NAACP President Bailey received an email from Director Najaka stating that the requested documents were not available and it was not necessary to travel to Santa Fe on the 15<sup>th</sup>.

10. July 14, 2016, Bailey responds to Najaka's email stating that the sudden change in position to his Request seemed "suspicious."
11. On July 18, 2016, NAACP President Bailey received a letter from Ms. Beverly Friedman, Custodian of record, for the Public Education Department stating that the PED has no such records and has "...no obligation to create such a record."
12. The Martinez Administration publically States throughout New Mexico that it's transparent, runs an open government and wants to be held accountable to the public.
13. However, demonstrated action, inactions, failures and a refusal to respond to legitimate Inspection of Records Requests, appear to be a contradiction.

Therefore, based on what is contained herein, this Complaint has additional standing because it's supported by different community organizations, groups and taxpayers. This Complaint is a matter of "public concern."

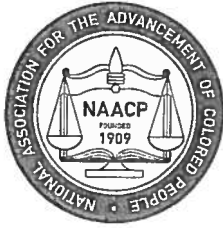
Thank you for your consideration and review.

I will wait to hear from your office.

Respectfully,

Harold Bailey, Ph.D.  
President  
Albuquerque NAACP  
1408 San Pablo NE

Albuquerque, New Mexico 87110  
505.908.0796



WWW.NAACP.ORG

# NAACP

August 24, 2016

Hector Balderas  
Attorney General of New Mexico  
408 Galisteo Street  
Villagra Bldg.  
Santa Fe, New Mexico 87501

Re: Formal Complaint Against Named Officials

Dear Attorney General Balderas,

This letter is an official Letter of Complaint against named officials as outlined in the attached document.

The Albuquerque NAACP and others are forced to move the Attorney General's Office to act on behalf of New Mexico Taxpayers.

The specificity needed to ground such a charge is well documented. No elected or appointed official should be allowed to misuse their official authority to violate the intent and spirit of Equal Employment Opportunity and Affirmative Action laws and principles. The absence of African Americans, Asian Americans, Native Americans, Hispanics and Minority Women in different levels of government will further substantiate stated claims.

The NAACP and others will wait for your response and action.

Thank you for your attention in this important matter of "public concern."

Respectfully,

Harold Bailey, Ph.D.  
President  
Albuquerque NAACP  
1408 San Pablo NE  
Albuquerque, New Mexico 87110  
505.908.0796



Carrasco-Trujillo, Sonya <scarrasco-trujillo@nmag.gov>

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## Fw: Official Request To Inspect Public Records

1 message

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**Harold Bailey** <BaileyHB65a@hotmail.com>

Wed, Aug 24, 2016 at 4:12 PM

To: sonya carrasco-trujillo <scarrasco-trujillo@nmag.gov>

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**From:** Harold Bailey <baileyhb65a@hotmail.com>  
**Sent:** Friday, July 8, 2016 6:27 PM  
**To:** Cason, Pamela, GOV  
**Subject:** RE: Official Request To Inspect Public Records

Thank you.  
Harold

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**From:** Pamela.Cason@state.nm.us  
**To:** baileyhb65a@hotmail.com  
**Subject:** RE: Official Request To Inspect Public Records  
**Date:** Fri, 8 Jul 2016 22:08:29 +0000

July 8, 2016

Mr. Bailey,

The Office of the Governor has received your below IPRA request and are reviewing it. We will respond no later than July 20, 2016.

Thank you,

Pamela Cason

Paralegal and Record Custodian

Governor Susana Martinez

State Capitol Building

Suite 400

Santa Fe, NM 87501

Office: (505) 476-2200

Fax: (505) 476-2207

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**From:** Gardner, Keith, GOV  
**Sent:** Wednesday, July 06, 2016 2:41 PM  
**To:** Harold Bailey  
**Cc:** Cason, Pamela, GOV  
**Subject:** RE: Official Request To Inspect Public Records

Mr. Bailey,

Thank you for your IPRA request. I am forwarding it to Pamela Cason at [pamela.cason@state.nm.us](mailto:pamela.cason@state.nm.us), she is the Records Custodian for our office.

Keith

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**From:** Harold Bailey [<mailto:baileyhb65a@hotmail.com>]  
**Sent:** Thursday, June 30, 2016 2:42 PM  
**To:** Gardner, Keith, GOV; Heitz, Michael, CYFD; Najaka, Justin R., SPO; Skandera, Hanna, PED  
**Cc:** sonya carrasco-trujillo; [janderson@nmag.gov](mailto:janderson@nmag.gov)  
**Subject:** Official Request To Inspect Public Records

Hello Governor Susanna Martinez, Mr. Keith Gardner, Secretary Monique Jacobson, Secretary Hanna Skandera, Mr. Justin Najaka and Mr. Michael Heitz,

This is a formal **Request To Inspect Public Records** for specifically named departments and offices;

1. The Governor's Office
2. Chief of Staff Office
3. Public Education Department ( Santa Fe Office Only)
4. Children Youth And Families Department ( Santa Fe Office Only) ( Mr. Michael R. Heitz, General Counsel)

## 5. State Personnel Office

**Please forward to the Records Custodian of above mentioned Offices and Departments.**

This Request To Inspect Public Records is being made by:

Dr. Harold Bailey

President

Albuquerque NAACP

P.O. Box 1922

Albuquerque, New Mexico 87103

505.908.0796

EMAIL: baileyhb65a@hotmail.com

I would like to inspect and copy the following records:

1. The ethnic and racial breakdown of all appointments, exempt and non-exempt staff, any other unnamed staff category, of each above mentioned office and department. List job and position categories.
2. The breakdown of women staff of each above mentioned office and department. List job categories. Include racial and ethnic makeup of women in each category.
3. The classification of groups should include African American, Native American, Asian, Hispanic and Anglo.

If your office, department or agency does not maintain these public records, please let me know who does, and include the proper custodian's name, mailing address, electronic address and phone number.

I agree to pay the applicable fees for copying and transmitting the records. If the charges will exceed \$50, please call or email me to discuss and finalize arrangements for inspection and payment.

Please provide a receipt indicating the charges for each document.

Thank you for your prompt attention to this matter.

Respectfully,

Harold Bailey, Ph.D.

President

Albuquerque NAACP

505.908.0796





# New Mexico State Personnel Board State Personnel Office

SUSANA MARTINEZ  
GOVERNOR

State Personnel Board  
Christine B. Romero, Chair

Justin Najaka  
Director

Megan Muirhead Jerry Manzgol

Nivia L. Thames  
Deputy Director

July 5, 2016

**SENT VIA EMAIL**

Dr. Harold Bailey, President  
baileyhb65a@hotmail.com  
Albuquerque NAACP  
P.O. Box 1922  
Albuquerque, New Mexico 87103  
505.908.0796

Mr. Bailey,

The State Personnel Office (SPO) is in receipt of your request for information pursuant to the New Mexico Inspection of Public Records Act dated June 30, 2016 for:

1. The Governor's Office
  2. Chief of Staff Office
  3. Public Education Department ( Santa Fe Office Only)
  4. Children Youth And Families Department ( Santa Fe Office Only) ( Mr. Michael R. Heitz, General Counsel)
  5. State Personnel Office
- The ethnic and racial breakdown of all appointments, exempt and non-exempt staff, any other unnamed staff category, of each above mentioned office and department. List job and position categories.
  - The breakdown of women staff of each above mentioned office and department. List job categories. Include racial and ethnic makeup of women in each category.
  - The classification of groups should include African American, Native American, Asian, Hispanic and Anglo.

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2600 Cerrillos Road, Santa Fe, New Mexico, 87505 (505) 476-7759



CENTENNIAL

AGENCY PARTNER

Harold Bailey  
July 5, 2016  
Page 2

- If your office, department or agency does not maintain these public records, please let me know who does, and include the proper custodian's name, mailing address, electronic address and phone number.

The documents in SPO's possession responsive to your request will be available for your inspection, to the extent they are not exempted by law, on July 15, 2016

Sincerely,



Armida Zamora  
Public Records Custodian

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2600 Cerrillos Road, Santa Fe, New Mexico, 87505 (505) 476-7759

