



Attorney General Of New Mexico

HECTOR H. BALDERAS
Attorney General

ELIZABETH A. GLENN
Chief Deputy Attorney General

February 2, 2016

VIA U.S. POSTAGE MAIL

Sunny Aris
7246 Hwy 54-70
Alamogordo, NM 88310

RE: Inspection of Public Records Act ("IPRA") Complaint

Dear Ms. Aris:

On November 30, 2015, the Office of the Attorney General, Open Government Division ("OAG") received your complaint alleging a violation of the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 to -12 (2011) by the County of Dona Ana. The OAG has reviewed your IPRA complaint. We determined that we must stay any further review.

On or about December 10, 2015, you filed suit against the County of Dona Ana, Case No. D-307-CV-2015-02547. This matter involves the same violations raised in your IPRA complaint. The long-standing policy of the OAG is that we abstain from opining on any matter that is the subject of pending litigation. This policy is maintained in deference to the authority and procedures of the judicial system.

If you have any questions about this Office's response, please let me know.

Sincerely,

A handwritten signature in black ink that reads "Dylan K. Lange".

Dylan K. Lange
Assistant Attorney General

RECEIVED NOV 30 2015
BM

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

2015 NOV 30 AM 9:07

OFFICE OF THE ATTORNEY GENERAL

YOUR CONTACT INFORMATION:

First Name: Sunny Aris Last Name: Aris
Address: _____
City: Albuquerque State: NM 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): DOÑA ANA COUNTY SO & ANIMAL CONTROL

Format of IPRA Request: Written Oral

Date IPRA Request was Submitted to the Public Body: 11/1/15

Date of all Responses Received from the Public Body: 11/4/15
11/10/15 11/23/15

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

An inspection of records pertaining to the 1 November 2015 IPRA requests (attached) occurred from 9:30 until 11:35 AM on 23 November 2015. Dona Ana County public information officer (PIO) Kelly Jameson provided written documents and a CD of e-mail messages. She was in attendance for the entire inspection meeting.

Our written requests asked for transcripts of telephone recordings (Items 8c) or actual recordings and telephone logs. This information was denied in the inspection of 23 November, even though no denial letter was received. The PIO explained at the inspection meeting that no phone calls are recorded with the exception of 911 calls, and those are available from another department within the county. The IPRA requests were to include public information from all departments within the county and it was expected that the 911 calls would be made available. It was also left unclear during the inspection meeting why no letter of denial was written to state that no other phone records or transcripts would be available. This created a burden because we were prepared with extra staff who took annual leave from their work to handle all phone calls within the 2 hours allowed for the inspection. The PIO stated in an e-mail message sent after the meeting (attached) that they would need to know exact phone numbers to determine if that number ever called the county. It appears to us that this should have been requested in a 3-day letter or letter requesting clarification, rather than after the inspection meeting.

Our written requests asked for transcripts of unit to unit and unit to base (Items 8d) or actual recordings and staff communication logs. This information was denied in the inspection of 23 November, even though no denial letter was received. The PIO explained during the inspection that no radio communications are recorded therefore they do not exist. As above, since no letter of denial to state that Item 8d would not be available, this created an added burden because we were prepared with extra staff who took annual leave from their work to handle all of this information within the 2 hours allowed for the inspection.

On 4 November the PIO sent a letter (attached) requesting more detailed information than the initial requests described. In providing more detail, an additional request for the current county policy on IPRA responses, and another policy on use of photocopiers and printers was included. These policies were not provided during the 23 November inspection. An e-mail message from the PIO after the inspection stated that a county policy does not exist. However, the 10 November letter referenced county policy. This is of importance because the county website lists copy fees of \$0.50/page and they quote county policy when we are asked to pay \$1.00 per page.

Finally, the e-mail records provided during the inspection were incomplete. We have in our possession copies of e-mail sent from the county that were not among the documents provided during the inspection. In that we did not receive copies of e-mail we know about, we cannot feel confident we have received all of the e-mail, or other public documents for that matter, pertaining to the requests. The PIO stated that one requested address is under investigation and therefore not all documents are public. However, one of the documents not provided (in our possession because it was inadvertently sent to us on the CC list) states that there is no investigation, therefore this creates the perception of impropriety.

This complaint concerns IPRA law not being followed by Dona Ana County in addition to a lack of preparation by the county in arranging items of public record for our inspection. We ask that you investigate in order for us to obtain the public information we requested. Thank you.