

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

December 16, 2019

VIA ELECTRONIC MAIL ONLY

Ms. Christine D. Gallegos
San Rafael Water & Sanitation District
PO Box 99
San Rafael, NM 87051
Email: srwaterdistrict@yahoo.com

Re: Inspection of Public Records Act Complaint – Lawrence Chavez

Dear Ms. Gallegos:

Thank you for your response to our inquiry regarding the complaint submitted to the Office of the Attorney General by Mr. Lawrence Chavez alleging that the San Rafael Water and Sanitation District (hereinafter the “the District”) violated the Inspection of Public Records Act (“IPRA”), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2019). As you know, Mr. Chavez alleges that the District failed to provide records responsive to his request dated August 15, 2018. Having thoroughly reviewed your response and Mr. Chavez’s complaint, we are concerned as to both the completeness and the timeliness of the District’s response to his request. We advise the District to reopen Mr. Chavez’s request and ensure that he has received copies of all responsive records.

Background

In New Mexico, the people are entitled to “the greatest possible information” about governmental affairs pursuant to the Inspection of Public Records Act. NMSA 1978, § 14-2-5. *See also San Juan Agr. Water Users Ass’n v. KNME-TV*, 2011-NMSC-011, ¶ 16 (noting that, “IPRA is intended to ensure that the public servants of New Mexico

remain accountable to the people they serve.”). To that end, IPRA specifically states that the public has the right to inspect and copy all “public records” with only limited and specifically enumerated exceptions. Section 14-2-1(A). All of IPRA’s provisions must be interpreted in light of this public policy and the “presumption in favor of the right to inspect.” Attorney General’s Inspection of Public Records Act Compliance Guide, p. 7 (8th ed. 2015) (“IPRA Guide”).

Mr. Chavez hand-delivered a notarized letter to the District requesting public records on August 15, 2018. Specifically, he sought “a copy of the San Rafael Water and Sanitation’s Bylaws, SOP’s and SOG’s.” The District did not respond to this request in writing, although several of its officers and employees did apparently discuss the request several times with Mr. Chavez in person. During these conversations, the District seems to have told Mr. Chavez that he was welcome to inspect the records at the District’s office, but he was never given a copy of the records. Although the District’s response to our inquiry reflects that it was under the mistaken impression that “the matter had been resolved,” Mr. Chavez’s complaint raises two key allegations: first, that the District violated IPRA’s specified timelines for public bodies to respond to records requests, and secondly that he was never provided the records he requested. We will address each issue in turn.

Timelines

Although the District’s confusion and misapprehension of its legal obligations is perhaps understandable, there is no question that it was noncompliant with IPRA’s specified timelines because it never responded to Mr. Chavez’s request in writing. Oral responses and personal conversations, while worthwhile, are not a legally valid substitute for IPRA’s required written responses. As the District never sent any written response or acknowledgement to Mr. Chavez, we do conclude that he has identified a violation of IPRA as to this issue.

In the interests of informing the District as to IPRA and assisting it in complying with the statute, we provide the following general summary of IPRA’s mandated deadlines. First, upon receipt of an IPRA request, the public body must respond within three business days. *See* § 14-2-8(D) (providing that, “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.”). This initial response must either provide the requested records or state “when the records will be available or when the agency will respond.” IPRA Guide, p. 33. If unable to provide the requested records within three business days, IPRA generally requires public bodies to provide all requested records within fifteen calendar days. Section 14-2-8(D). This fifteen-day period begins upon the records request’s receipt by the public body’s designated records custodian. *Id.* The only exception to this fifteen-day deadline is for records requests determined to be “excessively burdensome or broad” by the

public body, for which IPRA grants the public body an additional, reasonable amount of time to respond (to be determined individually, dependent on the circumstances). Section 14-2-10. In any event, the public body must either provide the requested records, deny the request, or designate the request as broad and burdensome in writing within fifteen calendar days. Section 14-2-11(A).

Records

Outside of the District's failure to abide by IPRA's timelines, there remains the more important issue that Mr. Chavez still has not been provided copies of any of the responsive records. This too is a problem that we suspect stems from the District's misapprehension of IPRA. To clarify, public bodies in New Mexico are required by IPRA to *both* allow requestors to inspect their public records (for free) *and* provide copies of those records to requestors.¹ *See* § 14-2-7 (requiring public bodies to both "provide proper and reasonable opportunities to inspect public records" and to "provide reasonable facilities to make or furnish copies of the public records during usual business hours"). Although public bodies must allow requestors to inspect the requested records, this alone is not sufficient if the requestor desires a copy of the responsive record.

Here, Mr. Chavez's primary concern appears to be that he has never been provided copies of the records he sought. For its part, the District does not claim that any of the responsive records are exempt from disclosure, and it has apparently provided Mr. Chavez the opportunity to inspect the records at its main office. But it did not provide Mr. Chavez copies of the records he sought despite his request specifying that he sought "a copy" of the responsive records. In other words, on this issue Mr. Chavez is again correct insofar as the District was and remains obligated under IPRA to provide him copies of the records responsive to his request. *See* § 14-2-7.

Conclusion

Because the District has still provided Mr. Chavez neither a written response to his request nor copies of the public records he sought, we strongly advise it to take prompt remedial action. This should consist of providing him with copies of the records he sought (unless it determines that those records are exempt from disclosure) along with a written letter acknowledging receipt of his request. These steps are imperative in order for the District to rectify its prior noncompliance with IPRA. We would also strongly

¹ IPRA provides a number of exceptions to mandatory disclosure, see generally Section 14-2-1, but in the absence of a valid exception grounded in law the public body must both allow inspection and provide a copy of the requested record.

encourage the District to reevaluate its public records policies and familiarize its staff with IPRA in order to avoid a recurrence of these problems in the future.

Our Office conducts periodic trainings for the public across the State on both the Inspection of Public Records Act and the Open Meetings Act, and we invite the District's employees and officers to attend. Please visit our website for more information on the exact date, time and location, <https://www.nmag.gov/events.aspx>, and make plans to attend. Additionally, for your reference, a copy of the IPRA Guide is available on the website of the Office of the Attorney General at www.nmag.gov. If you have any questions regarding this determination or IPRA in general, please let me know.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Kreienkamp", is written over a light blue rectangular background.

John Kreienkamp
Assistant Attorney General

Enclosure

cc: Lawrence Chavez

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

Electronic Complaint Submission

Submission Detail

ECS Reference Number	NMOAG-ECS-20190103-b653
Final Submit Date	1/3/2019 1:34:13 PM

Disclosure of your complaint: This complaint is a public record, thus available under provisions of the NM Inspection of Public Records Act.

Disclosure to other entities: This complaint, its content, and other information may be disclosed to other law enforcement and regulatory agencies.

I understand this complaint and any submitted documents are public record and may be shared with other law enforcement and regulatory agencies.

DECLARATION: By submitting this form, I attest that the information in this complaint is true and accurate to the best of my knowledge. I further understand that by submitting this form I may be called to testify as a witness in this matter.

I understand declaration statement.

The New Mexico Office of the Attorney General cannot give legal advice regarding this complaint and will not act as your personal attorney. If you have questions regarding your rights please contact a private attorney.

Submission of this complaint is not confirmation that an investigation will be initiated.

Complaint Detail

Complaint Type Inspection of Public Records (IPRA) Complaint

Retained Attorney

Parties

Complainant

Mr. Lawrence Chavez

Person

Address

[REDACTED]

Contact information

[REDACTED]
[REDACTED]

Complaint against

San Rafael water and Sanitation - Secretary

Public Body (Government Entity)

Address

San Rafael, New Mexico 87051

Contact information

Complaint Specifics

Format of IPRA request:	Written
Date IPRA request was submitted to the public body:	August 15 2018
Date of all responses received from the public body:	No response
Records	No records were provided.
Denied requests to inspect public 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.
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.

Transaction

Documents



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Notorized letter hand delivered requesting bylaws

Comments

Today Jan.3 2019 I requested copies once more and was told (oh well) by the secretary. The Organization has been run by the board president his daughter who is secretary, I believe two of her children and a relative.

*** END OF COMPLAINT ***

Request of San Rafael Water and Sanitation
District

By-laws, SOP's and SOG's

Attn: San Rafael Water and Sanitation Dist. Letter of request.

I Lawrence Chavez am requesting a copy of the San Rafael Water and Sanitation's Bylaws, SOP's and SOG's in a timely manner as specified by NM law.

I am requesting a written response within the time allowed by such laws as of today 2018 March 15. Please feel free to contact me in regards to this matter in person by postal service or by postal service.

My current mailing address is as follows.

PO Box 194 San Rafael, N.M. 87051.

Phone contact # 505-290-5990

State of New Mexico

County of Sibola

Subscribed and sworn to before me this

15th day of August 2018

by Lawrence Chavez

Robert Wynn Notary Public

My Commission Expires 3-16-2020

Thank You.

Lawrence Chavez
Sincerely: Lawrence Chavez