



Attorney General of New Mexico

HECTOR H. BALDERAS
Attorney General

29 February 2016

Gabriel D. Baca
Records Custodian
NM Public Employees Retirement Association
P.O. Box 2123
Santa Fe, NM 87504

Re: IPRA complaint by Loretta Naranjo Lopez

Dear Mr. Baca:

Thank you for responding to our request for information regarding a complaint submitted to our office by Ms. Loretta Naranjo Lopez alleging the New Mexico Public Employees Retirement Association ("PERA") may have violated the New Mexico Inspection of Public Records Act ("IPRA"), NMSA 1978, Sections 14-2-1 to -12. Our office reviewed the complaint as well as your letter and documents provided in response to our earlier inquiry, and we have concluded there is no evidence found that PERA has violated IPRA in this particular matter.

It is important to note that Ms. Naranjo Lopez first wrote to our office with a number of different concerns in a letter dated June 8, 2015. Further communication lead to Ms. Naranjo Lopez submitting an IPRA complaint form to our office with specific alleged violations. This particular review and response only addresses allegations raised in the IPRA complaint form received by our office from Ms. Naranjo Lopez.

Ms. Naranjo Lopez's IPRA complaint alleged that PERA failed to comply with several provisions of IPRA, including: failure to provide all records responsive to her request, failure to provide electronic copies of records when requested, inadequate explanation for withheld records, lack of a 3-day letter, and failure to provide inspection within fifteen days as required by IPRA. Each of these allegations are addressed further below.

This complaint stems from May 11, 2015, when Ms. Naranjo-Lopez e-mailed a records request to PERA. Three days later, on May 14th, PERA replied, stating additional time was be needed and that records would be available by May 26, 2015. Responsive records were provided by PERA on May 26th. This request was responded to timely and records were provided within the fifteen day period required by IPRA Section 14-2-8(D).

A separate handwritten records request was submitted by Ms. Naranjo Lopez on June 9, 2015, and PERA provided a response the next day, June 10th, with several responsive records and information on scheduling a time with the PERA records custodian to inspect records. There is no evidence of any violation regarding the June 9th handwritten request.

On June 11, 2015, Ms. Naranjo Lopez replied to PERA via email with another IPRA request for certain “original nominating petitions.” On June 12, the records custodian responded to Ms. Naranjo Lopez with a request for clarification because the multiple requests “all look the same” and it was difficult to identify exactly what documents were being requested. Ms. Naranjo Lopez and PERA staff communicated back and forth several times between June 12th and June 18th in an attempt to clarify what records were being specifically requested. On June 18, 2015, a response was provided by PERA stating that the requested records were previously provided on June 9, 2015, to Ms. Naranjo Lopez and that the request was considered complete. Our review is unable to find evidence to substantiate Ms. Naranjo Lopez’s allegation that the PERA nominating petitions documents were not “originals” and that the records made available for inspection on June 9th and June 25th were not responsive to her request.

The complaint raised another allegation that not all records were provided and that PERA failed to provide an explanation for denying the production of exempt records. As it pertains to the “original” nominating petitions, as previously discussed, there is no evidence that documents responsive to this request were withheld. In its response on May 26, 2015, PERA explained that copies of nominating petitions had individual social security numbers redacted pursuant to NMSA 1978, Section 14-2-1(B), and that Ms. Naranjo Lopez was able to inspect un-redacted copies she submitted. Our review found no evidence that any records were unlawfully denied or redacted, and do not find any violation of IPRA Section 14-2-11.

Finally, the complaint also alleged that a request was made for electronic copies of records maintained in electronic format, but that electronic copies were not provided. In response, PERA explained that records responsive to Ms. Naranjo Lopez’s requests are received in paper form and only maintained in paper form on a short term retention schedule. Our office finds no evidence that electronic copies of these records are maintained by PERA and therefore do not find a violation of IPRA Section 14-2-9(B).

In conclusion, our review finds no evidence to support finding that PERA failed to comply with IPRA as alleged.

For more information about IPRA you may refer to the Office of the Attorney General’s Inspection of Public Records Act Compliance Guide, available on our website at www.nmag.gov. If you have any questions about the specific matters addressed in this letter or about the Inspection of Public Records Act you may contact me directly or call the Office of the Attorney General Open Government Division at (505) 827-6070.

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Dworak', with a long horizontal flourish extending to the right.

Joseph M. Dworak
Assistant Attorney General

Cc: Loretta Naranjo Lopez

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

YOUR CONTACT INFORMATION:

First Name: Loretta Last Name: Naranjo Lopez

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): New Mexico Public Employees Retirement Assoc

Format of IPRA Request: Written Oral

Date IPRA Request was Submitted to the Public Body: May 11, 2015

Date of all Responses Received from the Public Body: May 29, 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 NMPERA denied my request to
review the Election Petitions. NMPERA
did not provide electronic copies

See attached explanation and exhibits

A written letter was not provided to explain why I could not review original Petitions

As a board member, these documents should be reviewed before approval by the board

PERA
Election
Petitions

I would like to meet with the Attorney General to discuss this issue and other issues pertaining to NMPEPA.

A full investigation needs to be conducted.

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