

7/16/15
4:00 P.M.
BM

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

New Mexico Office of the Attorney General

Open Government Division

YOUR CONTACT INFORMATION:

First Name: RG Last Name: Wakeland

Address: _____

City: _____ State: _____ Zip Code: _____

Phone Number: _____

Email: _____

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): Dept. of Cultural Affairs

Format of IPRA Request: Written Oral

Date IPRA Request was Submitted to the Public Body: 5-13-15, 6-5-15, 5/22/15
6/24/15, 6/21/15

Date of all Responses Received from the Public Body: 5/29/15, 6/25/15, 6/19/15
6/10/15

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.

I sent documents + copies of all correspondence
via mail in June 2015, to your office

7/28/15
10:40 A.M.
BM

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

New Mexico Office of the Attorney General

Open Government Division

YOUR CONTACT INFORMATION:

First Name: R. G. Last Name: Wakeland

Address: _____

City: _____ State: _____ Zip Code: _____

Phone Number: _____

Email: _____

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): Department of Cultural Affairs

Format of IPRA Request: Written Oral

Date IPRA Request was Submitted to the Public Body: 5-6-2015

Date of all Responses Received from the Public Body: 7-6-2015

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. #1

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.

If no records exist, DCA should state so.

See attached
Apparently Hatchitt (DCA) asked only
Blinman of OAS to respond. A donation
would be processed via the collections
committee, at least. Possibly the
donation of images would be processed
via museum archives, and/or ARMS

ADDITIONAL INFORMATION: Please provide a copy of your original inspection request (if written), and any documentation or evidence you have regarding the alleged IPRA violation.



Attorney General Of New Mexico

HECTOR H. BALDERAS
Attorney General

ELIZABETH A. GLENN
Chief Deputy Attorney General

December 8, 2015

R.G. Wakeland
P.O. Box 6881
Glendale, AZ 85312

RE: Inspection of Public Records Act Complaint against Department of Cultural Affairs

Dear Ms. Wakeland:

This determination addresses the complaint that you filed with the Office of the Attorney General alleging that the Department of Cultural Affairs ("DCA") 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 May 6, May 13, May 15, May 22, June 5 and June 23, 2015 IPRA requests. With respect to each of your complaints, you allege that DCA either failed to provide you with the records you requested or otherwise did not provide documents responsive to your request. I have reviewed each of your six complaints, which are individually addressed below, as well as DCA's response and supporting documentation, and conclude that DCA has complied with all of your IPRA requests.

May 6, 2015 IPRA Request

On May 6, 2015, you submitted an IPRA request via fax to DCA requesting documents concerning the Mesa Prieta Petroglyph Project. DCA received your request on May 7, 2015, and timely responded to your letter on May 11, 2015. In its May 11, 2015 letter, DCA stated that the documents would be available for your inspection by May 25, 2015.

On May 26, 2015, DCA's records custodian, Mary Ann Hatchitt, sent you a follow-up letter identifying fifty pages responsive to your request and outlined the cost associated with copying those documents. After you canceled two appointments to review the documents in person, DCA mailed you fifty pages responsive to your request. DCA made four redactions concerning the location of archaeological sites, which is authorized under NMSA 1978, Section 14-2-1(A)(8)

and NMSA 1978, Section 18-6-11.1¹. Thus, because DCA fulfilled its duty to retrieve all responsive documents, there was no violation of the IPRA with respect to this request.

May 13, 2015 IPRA Request

On May 13, 2015, you submitted a new IPRA request to DCA via fax. In your fax, you requested all DCA files regarding the “former curator of archeology, Dr. Harry Mera.” On May 21, 2015, DCA’s general counsel, Erin McSherry, responded to your request on behalf of DCA’s records custodian, who was out-of-town. The letter indicated that the request was “excessively burdensome” and overbroad since many Mera records contain “sensitive information” about archaeological site locations that required redaction prior to inspection, and since the documents were old and fragile, and located in numerous repositories. See Letter from Erin McSherry to R.G. Wakeland dated May 21, 2015. For these reasons, DCA offered a “phased plan” for inspection. In the same letter, DCA’s legal counsel asked you to provide more information about the documents you requested so that your time “could be optimized.” See Letter from Erin McSherry to R.G. Wakeland dated May 21, 2015. In a subsequent communication, Ms. Hatchitt explained that DCA would charge a photographer’s hourly rate to make copies following your inspection due to the “age and fragility of many of these documents.” See Letter from Mary Ann Hatchitt to R.G. Wakeland dated May 29, 2015.

On June 2, 2015, you sent a follow-up fax protesting DCA’s suggestion that you pay for a photographer’s time to make copies of fragile documents at a rate of twenty-five dollars per hour. On June 25, 2015, Ms. Hatchitt responded to your concerns regarding the copying costs and explained that some of the requested documents were so fragile that they could not be scanned, but she also indicated that you may be able to copy some of those records by taking your own photographs. In the same letter, DCA requested that you provide information about your camera and flash so that a DCA expert could determine whether the flash would disturb the fragile records.

In your letter to our office, you primarily expressed concern over paying for a photographer’s hourly fee to make copies of fragile records. Under Section 14-2-9(C)(1) of the IPRA, a custodian “may charge reasonable fees for copying the public records[.]” The New Mexico Office of the Attorney General’s Inspection of Public Records Act Compliance Guide (hereinafter “OAG IPRA Compliance Guide”) states, “[u]nless otherwise allowed by law, any

¹ Section 14-2-1(A)(8) of the IPRA allows a public body to withhold documents when doing so is authorized by another statute or source of legal authority. Under Section 18-6-11.1 of the Cultural Properties Act, “[a]ny information in the custody of a public official concerning the location of archaeological resources . . . shall remain confidential unless the custodian of such information determines that the dissemination of such information will further the purposes of the Cultural Properties Act . . . and will not create a risk of loss of archaeological resources.”

fee charged by a public body may reflect only the actual cost of copying.” OAG IPRA Compliance Guide 29 (8th ed. 2015). In this case, DCA’s policy of requiring a professional photographer to reproduce some of the more sensitive documents is reasonable, so long as DCA only charges the actual costs associated with reproducing fragile documents. In the future, DCA should calculate the actual costs associated with each reproduction instead of assessing a flat rate for the photographer’s time. In any case, because DCA did allow for inspection of the documents, and otherwise allowed for reproduction, we do not find a violation of the IPRA.

May 15, 2015 IPRA Request

You submitted two additional IPRA requests via fax on May 15, 2015, which were received by DCA on the same day. DCA’s legal counsel wrote you on May 21, 2015, and explained that the records custodian was out-of-town and indicated that DCA would assemble the requested documents for your inspection by June 4, 2015. According to DCA’s letter to our Office, Ms. Hatchitt spoke to you on June 1, 2015, and notified you that the three responsive documents would be available for inspection during your planned visit to New Mexico; however, because you never showed up to inspect the records, DCA ultimately mailed you a hard copy print-out of the requested documents. Based upon these facts, DCA fulfilled its obligations under the IPRA to permit inspection of the requested documents, and therefore, there was no violation of the IPRA in connection with your May 15, 2015 request.

May 22, 2015 IPRA Request

On May 22, 2015, you submitted a fax to DCA alleging a violation of the IPRA in reference to your April 20, 2015 request for records concerning Blair Clark. You claim that it was a violation of the IPRA to send you print out copies of the electronic files. The IPRA requires that a records custodian provide “a copy of a public record in electronic format if the public record is available in electronic format and an electronic copy is specifically requested.” NMSA 1978, § 14-2-9(B). Based upon the information provided to me, it is unclear whether you originally requested an electronic copy of the records. In any case, your concerns were addressed on July 6, 2015, when DCA mailed you a CD containing electronic files of the photos identified in your request.

June 5, 2015 IPRA Request

On June 5, 2015, you sent DCA a fax with five bullet points outlining “deficiencies” in the documents contained on a CD that DCA had previously provided you. In the same fax, you also made two additional IPRA requests. On June 10, 2015, Ms. Hatchitt indicated that she was in the process of researching the existence of documents that you identified as deficient. Ms. Hatchitt also indicated that she would gather documents responsive to your two additional IPRA requests. DCA sent you a follow-up letter on June 19, 2015. In that letter, DCA responded to each of the deficiencies alleged in your June 5, 2015 letter and attached missing documents. DCA also

Ms. R.G. Wakeland
IPRA Complaint – DCA
Page 4

requested additional time to research whether there were any documents responsive to your two additional inquiries. DCA also provided a citation for a publication that was potentially relevant to the additional requests identified in your June 5, 2015 fax.

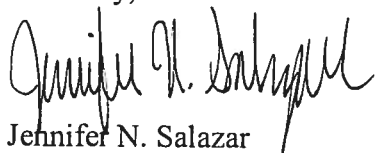
Based on the foregoing, there was no violation of the IPRA with respect to this request; instead, it appears that any omissions were unintentional, and upon learning of the omissions, DCA made a good-faith effort to respond to your concerns.

June 23, 2015 IPRA Request

On June 23, 2015, you requested to inspect all documents “concerning, referring to or relating to” Dr. Harry Mera. Your request included “but [was] not limited to” what Ms. Hatchitt previously identified as “10 linear feet of paper files.” DCA responded on June 26, 2015, and indicated that there were 1996 pages of documents authored by Dr. Mera. DCA estimated that the cost on making copies of the documents, at twenty-five cents per page, would be \$499. In the same letter, DCA indicated that there were 851 “site cards” ready for your inspection and requested that you make an appointment to inspect the records in person and determine which of those records you would like to copy. There is no violation with respect to this request as DCA timely responded to your request and made requested documents available for your inspection.

In closing, although we did not find a violation of the IPRA, we thank you for bringing your concerns to our attention. Please do not hesitate to contact our Office should you have any questions regarding this matter.

Sincerely,



Jennifer N. Salazar
Assistant Attorney General

cc: Mary Ann Hatchitt, Records Custodian, Department of Cultural Affairs
Erin McSherry, General Counsel, Department of Cultural Affairs