



Attorney General Of New Mexico

HECTOR H. BALDERAS
Attorney General

ELIZABETH A. GLENN
Chief Deputy Attorney General

February 29, 2016

Ms. Beverly A. Friedman
Custodian of Record
New Mexico Public Education Department
300 Don Gaspar
Santa Fe, New Mexico 87501

Re: Inspection of Public Records Act Complaint – Diane Yolanda Gonzales

Dear Ms. Friedman:

Thank you for your February 9, 2016 electronic messages on behalf of the New Mexico Public Education Department (the "Department") regarding the complaint filed by Ms. Diane Yolanda Gonzales, alleging that the Department violated the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 to 12 ("IPRA"). More specifically, Ms. Gonzales alleges that the Department failed to provide the records she requested by electronic messages dated November 28 and December 21, 2015, failed to send a "three-day letter" explaining when the records would be available or when the Department would respond to her request, failed to allow inspection or otherwise respond to the request within 15 days, and failed to explain the reason for denial of her request.

As a preliminary matter, I note that the Department acknowledged Ms. Gonzales' request to inspect certain documents via electronic message dated January 8, 2016, wherein it indicated that the Department "was preparing the response to her request", which it expected to "release with the next week." The Department subsequently delivered the documents it deemed responsive to Ms. Gonzales' request via electronic message dated January 28, 2016. Ms. Gonzales filed her complaint with this Office on January 27, 2016.

Section 14-2-8(D) of IPRA provides:

D. A custodian receiving a written request shall permit the inspection immediately or as soon as is practicable under the circumstances, but not later than fifteen days after receiving a written request. If 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. The three-day period shall not begin until the written request is delivered to the office of the custodian.

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NMSA 1978, § 14-2-8 (2009). Hence, it appears that the Department failed to comply with Section 14-2-8(D) by not allowing inspection immediately or within 15 days and by failing to send its acknowledgement letter to Ms. Gonzales within 3 business days of her request.

We encourage the Department to strictly comply with the timelines set forth in IPRA on all future requests for inspections, keeping in mind that IPRA provides consequences for failure to comply with its requirements and could result in an enforcement action by the Attorney General. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Sally Malavé". The signature is written in a cursive style with a horizontal line at the end.

Sally Malavé
Assistant Attorney General

Cc: Ms. Diane Yolanda Gonzales

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

YOUR CONTACT INFORMATION:

First Name: DIANE "YOLANDA" Last Name: GONZALES

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): Public Educ. Dept., Santa Fe, NM 87501

Format of IPRA Request: Written Oral

Date IPRA Request was Submitted to the Public Body: 12-21-15 & 11-28-15
re: Financial Coordinator Supervisor follow up ← initial ←

Date of all Responses Received from the Public Body: None

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.

1-27-16

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.

1-26-16 - To date, the IPR requested has not been provided.

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.