

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

February 5, 2020

Mr. Audeliz Nieves
8409 Mesa Top Road NW
Albuquerque, NM 87120
Email: Ofc.nieves@gmail.com

Re: Inspection of Public Records Act Complaint – Sandoval County

Dear Mr. Nieves:

This letter addresses the complaint you submitted to the Office of the Attorney General alleging that Sandoval County (hereinafter the “County”) violated the Inspection of Public Records Act (“IPRA”), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2018), by failing to provide you with records responsive to your request dated March 17, 2019. We have also reviewed the letter sent to us in response to our inquiry regarding this matter by Robin Hammer, the Sandoval County Attorney. Having reviewed both your complaint and the County’s response, we conclude that you have not identified a violation of IPRA.

On March 17, 2019, you sent a written request for public records to the County through its electronic public records request system. Specifically, you sought “test questions, notes and scores for all seven applicants used and scored by three interviewers in the recent March 13 and March 14, 2019 Sandoval County Sheriff’s Office Lieutenant Promotion Test. Test questions used in the 2018 Sandoval County Sheriff’s Office Lieutenant promotion test.” The County first responded on March 21, 2019 and sent you information regarding records responsive to the 2019 promotion test by way of an electronic message stating that it had received your request and that the records were available for your inspection by logging into the Online Public Records Center to retrieve/review/download them. The County also informed you that the records had been partially denied and listed the exemptions for the denials. Additionally, the County informed you that some of the records had been redacted and they provided their rationale for those redactions. According to the County, they inadvertently informed you that the County considered the request closed.

You contacted the County through the online portal on March 21, 2019 and again requested records related to the 2018 promotion test, that were not provided in the County’s original response. The County provided responsive records to this request on March 22, 2019 under a new system-

Mr. Audeliz Nieves
February 5, 2020
Page 2

assigned IPRA processing number and again informed you that the records were available for your inspection by logging into the Online Public Records Center to retrieve/review/download them.

As to your primary allegation, that the County failed to provide you with responsive records, the County emphatically maintains that it did, in fact, provide you all records in its possession that were responsive to your request. As proof of this, it provided our Office with a copy of its internal public records system file for your request(s) (identified as request Number P003877-031719 and Number S003913-032119). These files do show that a number of records were provided to you by March 22, 2019, five days after the County received your request. The County also strongly maintains that it provided you with valid explanations for withholding or redaction of any documents, an assertion to which we must defer in the absence of evidence to the contrary. See *Smith Butz, LLC v. Pennsylvania Dep't of Env'tl. Prot.*, 142 A.3d 941, 945 (Pa. Commw. Ct. 2016) (holding that, without "competent evidence" that a public body "acted in bad faith or that the...records exist," the court must accept as true the public body's assertion that the public records do not exist). As a result, it appears that the County complied with IPRA by providing the records you requested.

Finally, we would acknowledge that the County did initially fail to provide you with requested records regarding the 2018 Test questions used in the Sandoval County Sheriff's Office Lieutenant Promotion test. However, the County provided you a copy of those omitted record on March 22, 2019, which is well within the fifteen calendar day window within which IPRA generally requires public bodies to provide requested records. See § 14-2-8(D) (providing that public bodies must permit inspection "not later than fifteen days after receiving a written request"). Thus, even if it may have erred slightly by not sending you the 2018 records on March 21, 2019, it is abundantly clear that the County remains in substantial compliance with IPRA. See *Derringer v. State*, 2003-NMCA-073, ¶ 13.

Based on the evidence provided to us, we conclude that the County did not violate IPRA as alleged, and we consider this matter closed. However, the Office of the Attorney General appreciates you bringing possible violations to this office and will welcome any further complaints you may submit. If you have any concerns in the future, please do not hesitate to contact us. Additionally, our IPRA Guide is available on the website of the Office of the Attorney General at www.nmag.gov.

Sincerely,


Sally Malavé

Assistant Attorney General

Enclosure

CC: Robin S. Hammer, Esq.
Sandoval County Attorney
rhammer@sandovalcountynm.gov

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Electronic Complaint Submission

Submission Detail

ECS Reference Number	NMOAG-ECS-20190321-8e45
Final Submit Date	3/21/2019 1:41:18 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 Audeliz Nieves ofc.nieves@gmail.com

Person

Address

[REDACTED]

Contact information

[REDACTED]
[REDACTED]

Complaint against

Sandoval County Human Resources / Sandoval County Sheriff's Office - PIO Melissa Perez

Public Body (Government Entity)

Address

1500 IDALIA RD
BERNALILLO, New Mexico 87004

Contact information

mperez@sandovalcountynm.gov
(505) 867-4581
www.sandovalcountynm.gov

Complaint Specifics

Format of IPRA request: Written

Date IPRA request was submitted to the public body: March 17, 2019

Date of all responses received from the public body: March 17, 2019 March 21, 2019

Records The agency provided some but not all of the records responsive to the request.

Transaction

Documents



File too large.txt

Upload of file failed. Several attempts made. 247 page pdf file

Comments

Request of test questions from the 2018 Lieutenant Promotion Test were not provided yet the 2019 questions were provided. Test scores requested were redacted and my own score sheet was redacted.

*** END OF COMPLAINT ***