

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

July 8, 2021

VIA ELECTRONIC MAIL ONLY

City of Santa Fe
Michael N. Prinz, Esq.
200 Lincoln Ave.
Santa Fe, NM 87504
Email: mnprinz@santafenm.gov

Re: Inspection of Public Records Act Complaint – Melissa Mascarenas

Dear Mr. Prinz:

Thank you for your response to the complaint filed with the Office of the Attorney General by Ms. Melissa Mascarenas alleging that the City of Santa Fe (hereinafter the “City”) violated the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2019) (“IPRA”). As you know, Ms. Mascarenas alleges that the City violated IPRA by withholding records responsive to her public records request dated February 23, 2021. Having carefully reviewed both her complaint and your response to our inquiry, we do not agree with the City’s hyper-technical interpretation of Ms. Mascarenas’s request. We recommend that the City provide Ms. Mascarenas the payment invoice it provided to our Office in response to our inquiry and that it take a more inclusive approach to interpreting public records requests in the future.

Background

Ms. Mascarenas submitted a public records request to the City on February 23, 2021 seeking records related to the removal of a statue of the Spanish conquistador Don Diego de Vargas that was previously located on the Santa Fe Plaza. In particular, Ms. Mascarenas requested “any and all documents showing payment to the contractor for services rendered involving the removal and storage of the DeVargas statue.” Three days after receiving this request, on February 26, 2021, the City responded by stating that it had received Ms. Mascarenas’s request and would respond again on or before March 10, 2021. The City then

responded substantively on March 8, 2021, when it informed Ms. Mascarenas that it had conducted a search of files belonging to a number of its internal departments and “failed to identify any records that are responsive to your request.” The City then stated that it considered the matter closed.

After receipt of Ms. Mascarenas’ complaint, our Office contacted the City and requested a response. The City explained our Office that it “did not deny the inspection of the records Ms. Mascarenas requested but merely did not have any such records.” The City further explained that, although the City had received an invoice for payment from the contractor and had this record in its possession when it received Ms. Mascarenas’s request, it did not actually pay the contractor until March 23, 2021, almost two weeks after stating to Ms. Mascarenas that no records existed. As the City interprets Ms. Mascarenas’s request, “all documents showing payment to the contractor for services rendered” meant only records showing payments that it had already made. In other words, the City argues that since it had not paid for the removal of the statue, it had no records “showing payment to the contractor for services rendered” and the payment invoice was not a responsive record.

The sole allegation in Ms. Mascarenas’ complaint is that the City withheld responsive records. Since there is no question that the payment invoice was “held by” the City at the time of the request, Section 14-2-6(G), she argues that the City violated IPRA by failing to allow inspection of the record. As mentioned previously, the City responded to this allegation by contending that, since it had not paid for the removal of the statue, the payment invoice was not a responsive record. According to the City, it “complied with the IPRA by conducting a search for responsive records and then accurately and timely informing Ms. Mascarenas on March 8 that the records she requested did not exist.” Therefore, to resolve this dispute, the only issue we must resolve is whether the payment invoice was responsive to Ms. Mascarenas’ request.

Analysis

The public policy behind New Mexico’s Inspection of Public Records Act is that the public is entitled to “the greatest possible information” about governmental affairs. NMSA 1978, § 14-2-5. *See also Am. Civil Liberties Union of New Mexico v. Duran*, 2016-NMCA-063, ¶ 25 (noting that the purpose of IPRA is “to promote the existence of (1) an informed electorate and (2) transparency in governmental affairs”). IPRA specifically provides that individuals may inspect and copy all “public records” with only limited and specifically enumerated exceptions. Section 14-2-1(A). We interpret IPRA’s various provisions in light of 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”).

Upon receipt of a public records request, the public body must permit inspection of each responsive record or provide the requestor a “written explanation of denial.” Section 14-2-11(B). The determination of whether a particular record is responsive to the request is only

the first step in the IPRA process, since responsive records will often be exempt from disclosure. *See generally Dunn v. N.M. Dep't of Game & Fish*, 2020-NMCA-026, ¶ 7 (concluding that “the email addresses NMDGF collected in connection with its licensing system constitute ‘public records’ that are subject to disclosure under IPRA in the absence of an applicable exception”).

“A public record is ‘responsive’ to an inspection request when the request identifies the public record with reasonable particularity.” *San Juan Agr. Water Users Ass'n v. KNME-TV*, No. A-1-CA-35839, mem. op. at 21 (N.M. Ct. App. Apr. 16, 2019) (non-precedential) (quoting *Duran*, 2016-NMCA-063, ¶ 27). *See also* § 14-2-8(C). To make this determination, courts will look to the specific language within the request, utilizing standard rules of grammar. *See Duran*, 2016-NMCA-063, ¶ 30 (explaining that the request at issue could “be deconstructed using basic grammar” and that “numerous possible readings are included within the request”).

Looking to the specific language of Ms. Mascarenas’s request, we think the City interpreted the phrase “all documents showing payment to the contractor for services rendered” too narrowly. Although the language of this request is arguably susceptible to differing interpretations, a strict and narrow construction of the phrase “payment to the contractor” seems to be at odds with the plainly broad scope of the phrase “all documents.” Even if the City had not yet paid for the contractor’s removal of the statue, the payment invoice did clearly show a *future* payment to the contractor. Since IPRA requires only “reasonable” particularity – not exacting detail that eliminates all possible doubt – we think the payment invoice fell within the ambit of Ms. Mascarenas’ request. We would also emphasize that to interpret records requests and enforce the rules of grammar in an exceptionally narrow and hyper-technical manner, as it appears the City did here by informing Ms. Mascarenas that it had “failed to identify any records that are responsive to your request,” is inconsistent with IPRA’s purpose. Interpreted reasonably and in line with the evident intent of the requestor, we think the payment invoice was responsive to Ms. Mascarenas’ request and the City should have provided it to her.

Conclusion

If it has not done so already, we recommend that the City provide Ms. Mascarenas the payment invoice that it held on the day it received her records request. Even if the City’s quite narrow interpretation of her request was plausible from a strictly grammatical perspective, we think that it was not the most reasonable interpretation and, in any case, clearly not a best practice. Thus, as a means of resolving her request with finality, the City should simply provide her the record she sought. Moreover, in the future, where the City has similar questions as to the scope of a particular public records request, we suggest that it communicate with the requestor to obtain necessary clarification rather than risk an enforcement action.

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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: Melissa Mascarenas