



Attorney General of New Mexico

HECTOR H. BALDERAS
Attorney General

March 30, 2016

Charles Arasim
2892 Aspen Leaf Ct.
Rio Rancho, NM 87124

Re: Inspection of Public Records Act Complaint; City of Albuquerque Police Oversight Board

Dear Mr. Arasim:

This determination letter addresses the complaint you filed with the New Mexico Office of the Attorney General against the City of Albuquerque's Police Oversight Agency and Police Oversight Board (collectively "City") alleging that the 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 your April 11, 2015 IPRA request. We have reviewed your complaint, as well as the City's response, and as set forth in more detail below, we have determined that the City has substantively complied with the IPRA.

To provide some background, you submitted an IPRA request to the City of Albuquerque's Police Oversight Board ("POB") via email on Saturday, April 11, 2015. Your email contained seven paragraphs, each identifying a request for documents. Robin Hammer, former Acting Director of the Civilian Police Oversight Agency ("CPOA"), replied to your email on Monday, April 13, 2015. In her email, Ms. Hammer indicated that your request could not be fulfilled within three days "due to the nature and extent" of the request. Ms. Hammer also explained that her office would continue to search for responsive documents and would contact you within fifteen days from the City's receipt of your written request.

Subsequent to Ms. Hammer's correspondence, Kathleen Oney, Records Custodian for the City of Albuquerque, sent you an email on April 27, 2015, explaining that your request for "all email correspondence between any member of the POB and any member of the Executive Director's office of the CPOA" was "deemed excessively burdensome." Ms. Oney also suggested instituting an "inspection schedule" whereby you would be able to inspect one hundred emails per week at the City Clerk's Office. On April 28, 2015, Ms. Hammer responded to the remaining six paragraphs outlined in your April 11, 2015 IPRA request.

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You raise four issues in your complaint to our Office. First, you allege that the POB's designated records custodian never responded to your April 11, 2015 IPRA request. Second, you allege the response you received was "piecemeal" and "virtually impossible" to decipher. Third, you contend that the attachments to one of the emails you received was denied under the attorney-client privilege without an explanation of the attorney and client involved. Finally, you allege the City Clerk failed to comply with your oral request for the City's draft policies regarding IPRA compliance.

Before addressing your complaints, we first address the timeliness of the City's response. The City properly acknowledged receipt of your IPRA request on April 13, 2015. *See* NMSA 1978, § 14-2-8 14-2-8(D) (requiring that a record custodian respond to a requester in writing if inspection is not permitted within three business days and inform the requester when the records will be available for inspection). At that time, Ms. Hammer explained she required additional time to retrieve all the requested documents. Ms. Oney and Ms. Hammer timely followed-up with your request on April 27 and April 28, 2015, respectively, which was within fifteen days from the City's receipt of your request. *See* NMSA 1978, § 14-2-8(D) (stating that a records custodian must respond immediately "but not later than fifteen days after receiving a written request"). Thus, because the City responded to your request within fifteen days, there was no violation of the IPRA.

Turning to your complaint, you first allege that you never received a response from the POB's designated records custodian. The IPRA requires each "public body" designate "at least one custodian of public records." NMSA 1978, § 14-2-7. The IPRA defines a public body as "the executive, legislative and judicial branches of state and local governments and all advisory boards, commissions, committees, agencies or entities created by the constitution or any branch of government that receives any public funding, including political subdivisions[.]" NMSA 1978, § 14-2-6(F). As a public body subject to the IPRA, the City is required to designate a records custodian. It is my understanding based upon discussions with the City Attorney's Office and the attorney for the CPOA, that the City Clerk serves as the records custodian for the City as well as for all City agencies, including the CPOA¹. For this reason, there was no IPRA violation when the City Clerk responded to your IPRA request on behalf of the CPOA and the POB.

Your second complaint is that the emails you received were piecemeal and "virtually impossible to decipher." According to Ms. Oney's April 27, 2015 email, a weekly inspection schedule was arranged in order to allow staff sufficient time to review the emails and redact any confidential information prior to inspection. A records custodian may take into account the availability of personnel when responding to a records request. *See* New Mexico Attorney General's Inspection of Public Records Act Compliance Guide, at 28-29 (8th ed. 2015). Furthermore, a "custodian may impose reasonable conditions on access, including appropriate times when, and places where, records may be inspected and copied." *Id.* Consequently, there was no violation of the IPRA when the City arranged for a weekly inspection schedule.

¹ Please also refer to the City's IPRA notice, which is found at <https://www.cabq.gov/clerk/documents/notice-of-right-to-inspect-public-records.pdf>.

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You also allege that there were several attachments corresponding to the emails you had requested that were not initially provided to you. According to your complaint, you had to make a follow-up request in order to obtain the email attachments. The City should have provided all requested emails, as well as corresponding attachments, in its initial response to your April 11, 2015 IPRA request. Nevertheless, the City ultimately provided you with the requested documentation and is therefore in substantive compliance with the IPRA. *See Derringer v. State*, 2003-NMCA-073, 133 N.M. 721, 68 P.3d 961. To the extent that the emails are difficult to read, I request that the City provide you with legible copies of those emails within two weeks from the City's receipt of this letter.

Your third complaint is that the City denied inspection of certain email attachments under the attorney-client privilege without an explanation of the attorney or client involved. The IPRA requires that a records custodian provide a requester with a written denial that contains the following information: (1) a description of the records sought; (2) the names and title of each person responsible for the denial; and (3) the denial must be hand-delivered or mailed to the person requesting the records within fifteen days after the request was received. *See NMSA 1978, § 14-2-11(B)*. There was no violation of the IPRA with respect to this allegation since the IPRA does not require a public body to describe the relationship of all persons identified in a record that is denied.

Turning to your final complaint, you allege that you made an oral request to inspect the City's draft policies regarding IPRA compliance² but a response was not provided. First, it is important to note that the IPRA's procedural requirements do not apply to an oral request to inspect documents. *See NMSA 1978, § 14-2-8(A)* (authorizing a person to submit an oral request to inspect documents but stating that the procedures provide in the IPRA shall only apply to written requests for inspection). Second, the attorney for CPOA/POB, Mark Baker, explained that the POB never adopted a policy concerning the IPRA. Mr. Baker further clarified that the POB did adopt an IPRA resolution at a public meeting and agreed to provide you with a copy of that resolution. Thus, by copy of this letter, I respectfully request that the POB forward you a copy of the referenced IPRA resolution.

Thank you for bringing this matter to our attention. Please do not hesitate to contact our Office should you have any questions about this determination or about the IPRA in general.

Sincerely,


Jennifer N. Salazar
Assistant Attorney General

cc: Mark Baker, Esq.
Kathleen Oney, Records Custodian

² This determination letter does not address the question of whether the City of Albuquerque improperly denied inspection of draft policies since your complaint is against the CPOA/POB and not to the City itself.

Ms. Roller,

Below is a copy of an email I just sent out to the ABQ Police Oversight Board (POB). Please consider this a complaint to the AG's office for a myriad of IPRA violations.

"Police Oversight Board Members,

As I stated at your meeting on May 19th 2015, you are in violation of the IPRA.

1. I have received no response from the POB's designated custodian of records, as required under the IPRA, to my request received by her office on April 13th, 2015 as to emails.
2. The responses I have received, apparently from outside the POB office, as to my request for emails have been piecemeal and are virtually impossible for me to decipher.
3. Attachments to a particular email, from a one Christopher Davidson, I was able to decipher are being denied me under a claim of 'attorney/client privilege without any identification of the attorney or the client as required by the IPRA. Note: This denial is also in violation of a NM Supreme Court ruling.
4. The source (city clerk), from outside the POB office, has admitted on camera to be using "draft" policies to comply with the IPRA. When asked, orally, for those policies as is allowed by the IPRA the 'source', to date, has failed to comply.

<https://www.youtube.com/watch?v=aj75PvZewVM>

Being that I have been given no other avenue for your custodian of records compliance with my request, I will be forwarding this email to the New Mexico Attorney General asking for a full investigation into what I can only call a 'pattern and practice' by the your office and the city of ABQ in 'mudding the waters' when it comes to responding to IPRA requests."

Respectfully,

Mr. Charles Arasim