



Attorney General Of New Mexico

HECTOR H. BALDERAS
Attorney General

ELIZABETH A. GLENN
Chief Deputy Attorney General

30 November 2015

Scott Berry, City Manager
City of Raton
P.O. Box 910
Raton, NM 87740

Re: Ward Shrake IPRA Complaint Determination

Dear Mr. Berry:

Thank you for responding to our request for information regarding a complaint from Mr. Ward Shrake alleging that the City of Raton violated the New Mexico Inspection of Public Records Act ("IPRA"), NMSA 1978, Sections 14-2-1 to -12. Our office reviewed Mr. Shrake's complaint as well as your letter in response to our earlier inquiry, and has concluded there is no evidence demonstrating the City violated IPRA in this particular matter.

In Mr. Shrake's complaint it was alleged that the City failed to comply with a previous request for records made by a third party, a local newspaper. No evidence of this request was provided or otherwise found, and Mr. Shrake admitted that he was not a party to the alleged request. Mr. Shrake did eventually submit a written request himself, but the complaint was made to our office before Mr. Shrake actually submitted his records request to the City.

While a request for public records may be submitted orally, the procedures set forth in IPRA only apply to written requests, and only written requests are considered enforceable under IPRA. See § 14-2-8(A) ("The failure to respond to an oral request shall not subject the custodian to any penalty"). It is important to create a record of each request. Without record of a written request it is not possible to enforce IPRA. The reference to a prior request by a third party is speculative and unenforceable. Even if such request was made, Mr. Shrake stated himself in a January 2, 2015, e-mail that the request was oral and made in passing in the form of a question. This type of request, if it even took place, is not enforceable under IPRA without being made in writing.

Our office has determined that the City complied in responding to Mr. Shrake's written request. In our review it was discovered that Mr. Shrake's complaint was filed with our office before Mr.

Shrake submitted a written request for records to the City. Mr. Shrake e-mailed his complaint to the Office of the Attorney General on Friday, January 2, 2015, at 11:56 a.m. Later that day, at 6:59 p.m., Mr. Shrake e-mailed a request for records to the Raton City Clerk, Tricia Garcia. The next business day, at 11:47 a.m., Monday, January 5, 2015, the City responded to Mr. Shrake's IPRA request with responsive records. This timeline is well within the requirements for a response under IPRA Section 14-2-8(D). Furthermore, Mr. Shrake replied the same day via e-mail to the City Clerk, and copied our office, stating he received the provided records and that it "satisfies [his] IPRA request." Under the circumstances there is no evidence that the City violated any provision of IPRA. Nevertheless, the City timely responded to an inquiry letter sent by our office. The City's letter, dated January 27, 2015, provided related documents and asserted that all written records requests from Mr. Shrake were properly complied with. Our office does not find any evidence to the contrary and has determined that the City did not violate IPRA.

Our office will maintain this complaint and determination in our files in the event that future allegations are raised against the City. Consequences for failure to comply with these laws can be serious, and legal action can be taken to enforce IPRA. See § 14-2-12. Judicial enforcement may result in a court order, damages, costs, and reasonable attorney fees paid by the public body.

For more information about IPRA you may refer to the Office of the Attorney General's IPRA Compliance Guide, available on our website at www.nmag.gov. If you have any questions about the specific matters addressed in this letter or about the Inspection of Public Records Act you may contact the Office of the Attorney General Open Government Division at (505) 827-6070.

Thank you for your attention to this important matter.

Sincerely,



Joseph M. Dworak
Assistant Attorney General

Cc: Tricia Garcia, City Clerk
Ward Shrake



Russell, Richard <rrussell@nmag.gov>

FW: Raton -- city hall creatively denied a reporter's request for public records

1 message

Laverne Roller <lroller@nmag.gov>
To: Richard Russell <rrussell@nmag.gov>

Mon, Jan 5, 2015 at 2:02 PM

-----Original Message-----

From: Ward Shrake
Sent: Friday, January 02, 2015 11:56 AM
To: lroller@nmag.gov
Cc: Ward Shrake; Susan Boe
Subject: Raton -- city hall creatively denied a reporter's request for public records

Hi again, Laverne. (And Susan).

I'm writing to the AG's office in regards to what amounts to an IPRA request, which I believe city hall in Raton creatively denied, rather than supplying requested info.

The circumstances are a bit unusual, in that I wasn't the person who made the IPRA request. However, I believe it is clear the city has (once again) violated IPRA laws.

In this week's local newspaper, the Raton Comet, their reporter makes it clear that while he asked the city's latest manager for the names of the candidates for the office of Police Chief, that the city's manager decided he didn't want to answer that question. He talked about one candidate, but never mentioned any of the other six the city claims applied for the job. The city's manager is quoted on the front page of the Thursday, Jan 1 edition, as having told reporter Steve Ramos that, "I can't reveal much about the other candidates because we have to respect that they may have submitted their resume without the knowledge of their current employers."

As you can see from the information below, I first did some law research -- and then also questioned that choice on the city manager's part, to the Executive Director of the New Mexico Foundation for Open Government. She claims, and I fully believe, that the city's manager chose poorly when he refused to answer that reporter's questions.

I would like to be supplied with the names of every candidate who applied for that very important public office. So would many other people in the city of Raton.

I'll note in passing that this will be the second time in recent months that I've had to complain to the AG's office that the latest city manager was "doing things wrong". Their non-compliance in regards to "reasonable specificity" in regards to the Open Meetings Act agendas turned into sudden compliance, after your people had talked to them; so hopefully the city's latest manager will begin to realize he has a duty of care, or a similar duty, in regards to these matters; and with any luck, will begin familiarizing himself more fully with the IPRA / OMA compliance guides that your offices have helpfully made available to both municipal

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officials and the public, for many years now.

I'm not asking the AG's office to throw the book at the city of Raton, over this. But please have someone at the AG's office inform the habitually non-compliant city of Raton that they have no legal right to deny citizens the names of police chief candidates when reporters and/or members of the public ask them to supply that information.

Thank you.

Ward Shrake