

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



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January 27, 2017

Ms. Robin Wakeland
501 Quincy Pl SE
Albuquerque NM 87108

Re: Inspection of Public Records Act (IPRA) Complaint against the New Mexico State Land Office (SLO).

Dear Ms. Wakeland:

We have completed the review of your two complaints against the New Mexico State Land Office ("SLO") under the Inspection of Public Records Act ("IPRA"), NMSA 1978, §§ 14-2-1 to -12 (1947, as amended through 2013). You allege that the SLO violated IPRA by: (1) failing to respond timely to your request for certain records; and (2) failing to comply with specific requirements for denying records. Based on our review of the relevant documents and analysis of IPRA we conclude that SLO committed no IPRA violations.

SLO responded to your July 7, 2016 request in timely fashion, electronically producing more than 1500 emails comprising 2400 pages and spanning more than a decade. SLO provided technical assistance to you in opening the files in the "personal storage table" (".pst") format and advised you of fees and costs for copies. Therefore, it fulfilled its statutory duty to provide a "reasonable opportunity to inspect" the information. See § 14-2-7 (C).

SLO also formally declined to release some maps and "shape file attachments" in its first response to you, noting that these items related to locations of specific archeological sites deemed confidential under the New Mexico Cultural Properties Act, § 18-6-11.1. IPRA provides an exemption for inspection of public records when disclosure is otherwise prohibited by law, and your complaint did not take issue with SLO's denial of copies of such documents. See § 14-2-1.A(8).

You followed the initial request with a request for two documents mentioned in the records SLO originally released. On August 25, 2016, SLO informed you it would need until August 31 to

respond. See § 14-2-10 (describing appropriate procedures for excessively burdensome or broad requests). Then, it responded on August 29, 2016, indicating that it had no responsive documents.

Your complaint indicates that you believe SLO failed to observe the formal requirements for denying your request for these documents. Your complaint stated that “if no records described [August 17, 2016] exist, SLO needs to issue a statement to that effect.” Your understanding is not supported in law.

IPRA requires that a public body denying a records request provide the requester within 15 days of the request with a written explanation of the denial that describes the records sought, sets forth the names and titles or positions of each person responsible for the denial—when the agency declines to produce the request on the basis that it is excessively burdensome or broad. See § 14-2-11 (A). While the statutory requirement for a more detailed statement pertains to records requests denied for being too burdensome or broad, it is not relevant to situations in which the agency simply does not possess the records.

In this case, SLO did not have the requested records. The public body suggested it might need a longer time frame in which to respond, but did not indicate that the request was overly burdensome or broad. Instead, it responded within a week after a thorough check of files and answered that it simply did not have the documents.

New Mexico’s highest court has acknowledged the importance ensuring that records are available to the public. See *Stat ex re. Newsome v. Alarid*, 1977-NMSC-076, 90 N.M. 790, 568 P.2d 1236 (S. Ct. 1977) (stating that “[w]ritings coming into the hands of public officers in connection with their official functions should generally be accessible to members of the public so that there will be an opportunity to determine whether those who have been entrusted with the affairs of government are honestly, faithfully and competently performing their function as public servants.”). However, when a public body has disclosed all the responsive records in its possession, it is in substantial compliance with IPRA. See *Derringer v. State*, 2003-NMCA-073, 133 N.M. 721 (2003) (closing a matter after a public body “ultimately produced or allowed for the inspection of all responsive records” it possessed).

Accordingly, this Office considers this matter closed.

Sincerely,

Jennie Lusk

Jennie Lusk
Assistant Attorney General

cc: Jennifer Pruett, Associate Counsel, SLO

2016-11-22 PM 5:07

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

New Mexico Office of the Attorney General
Open Government Division

YOUR CONTACT INFORMATION:

First Name: RG Last Name: Wakeland

Address: [Redacted]
City: [Redacted] State: [Redacted] Zip Code: [Redacted]

Phone Number: [Redacted]

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): State Land Office (SLO)

Format of IPRA Request: Written Oral

Date IPRA Request was Submitted to the Public Body: 7-7-2016, 8-17-2016

Date of all Responses Received from the Public Body: 8-1-2016, 8-5-2016, 8-10-2016, 8-9-2016, 8-17-2016

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. *if no records described 8-17-2016 exist, SLO needs to issue statement to this effect.*

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.

My 8-17-16 memo is a continuation of my 7-7-16 request. My 8-17-16 memo is a request for records omitted from previous responses + data supplied 8-9-2016 8-10-2016.

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If no such 8-17-16 records exist, SLO needs to state so. SLO needs to search for the omitted records SLO 8-17-16 response indicates ONLY Email search was previously search.

COPY



Aubrey Dunn
COMMISSIONER

State of New Mexico
Commissioner of Public Lands

310 OLD SANTA FE TRAIL
P.O. BOX 1148
SANTA FE, NEW MEXICO 87504-1148

COMMISSIONER'S OFFICE

Phone (505) 827-5760

Fax (505) 827-5766

www.nmstatelands.org

By email to: rgwakeland4036@msn.com

August 17, 2016

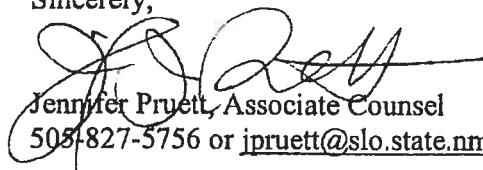
Ms. R.G. Wakeland
501 Quincy Place SE SPC C
Albuquerque, NM 87108

Re: Closing IPRA Request Dated 07/07/16

Dear Ms. Wakeland:

The State Land Office (SLO) uploaded to Dropbox the documents you requested in your July 7, 2016 IPRA, and subsequently provided instructions and assistance to you in opening the Outlook personal storage table (.pst) format documents. As SLO has complied with IPRA's requirements for responding to this request, SLO is now closing this IPRA. Any additional request for documents will be considered a new IPRA request.

Sincerely,


Jennifer Pruett, Associate Counsel
505-827-5756 or jpruett@slo.state.nm.us

cc: Lucille Sisneros, SLO Records Management Division

copy

<p>TO: Jennifer Pruitt Associate Counsel Office of General Counsel 505.827.5756 New Mexico State Land Office (SLO) 310 Old Santa Fe Trail P.O. Box 1148 Santa Fe NM 87504 PHONE: 505-827-5756 FAX: 505-827-5766</p>	<p>FROM: R.G. Wakeland 501 Quincy PL SE SPC <i>Row</i> Albuquerque NM 87108 PHONE: 505-473-4036 FAX: 505-508-5376</p>
<p>RE: 7/7/16 IPRA request for SLO records concerning Galisteo Basin archaeological protection sites act</p>	<p>TOTAL PAGES: 2 DATE: 8/17/16</p>

I received your outlook, .pst file data responding to the above-referenced request and opened it on my computer. However, some records seem to be missing, as follows. I noticed in a 6/3/2005 email from James B. Walker of The Archaological Conservancy to David Eck of the SLO (attached), with a request to SLO staff to review a draft report and return comments to Walker. No such returned comments exist in the data you sent me. Likewise, no final report, also mentoned by Walker: "We will be mailing out a final plan with all comments incorporated by mid-July", exists in the data you sent me.

The statutory time has passed for your response to my request. Therefore, you should send me the records as soon as possible.

If you have any questions or need any further info, you can call or send fax or letter or email.

COPY

TO: State Land Office New Mexico state government 310 Old Santa Fe Trail Santa Fe, NM 87501 PHONE: 505-827-5760 FAX: 505-827-5766	FROM: R.G. Wakeland <i>R.G. Wakeland</i> 501 Quincy PL SE SPC C Albuquerque NM 87108 PHONE: 505-473-4036 FAX: 505-508-5376
RE: Inspection of Public Records act (IPRA) request	DATE: 7/7/16
	TOTAL Pages: 1

I am requesting to inspect and copy records concerning or referencing the work/consultation the land office commissioner and other state land office staff did on the general management plan cited below. This federal statute is commonly known as the GALISTEO BASIN ARCHAEOLOGICAL PROTECTION SITES act, 118 STAT 560, 16 USC 470.

See: <https://www.gpo.gov/fdsys/pkg/STATUTE-118/html/STATUTE-118-Pg558.htm>

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118 STAT. 560 [emphasis added]

(1) In general.--Within NOTE: Deadline. 3 complete fiscal years after the date funds are made available, the Secretary shall prepare and transmit to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives, a general management plan for the identification, research, protection, and public interpretation of--

(A) the archaeological protection sites located on Federal land; and (B) for sites on State or private lands for which the Secretary has entered into cooperative agreements pursuant to section 6 of this Act.

(2) Consultation.--The general management plan shall be developed by the Secretary in consultation with the Governor of New Mexico, the New Mexico State Land Commissioner, affected Native American pueblos, and other interested parties.

I agree to pay reasonable copying charges for this data. However, you should notify me first before incurring any copying expenses. In addition, if there are a lot of papers to look at, I will probably to inspect the records in person and then decide if I need any copies.

If you have any questions or need any further info, you can call or send fax or email to rgwakeland4036@msn.com

