

Sent: Wednesday, April 22, 2015 12:19 PM
Subject: City of Albuquerque IPRA Request Complaint

April 22, 2015

Office of New Mexico Attorney General Hector Balderas

Civil Division
PO Drawer 1508
Santa Fe, NM 87504-1508
(505) 827-6000

Sent via email to : lrroller@nmag.gov

Dear Attorney General Balderas:

There are several IPRA requests I have done with the City of Albuquerque. I don't believe they have provided an appropriate response to my IPRA request. I therefore am asking you to investigate these matters to ensure they have complied with the law.

1) On March 2, 2015, I filed an IPRA request which stated

IPRA: All emails for the period 09/01/12 through 04/30/13 directed from, to, cc'd or bcc'd the following individuals. Eleven individuals were listed.

After extensive phone calls and emails diligently trying to work with the city clerk's office on how to effectively obtain my request, which they have stated is approximately 40,000 emails, they have refused to provide me any answers, abandoned my request and closed it. I have attached some of the email chains for you to review. Today I have done an IPRA request with the city clerk's office for all emails related to my email address. Hopefully I will have that in 15 days.

See attached email chains with the date of 3/2/15.

2) On March 17, 2015, I filed an IPRA request which stated:

IPRA: Please provide all documentation, documents, permits, inspection reports and all email correspondence related to any permit issued for 14112 Grand

I did in fact receive some emails sent to me via a msg Outlook file. I noticed that not all of the emails had been included as I know I have sent emails to the city that were excluded. I contacted the city clerk's office about this and they have ignored all of my correspondence related to the emails I have not received.

See attached email chains with the date of March 17, 2015.

3) On April 3, 2015, at 1:54pm I sent an IPRA request which stated:

IPRA: The report as referenced in email to Susan Lubar on 03/27/13 9:39:26am which states:

A report will be supplied after applicable research is conducted and reviewed by the supervisor.

This request was as a result of my reviewing some of the documents provided as a result of my March 17, 2015 request.

Although I had sent a reminder to the city clerk's office on April 17, 2015 that I had not received my 3-day confirmation letter, they have provided no response to this request. Please note, it is past the 15 day required deadline.

4) Today I have done an IPRA request which states:

I will look forward to them properly handling my request and providing these documents to me on a timely basis.

Please investigate my outstanding IPRA requests to ensure that the City of Albuquerque is complying with the IPRA law and that the citizens of Albuquerque can be assured that the City of Albuquerque is compliant both in the law and in the spirit of allowing the sun to shine on our government.

I can be reached if you have any questions.

Thanks for all that you and your team at the AG's office are doing to make New Mexico better.

Sincerely,

Dianne Goodman



Attorney General Of New Mexico

HECTOR H. BALDERAS
Attorney General

ELIZABETH A. GLENN
Chief Deputy Attorney General

December 17, 2015

Kathleen Oney
IPRA/Codification Specialist
City of Albuquerque
PO Box 1293
Albuquerque, NM 87103

Re: **Inspection of Public Records Complaint filed by Dianne Goodman**

Dear Ms. Oney:

Thank you for your response to our request for information regarding the complaint filed by Ms. Dianne Goodman alleging that the City of Albuquerque ("City") violated the Inspection of Public Records Act ("IPRA"), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2013) in connection with her March 2, March 17, and April 3, 2015 IPRA requests. Each of Ms. Goodman's IPRA requests is addressed in more detail below. We have reviewed Ms. Goodman's complaint and supporting documentation, as well as the responses submitted on behalf of the City, and conclude that the City violated the IPRA in connection with Ms. Goodman's March 2, 2015, and April 3, 2015 IPRA requests.

March 2, 2015 IPRA Request

On March 2, 2015, Ms. Goodman requested "all emails for a period of 09/01/12 through 04/30/13 directed from, to cc'd or bcc'd" eleven enumerated individuals. The City's records custodian, Kathleen Oney, acknowledged receipt of Ms. Goodman's request on March 3, 2015, and indicated that the City's response would be provided no later than March 16, 2015. On March 16, 2015, Ms. Oney indicated via email to Ms. Goodman that her IPRA request was "excessively burdensome and broad" and requested that Ms. Goodman set up a weekly schedule to review documents. After subsequent email communications, it was determined that the City would provide 40 emails per week for Ms. Goodman's review, which could be viewed on the City's public computer. In addition, Ms. Oney indicated that the City would charge Ms. Goodman to view redacted documents "because of the process of having to print [the documents] multiple times to redact." See Email from Kathleen Oney to Dianne Goodman dated March 24, 2015 at 3:01 p.m. There were subsequent email exchanges in which Ms. Goodman sought to clarify the costs associated with viewing the redacted documents as well as

seeking clarification about what information would be redacted; however, it is unclear whether or not an inspection schedule was ever arranged. Then, on April 22, 2015, Ms. Oney informed Ms. Goodman via email that her IPRA request was considered “abandoned” and indicated that the City had closed the matter due to Ms. Goodman’s failure to arrange a time to review requested documents.

Ms. Goodman alleges that the City’s policy of charging to view redacted documents violates the IPRA. The IPRA states that “every person has a right to inspect public records” subject to the exceptions enumerated in the IPRA and as otherwise provided by law. NMSA 1978, § 14-2-1. Moreover, Section 14-2-9(A) of the IPRA requires a records custodian to separate “exempt and nonexempt” information in a record prior to inspection. The IPRA does not, however, authorize a public body to charge for the costs associated with redacting exempt information from a document prior to inspection. The only explicit provision of the IPRA that authorizes charges is in the context of “reasonable fees” associated with *copying* public records. *See* NMSA 1978, § 14-2-9(C) (explaining that a records custodian may charge a reasonable fee for copying a public record) (emphasis added). Accordingly, the City violated the IPRA when it attempted to charge Ms. Goodman for the costs associated with redacting exempt information from emails responsive to Ms. Goodman’s March 2, 2015 IPRA request.

March 17, 2015 IPRA Request

On March 17, 2015, Ms. Goodman submitted an IPRA request to the City for “all documentation, documents, permits, inspection reports, and all email correspondence related to any permit issued for 14112 Grant Ave. NE.” Later that same day, Ms. Goodman amended her request to include all documentation related to “14112 Grand.” *See* Email from Ms. Goodman to Ms. Oney dated March 17, 2015, at 6:45 p.m. On March 18, 2015, a City employee, Linda Evans, acknowledged receipt of Ms. Goodman’s request and indicated that a response would be sent no later than April 2, 2015. On April 2, 2015, Ms. Evans informed Ms. Goodman that she had compiled documentation responsive to Ms. Goodman’s request and was sending the documents to her via DropBox. There were a total of 81 files contained in the DropBox folder, which consisted of 73 MSG files and 8 PDF files.

In subsequent email communications, Ms. Goodman expressed concern that there were emails missing from the DropBox folder that was sent to her. On May 26, 2015, the City responded to Ms. Goodman’s concerns via email. At that time, the City indicated that it had conducted another search, with the assistance of technical experts, and was unable to locate any missing emails. Based on the foregoing, we conclude that the City timely complied with Ms. Goodman’s request and that it made a good-faith effort to provide all documents responsive to her request. For these reasons, we do not find a violation of the IPRA in connection with Ms. Goodman’s March 17, 2015 IPRA request.

In her complaint to our Office, Ms. Goodman attached screenshots of several files contained in the DropBox folder that were password protected and could not be viewed. In a letter to our Office dated November 30, 2015, Assistant City Attorney Kevin Morrow indicated that any technical difficulties with the files were unintentional and also indicated that the City would

work with Ms. Goodman to address the underlying technical issues and provide the missing documentation. Based upon this representation, we request that the City work with Ms. Goodman to provide access to the files Ms. Goodman was unable to open within thirty days from the City's receipt of this letter.

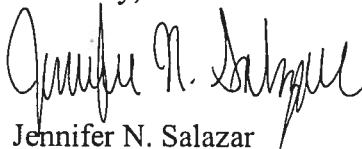
April 3, 2015 IPRA Request

Ms. Goodman submitted an IPRA request on April 3, 2015 requesting the following: "The report as referenced in email to Susan Lubar on 03/27/13 at 9:39:26am which states: A report will be supplied after applicable research is conducted and reviewed by the supervisor." Upon review of the documentation provided to this Office, it does not appear that the City ever responded to Ms. Goodman's email request. In a letter to our Office, the City Attorney's Office explained that the report referenced in Ms. Goodman's April 3, 2015 IPRA request was never created, therefore, there was no need to create a public record to respond to Ms. Goodman's request. *See* Letter from Kevin Morrow to Jennifer Salazar dated November 30, 2015. Although the City is correct that a public body need not create a record in order to respond to an IPRA request, *see* NMSA 1978, § 14-2-8(B), a public body is required to respond to a records request in the same medium in which the request was made. *See* NMSA 1978, § 14-2-7(B). The City's failure to provide *any* written response to Ms. Goodman's request was a violation of the IPRA. In the future, we strongly encourage the City to provide timely written responses to requests for inspection in order to avoid potential legal action authorized under IPRA.

In closing, in order to comply with the IPRA, we ask that the City provide Ms. Goodman with access to inspect the emails referenced in her March 2, 2015 IPRA request, and further, that the City refrain from charging Ms. Goodman a fee to inspect redacted documents. Within thirty days from the City's receipt of this letter, we ask that the City provide this Office with a copy of the City's communication to Ms. Goodman regarding her right to inspect these documents. Enclosed, please find a copy of the Office of the Attorney General's Inspection of Public Records Act Guide for your future reference.

We will keep Ms. Goodman's complaint in our file in the event that future violations of the IPRA are alleged and proved. Please do not hesitate to contact our Office should you have any questions regarding the IPRA or about the matters raised in Ms. Goodman's complaint.

Sincerely,



Jennifer N. Salazar
Assistant Attorney General

Enclosure

cc: Dianne Goodman, without enclosure
Kevin Morrow, Assistant City Attorney