

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

TANIA MAESTAS
Deputy of Civil Affairs

SHARON PINO
Deputy of Criminal Affairs

CARLA MARTINEZ
Chief of Staff for Operations

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

July 27, 2016

Christopher Hotchkiss
Chief Executive Officer
Creative Education Preparatory Institute
4801 Montano Rd, NW
Suite A-2
Albuquerque, NM 87120

RE: IPRA Complaint – Catherine Bullock

Dear Mr. Hotchkiss:

Thank you for your letter dated April 26, 2016, addressing the Inspection of Public Records Act (“IPRA”) complaint filed by Catherine Bullock. We have reviewed the complaint and its attachments, your response and its attachments, and the IPRA. Based on the review, we conclude that, although timely, your denial letter dated March 14, 2016 did not comply with the IPRA as explained in greater detail below.

The IPRA provides a specific procedure to deny a written public records request. *See* Section 14-2-11(B)(a custodian of public records who denies a written request to inspect “shall provide the requester with a written explanation of the denial ...[that] shall: (1) describe the records sought; (2) set forth the names and titles or position of each person responsible for the denial; and (3) be delivered or mailed ... within fifteen days after the request for inspection was received.”) *See also, NM Republican Party of NM v. NM Dept. of Tax & Rev.*, 2012-NMSA-026(a public body may deny inspection of a public record only if the denial is based on (1) a specific exception contained in IPRA, (2) a statutory or regulatory exception, (3) a rule adopted by the NM Supreme Court, or (4) a privilege in the U.S. or NM constitution.)

We note from the outset, that the March 14, 2016 letter denying inspection of the invoices submitted by attorney Sue Fox was delivered to the requester in one business day. However, this denial letter did not cite to the IPRA exception or Supreme Court Rule that supports such a denial. Please review the Inspection of Public Records Act Compliance Guide, Eighth Edition, 2015, Form V, at page 49, for a sample denial letter. In addition, the March 14, 2016 letter did

Christopher Hotchkiss
July 27, 2016
Page 2

not address Ms. Bullock's request for Ms. Fox's new contract. Instead, the letter indicates that the "most current contract with Matthews Fox" is provided. In your response to this Office, you indicate there is no new contract with Ms. Fox, and that Ms. Fox has provided some services free of charge following the termination of her contract with Creative Education Preparatory Institute ("CEPi"). Although not a denial, as there is no "new" contract with Ms. Fox, this clarification should have been included in the March 14, 2016 letter. While we understand that CEPi's charter has been revoked, we ask that, within ten business days of receiving this determination, you provide a denial letter to the requester in conformance with the IPRA and copy this Office.

Sincerely,


Tania Maestas
Deputy Attorney General of Civil Affairs

cc: Catherine Bullock

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

New Mexico Office of the Attorney General

Open Government Division

YOUR CONTACT INFORMATION:

First Name: Catherine Last Name: Bullock

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): Creative Education Preparatory Institute Charter School (CEP) Albuquerque, New Mexico

Format of IPRA Request: Written Oral

Date IPRA Request was Submitted to the Public Body: March 11, 2016

Date of all Responses Received from the Public Body: March 14, 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.

Please see the attached page.

Cathy Bullock

Via Email and regular mail

Office of the Attorney General
Open Government Division
PO Drawer 1508
Santa Fe, NM 87504-1509

Re: CEPI Inspection of Public Records Request

Dear Attorney General,

Please consider this a formal complaint against the CEPI Charter School, Christopher Hotchkiss lead administrator. It is my understanding this is the appropriate venue to file a formal complaint. If it is not, then please pass this information along to the Department or individual who is in charge of IPRA Complaints.

CEPI is a state chartered charter school, and as such is a public school. On March 11, 2016, I made the following request for Inspection of Public Records of the CEPI Charter School:

1. **Invoices for legal services:** copies of the invoices submitted by attorney Sue Fox under her original contract with CEPI for the 2015-2016 academic year.
2. **Copy of the new contract for legal services:** I would also like to request a copy of her new contract with CEPI, since her old contract had reached its maximum payout to her.

On March 14, 2016, I received the following communication from Christopher Hotchkiss: "*With regard to your March 11, 2016 IPRA request, we respond as follows:*

Invoices submitted by Sue Fox contain attorney-client privileged information, and as such are not public record subject to production under IPRA.

We have provided you with the most current contract with Matthews Fox" (emphasis is mine)

I do not believe Mr. Hotchkiss' response is correct. It's my understanding that invoices submitted for payment with public funds is not immune from an IPRA request. Additionally, Ms. Fox has continued to represent the school and provided legal services, most recently at CEPI's revocation hearing on March 22, 2016. She is either working without a contract, or working for no fee, as procurement limits were reached in January of 2016. If the later was true, then a simple statement of such would of course satisfy the second half of my request.

I am asking that you look in to this issue. I am attaching all communication between myself and the chief administrator, Christopher Hotchkiss.

Respectfully,



Cathy Bullock