

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



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May 18, 2016

Ronald Barron  
1011 E. Fairground Rd.  
Artesia, NM 88210

Dear Mr. Barron:

This letter responds to a complaint you filed with the Office of the Attorney General ("OAG") regarding a possible violation of the Inspection of Public Records Act ("IPRA"), NMSA 1978 §§ 14-2-1 to -12 (1993, as amended through 2013) by Eddy County ("County") pertaining to inspection requests you submitted to the County dated June 9, 2015 and July 3, 2015.<sup>1</sup> We reviewed your complaint and also the County's response to us dated October 6, 2015, as well as their supplemental production to you dated December 15, 2015. Based on the information available to us and as discussed in more detail below, we conclude that the County complied with IPRA in handling your June 9<sup>th</sup> inspection request. Regarding your July 3<sup>rd</sup> inspection request, we conclude that although the County failed to timely provide all responsive records, based on the information available to us it appears that additional records which are responsive to your July 3<sup>rd</sup> request were sent to you on December 15, 2015. Accordingly, although the County failed to timely provide all records responsive to your July 3<sup>rd</sup> request, we conclude that the County has corrected any noncompliance with IPRA in handling your July 3<sup>rd</sup> request.

June 9, 2015 request

In your June 9<sup>th</sup> request, you asked for "copies of any and all contracts between Eddy County and the County Manager, including any amendments to the contracts." Attorney Cas Tabor (Caraway, Tabor and Byers, LLP) responded on behalf of the County by letter to you dated June 19, 2015, stating "[p]ursuant to your request in your letter of June 9, 2015 please see the enclosed copy of the County Manager Employment Contract as recorded in Eddy County Book 72 page 1188 through page 1194." We understand from Mr. Tabor that you also received copies of the "Current Employment Record" ledger sheets showing County Manager Rick Rudometkin's salary from October 27, 2013 through March 10, 2015. You acknowledged

<sup>1</sup> You also filed a separate complaint with the OAG in which you allege that the County violated the Open Meetings Act ("OMA"), NMSA 1978, Sections 10-15-1 to -4 (1974, as amended through 2013) during the period of December 2013 through March 2015. The OAG's determination with regard to your OMA complaint will be sent to you in a separate letter.

Ronald Barron  
May 18, 2016  
Page 2 of 3

receiving the contract and the ledger in your July 3, 2015 letter to the County. According to the County's October 6, 2015 letter to this Office, there are no amendments to the County Manager contract. Based on the information available to us, we conclude that the County timely provided the records you requested and complied with IPRA in handling your June 9, 2015 inspection request.

July 3, 2015 request

In your July 3<sup>rd</sup> request, you asked for "copies of all meeting minutes, emails, documents, contacts [sic] and contract amendments in which Eddy County authorized raises for the current County Manager. To date, you have sent a copy of the County Manager Employment Contract as recorded in the Records of Eddy County Book 72 Page 1188 through page 1194, dated 11/5/2013, and handwritten entries of the raises in the human resources ledger." Mr. Tabor's office responded on July 10, 2015 with a transmittal memo stating "Ronald, per your IPRA request, enclosed are the responsive documents", consisting of the agenda for the November 4, 2014 County Commission meeting and pages 1, 7 and 8 of the November 14, 2014 County Commission meeting. Item 25(a)(i) of the Agenda states "Annual Evaluation (10/23/13 to 10/2014) of County Manager". Item 26 of the minutes states in relevant part that "Volpato moved to increase the salar[y]of the County Manager to \$172K ... based on the Manager's annual evaluation ...". The November 14 agenda and minutes appear to be responsive to your July 3<sup>rd</sup> request because they discuss the County Manager salary. Also enclosed were the agenda and minutes for the March 10, 2015 County Commission meeting. The March 10 agenda and minutes mention the annual review and evaluation of the Assistant County Manager, but do not mention the County Manager review, evaluation or salary and thus the March 10 records do not appear to be responsive to your July 3 request.

In response to the OAG's inquiry into your IPRA complaint, the County re-reviewed your July 3<sup>rd</sup> IPRA request and found additional records in its custody which were responsive to your request but had not been provided to you.<sup>2</sup> We received a copy of a letter from Mr. Tabor to you dated December 15, 2015 which enclosed these additional responsive records, and also other records including County Commission meeting agendas and minutes from December 2013 to March 2015. It appears to us that with this additional production of records on December 15, 2015, that the County has now provided all records responsive to your July 3<sup>rd</sup> request for "all meeting minutes, emails, documents, contacts [sic] and contract amendments in which Eddy County authorized raises for the current County Manager."

Finally, we turn to your claim that the County violated IPRA because the County Commissioners did not receive your request for records from the records custodian. IPRA requires that a public

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<sup>2</sup> (i) a one page memo dated January 14, 2014 from Eddy County Administrative Services Director Kenny Rayroux regarding the County Manager salary change from \$120,000 to \$130,961.00; and (ii) a "Personnel Change Notice" for Mr. Rudometkin with effective date of 6/22/14 and 1 page spreadsheet. These records are at Tabs C and D, respectively, of the binder the County sent to you on December 15, 2015.

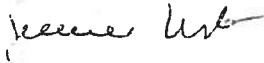
Ronald Barron  
May 18, 2016  
Page 3 of 3

body designate at least one custodian of public records (See, § 14-2-7). According to Mr. Tabor, Eddy County has designated the County Manager (Mr. Rudometkin) as the records custodian. Mr. Rudometkin received your June 9 and July 3 inspection requests and gave the requests to a staff member who worked with Mr. Tabor in responding. We see nothing improper with this arrangement for handling an IPRA request. Furthermore, we note that IPRA does not mandate that *only* the designated custodian may handle an IPRA request or that specific persons in the public body – such as county commissioners – must be informed about an IPRA request. Accordingly, we find no violation of IPRA in this aspect of the County's handling of your inspection requests.

In summary, based on the information available to us, it appears that the County has now provided all records which are responsive to your June 9, 2015 and July 3, 2015 inspection requests. Although the County failed to timely provide two of the records which were responsive to your July 3, 2015 inspection request, we accept the County's explanation as stated in Mr. Tabor's December 15, 2015 letter that this was an oversight and not an attempt to hide information. Going forward, we encourage the County to be more thorough when searching for and retrieving records which may be responsive to inspection requests.

The OAG has closed your IPRA complaint. Thank you for bringing this matter to our attention.

Sincerely,



Jennie Lusk  
Assistant Attorney General

cc: Cas Tabor, Esq., Caraway, Tabor and Byers, LLP

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

**YOUR CONTACT INFORMATION:**

First Name: Ronald Last Name: DARRON

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): EDDY COUNTY COMMISSIONERS

Format of IPRA Request:  Written  Oral

Date IPRA Request was Submitted to the Public Body: JUNE 9, 2015  
JULY 3RD 2015

Date of all Responses Received from the Public Body: JUNE 15TH 2015  
JULY 10TH 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.
- 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

ALSO I TALKED TO THREE COUNTY COMMISSIONERS

They told me they did not get the request for the records from the records custodian:

These request were addressed to  
Eddy County Commissioners  
c/o Rick Rudometkin  
Eddy County Manager

Commissioner did not get the letters.

**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.

SEE ATTACHED