

**INSPECTION OF PUBLIC RECORDS ACT ("IPRA") COMPLAINT FORM**  
New Mexico Office of the Attorney General  
Open Government Division

**YOUR CONTACT INFORMATION:**

First Name: PATRICK Last Name: HAYES

Address: 110 DAHS AVE

City: LAS CRUCES State: NM Zip Code: 88005

Phone Number: 928-503-6715

Email: phayes.97@gmail.com

**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): NEW MEXICO STATE POLICE / DPS

Format of IPRA Request:  Written  Oral

Date IPRA Request was Submitted to the Public Body: 9/4/15

Date of all Responses Received from the Public Body: 9/4/15, 9/5/15, 9/16/15

**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.

(SEE ATTACHED)

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On September 4, 2015 I emailed a list of questions to Sgt. Elizabeth Armijo with the New Mexico State Police.

Sgt. Armijo is also the police department's public information officer.

Later that evening, she replied and said she was "unsure" which of my questions she could answer and sent my email to the DPS records department "to process as an IPRA."

Four days later, I received an email from DPS' IPRA coordinator Amanda Lopez. Ms. Lopez told me she would start working on my request and attached a letter dated September 4, 2015 which stated that my IPRA request had been received.

I emailed Ms. Lopez on September 14, 2015 asking if there was an update.

She replied saying the documents would be ready by the end of the week or early next week.

On September 16, 2015, Ms. Lopez sent me another email that said the IPRA request is still open and they are gathering records to respond to my request.

I believe the public body did not respond to my requests within fifteen (15) calendar days and therefore violated the Inspection of Public Records Act.

Respectfully,

Patrick Hayes



## Attorney General Of New Mexico

HECTOR H. BALDERAS  
Attorney General

ELIZABETH A. GLENN  
Chief Deputy Attorney General

November 16, 2015

Regina Chacon, Records Custodian  
Department of Public Safety  
P.O. Box 1628  
Santa Fe, NM 87504-1628

**Re: Inspection of Public Records Act Complaint – Patrick Hayes**

Dear Ms. Chacon:

We have received your October 22, 2015 response to our inquiry regarding Patrick Hayes' complaint to this office alleging that the New Mexico Department of Public Safety ("Department") violated the Inspection of Public Records Act ("IPRA"), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2013). We have reviewed Mr. Hayes' complaint, its attachments, the Department's response and its attachments, and the IPRA. As discussed below, we have determined that the Department substantially complied with the IPRA.

In his complaint, Mr. Hayes alleged that the Department did not provide him with records requested within the fifteen calendar days required under the IPRA. The request was submitted to the Department on September 4, 2015, and documentation was sent to Mr. Hayes on October 6, 2015 with an accompanying statement regarding documents being withheld or redacted.

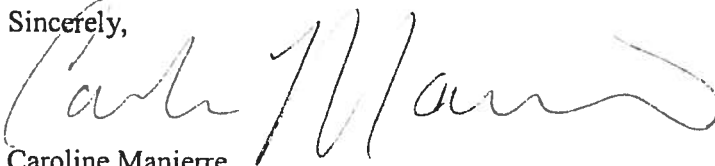
We have concluded that though the Department failed to timely respond to Mr. Hayes' request, the Department has substantially complied with the IPRA by providing responsive documentation along with a denial letter explaining the documents withheld or redacted and the legal reasoning for doing so. *See Derringer v. State*, 2003-NMCA-073, 133 N.M. 721. Although we find that the Department substantially complied with the IPRA by having permitted inspection of responsive and nonexempt records, we would like to reiterate the seriousness of a public body's duties under the IPRA. We note several deficiencies in the Department's handling of this IPRA request. First, though the three-day letter, sent on September 8, 2015, was sent within a timely fashion, the letter did not contain any information about when the records would be available. The IPRA requires that "[i]f the inspection is not permitted within three business days, the custodian shall explain in writing *when the records will be available for inspection or when the public body will respond to the request.*" NMSA 1978, § 14-2-8(D)(emphasis added). The response sent to Mr. Hayes stated that the Department would "respond to [his] request after the records have been located and reviewed." Second, the Department did not provide the

Ms. Regina Chacon  
November 16, 2015  
Page 2 of 2

documents within fifteen days nor inform Mr. Hayes that it would require additional time to comply with an excessively burdensome or broad request. The IPRA requires that the records custodian "shall permit the inspection immediately or as soon as is practicable under the circumstances, but not later than fifteen days after receiving a request." NMSA 1978, § 14-2-8(D). Finally, when the Department determines that records should be withheld, NMSA 1978, Section 14-2-11 requires the denial to be communicated to the requester in writing within fifteen days and to include a description of the records sought, the names and titles of each person responsible for the denial, and the reason for the denial. *See also* N.M. Att'y Gen. Inspection of Public Records Compliance Guide at 40 (8th ed. 2015) (available on our website, [www.nmag.gov](http://www.nmag.gov)). Though the Department informed Mr. Hayes which documents it was withholding, and explained that the documents were being withheld or redacted because they contained matters of opinion in a personnel file, an exception under Section 14-2-1(A)(3), the letter and responsive documents were not sent to Mr. Hayes until several weeks past the fifteen-day deadline.

Our office considers educating public bodies about their obligations under the IPRA to be an important part of our responsibility. Please ensure that in the future you follow all requirements specified in the IPRA, including providing three-day letters, timely responses and proper denial letters, and allowing inspections of non-exempt material in a timely manner. If you have questions about the specific matters addressed in this letter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Caroline Manierre". The signature is written in black ink and is positioned above the printed name and title.

Caroline Manierre  
Assistant Attorney General

cc: Mr. Patrick Hayes