

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

YOUR CONTACT INFORMATION:

First Name: Lorraine Last Name: Mendiola

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): Office of Guardianship

Format of IPRA Request: Written * Oral spoke to Mr. Block on Aug. 24, 2015
on Aug. 18th & 30th

Date IPRA Request was Submitted to the Public Body: August 18, 2015 - submitted to Justin Moore, Office Manager at OOG. August 24, 2015 - spoke with John Block, Ex. Director at OOG requesting information orally. August 30, 2015 - requested info. via email on August 30, 2015

Date of all Responses Received from the Public Body: Mr. Block responded on August 31, 2015 - see printout of his email

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.

No information has been provided by the Office of Guardianship nor has there been a written "3-day letter" explaining when the information would be available or when the OOG would respond to the request.

When I spoke with Mr. Black on August 24, 2015 I inquired about the minutes from the May 22, 2015 Special Council Meeting. My question was "How were the minutes recorded?" Were they written or taped. He stated that no record of the minutes was available. He also stated that this meeting was not public information.

However on the DDPC website it lists on the agenda for the Final Council Meeting dated August 21, 2015 that the minutes for the May 22, 2015 meeting were approved. ~~He also stated that the~~

* Also I could not find any information from the DDPC website regarding a notice: the rights of any person to inspect the public body's public records, their responsibility to make public records available for inspection, procedures for requesting information of public records, procedures for requesting copies of public records and/or reasonable fees for copying such public records.

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.

Please review all documents provided. Thank you.



Attorney General Of New Mexico

HECTOR H. BALDERAS
Attorney General

ELIZABETH A. GLENN
Chief Deputy Attorney General

January 15, 2016

John Block III, Executive Director
Developmental Disabilities Planning Council
625 Silver Avenue SW, Suite 100
Albuquerque, New Mexico 87102

Re: Inspection of Public Records Act Complaint

Dear Mr. Block III:

Thank you for the Developmental Disabilities Planning Council's ("DDPC") response to our request for information regarding Lorraine Mendiola's complaint, which alleges that the DDPC violated the Inspection of Public Records Act ("IPRA"), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2011). The Attorney General and district attorneys are charged with enforcement of the IPRA. Consequently, this letter will address only IPRA issues within the scope of this Office's enforcement authority raised in Ms. Mendiola's complaints and your response. We have reviewed the complaint and attachments, your response dated November 6, 2015 ("Response"), and the IPRA. As discussed below, we have concluded that while the DDPC has complied with the IPRA in many circumstances, the DDPC failed to provide adequate notice of the IPRA procedure and failed to adequately respond to Ms. Mendiola's request to inspect public records.

1. The DDPC failed to post proper notice of the IPRA procedure.

The complaint alleged that the DDPC did not post on their website or in its administrative office notice of the IPRA procedure. Section 14-2-7(E) requires a records custodian to post a notice of the IPRA procedure in a conspicuous location in the administrative office of the public body and on the public body's website. The notice must describe, at a minimum, the right to inspect public records, contact information for the records custodian, the procedures for requesting inspection and copies of the public body's records, and applicable reasonable fees for copying records. The DDPC failed to comply with Section 14-2-7(E).

However, based on your Response, it is clear that the DDPC is actively working toward compliance of the notice requirements of the IPRA. Ensure that such notice is available on your website as soon as practicable.

2. The DDPC did not appoint a Records Custodian.

Upon a search of your website at the time this complaint was filed, the DDPC did not have a records custodian appointed. Under Section 14-2-7, each state board, commission, committee, agency or entity must designate a custodian to handle requests to inspect public records. However, based on your Response, the DDPC has appointed Justin Moore as records custodian. This important designation will ensure that the DDPC will be able to comply with the IPRA in the future.

3. The DDPC has provided untimely responses to Ms. Mendiola.

The complaint alleges that the DDPC did not provide Ms. Mendiola a "3-day letter" explaining when responsive records would be available or otherwise respond to her request. Ms. Mendiola made a written request on August 18, 2015 and August 30, 2015. The IPRA requires that "[A] custodian receiving a written request shall permit inspection immediately or as soon as practicable under the circumstances, but no later than fifteen (15) days after receiving the request." Section 14-2-8(D). If the request is determined to be "excessively burdensome or broad, and additional reasonable period of time shall be allowed to comply with the request. The custodian shall provide written notification to the requester within fifteen days of receipt of the request that additional time will be needed to respond to the request." Section 14-2-10. Additionally, "[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." Section 14-2-8(D).

In this case, the DDPC has not complied with the 3-day letter requirement and although has now responded and provided Ms. Mendiola with responsive records, has done so beyond the fifteen days as the IPRA requires. The DDPC has not complied with the IPRA in providing Ms. Mendiola with late responses and by failing to provide Ms. Mendiola with an adequate 3-day letter detailing when the requested documents will be produced. If the DDPC requires more time to produce responsive records, the DDPC needs to provide a date when the records will be available. The additional time requested should be a reasonable amount of time to allow inspection with as little delay as possible.

4. Section 14-2-8(D) does not apply to oral requests for inspection.

The complaint further alleges that Ms. Mendiola made an oral request to inspect public records on August 24, 2015, and was not provided a "3-day letter" explaining when responsive records would be available or otherwise respond to her request. To obtain full advantage of the inspection right provided by the Act, a request to inspect public records should be in writing.

Mr. John Block
January 15, 2016
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The IPRA does not prohibit oral requests, but if an oral request is made, the time constraints imposed by the public body for allowing inspection will not apply. Section 14-2-8(A).

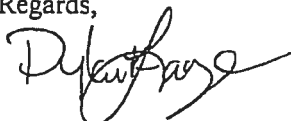
In addition, a custodian who fails to respond to an oral request is not subject to any of the penalties imposed under the Act.

The DDPC is not in violation of the Section 14-2-8(D) relating to Ms. Mendiola's August 24, 2015 request because it was an oral request. Nevertheless, the DDPC cannot ignore an inspection request solely because it is oral. In all cases involving legitimate inspection requests, oral or otherwise, a records custodian should respond readily and provide the requested material in a timely manner, unless the materials are clearly protected.

CONCLUSION

The DDPC should bear in mind that the IPRA provides consequences for failure to comply with its requirements. One of the Office of the Attorney General's enforcement responsibilities under the IPRA include educating public bodies about their obligations under the IPRA. This determination serves to address the complaints filed by Ms. Mendiola's on September 21, 2015. If you have any questions, please do not hesitate to contact me.

Regards,



Dylan K. Lange
Assistant Attorney General

cc: Lorraine Mendiola