

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

New Mexico Office of the Attorney General

Open Government Division

YOUR CONTACT INFORMATION:

First Name: MICHAEL Last Name: M. ANW

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): LEA COUNTY CLEAR

Format of IPRA Request: Written Oral

Date IPRA Request was Submitted to the Public Body: MAY 22, 2015

Date of all Responses Received from the Public Body: JUNE 4, 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.



the **LAND** department, inc.

7/19/15
11:20 A.M.
BM

July 1, 2015

Office of the Attorney General
Open Government Division
P.O. Drawer 1508
Santa Fe, NM 87504-1508

In Re: IPRA complaint against the Lea County County Clerk

Dear Sir/Madam:

As I don't know if you ever received my original complaint dated June 10th, I have enclosed a duplicate of that complaint, along with subsequent emails from and to the Lea County County Clerk.

I am enclosing a proposal that we submitted to Ms. Chappelle subsequent to the original complaint that she has verbally refused as well. This proposal, for all records prior to 1936, should be without any problem as there are and could not be any Protected Personal Identifier information in those records.

Mr. Mann and his company The Land Department are quite anxious to retrieve the County Clerk's records and would prefer to do so without conflict and with maximum congeniality however they do intend to insist upon their rights to inspect and copy any and all public records. We will move forward with litigation if necessary to preserve our, as well as the public's, rights.

Thank you for your attention to this matter.

Sincerely yours,

Eloyd Rex Bennett
Land Manager

Enclosures



Attorney General Of New Mexico

HECTOR H. BALDERAS
Attorney General

ELIZABETH A. GLENN
Chief Deputy Attorney General

December 28, 2015

Lloyd Rex Bennett
The Land Department, Inc.
3730 Kirby Drive Ste. 1000
Houston TX 77098

Re: Inspection of Public Records Act Complaint – Lea County

Dear Mr. Bennett,

This letter responds to the complaint you filed with this Office regarding a possible violation of the Inspection of Public Records Act (“IPRA” or the “Act”), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2013) by Lea County, New Mexico. We reviewed your complaint and the response from Lea County (“County”). As explained in more detail below, based on the information available to us we conclude that the County complied with IPRA in handling your request.

On May 22, 2015, you submitted an email to Pat Chappelle, Lea County Clerk (“Clerk”) and Michael Gallagher, County Manager, requesting to “... inspect and copy all those public records in the custody and control of the Lea County Clerk that are open to public inspection[.]” and also to “access [] all the property, probate, and mineral lease records for the purpose of inspecting and copying digitally all those records.” Ms. Chappelle responded to you by email on May 28, 2015, stating as follows:

“Thank you for your interest in Lea County. Our office hours are 7:00 a.m. to 5:00 p.m. Monday through Friday, we do not close for the lunch hour. Our records are open for inspection and copying on our copy machines. Each image/page must be checked by our staff for Personal Protected Identifier Information. Our fee is fifty cents, pages may be two sided. We look forward to meeting and visiting with Mr. Mann.”

Ms. Chappelle’s May 28th email was timely issued and provided information as to office hours, availability of copy machines, and photocopy fees. Although you requested the ability to digitally copy the records, there is no requirement under IPRA that a custodian make available a specific type of copying technology (such as digital, CD, DVD, flashdrive etc.). Rather, IPRA requires that a custodian “provide reasonable facilities to make or furnish copies of the public records during usual business hours.” Section 14-2-7(D) (2011). As Ms. Chappelle stated in her May 28 email, photocopiers are available in the County Clerk’s office. Ms. Chappelle informed this Office

Lloyd Rex Bennett
December 28, 2015
Page 2 of 2

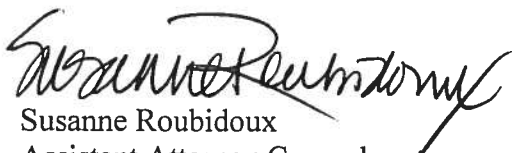
by letter dated September 15, 2015 that the County has eleven copiers available for public use and nine computers for searching information. Accordingly, we believe the County has complied with its obligations under IPRA to provide reasonable facilities to make or furnish copies of the requested records. As for your assertion that \$0.25 per page is “patently exorbitant” and thus violates IPRA, we disagree. A public body may charge “reasonable fees for copying public records.” Section 14-2-7(E)(3) (2011). Unless otherwise allowed by law, any fee charged by a public body may reflect only the actual cost of copying. This may include the actual costs to the public body for making and transmitting copies, including any personnel time involved and cost of paper. See N.M. Att’y Gen. IPRA Compliance Guide, 8th ed. 2015, p. 36 (“IPRA Guide”). Considering these and other factors, we do not believe that the County’s photocopy fee violates the “reasonable fee” provision of IPRA.

Finally, we turn to your assertion that redaction of private personal information in the County records can be performed by persons other than the Clerk, and that the Clerk isn’t required to redact this information before making the records available. IPRA provides that “protected personal identifier information” contained in public records may be redacted *by a public body* before inspection or copying of a record. Section 14-2-1(B) (2011).¹ (Emphasis added). With limited exceptions, all documents filed and recorded in the office of the county clerk are public records, subject to disclosure pursuant to the Inspection of Public Records Act. See NMSA 1978, Section 14-8-9.1(A) (2011). Before digitizing or purchasing of documents by third parties, protected personal identifier information, as defined in the Inspection of Public Records Act, *shall be redacted*. Section 14-8-9.1(C) (2011). (Emphasis added).

Based on the information available to us, we conclude that the County timely made the requested records available for inspection and complied with IPRA in handling your inspection request.

We appreciate you bringing this matter to our attention.

Sincerely,


Susanne Roubidoux
Assistant Attorney General

cc: Ms. Pat Chappelle, Lea County Clerk

¹ As used in IPRA, “protected personal identifier information” means: (1) all but the last four digits of a taxpayer identification number; financial account number; or driver’s license number; (2) all but the year of a person’s date of birth; and (3) social security number. Section 14-2-6(E) (2013).