

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
ATTORNEY GENERAL

October 31, 2017

Acequia Los Ranchitos  
Yvonne Aragon, Secretary/Treasurer  
P.O. Box 206  
Anton Chico, NM 87711

**Re: Inspection of Public Records Act Complaint-Acequia Los Ranchitos**

Ms. Aragon:

We have reviewed the complaint submitted by Bill Mann on November 3, 2016 alleging that Acequia Los Ranchitos (Acequia) violated the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 to -12 (as amended through 2013) (IPRA), by failing to provide public records in response to Mr. Mann's written request. We also have reviewed your response, on behalf of the Acequia, to our inquiry regarding the complaint. *See* e-mail from Yvonne Aragon (Dec. 4, 2016) (Acequia's Response). Based on our review, as discussed in more detail below, we conclude that the Acequia violated IPRA by failing to respond to Mr. Mann's inspection request, as alleged, but has since provided Mr. Mann with all responsive records.

According to the complaint, the Acequia's Response, and other information provided to us, Mr. Mann submitted a request on May 12, 2016, for copies of the Acequia's "bank statements and checking account register from 2012 to the present." Mr. Mann made his request by e-mail addressed to you and other officers of the Acequia. On June 1, 2016, Andres Aragon, president of the Acequia, sent an e-mail informing Mr. Mann that he would need to "send an official request via US mail to the official address of the Acequia organization" before the Acequia would address the request. On October 20, 2016, Mr. Mann sent a follow-up e-mail stating that he had not received the records he requested on May 12. Through e-mail exchanges between November 7 and November 9, 2016, you made available all responsive records Mr. Mann requested.

IPRA requires a public body to "designate at least one custodian of public records who shall ... receive requests, including electronic mail ..., to inspect public records..." and "respond to requests in the same medium, electronic or paper, in which the request was made...." NMSA 1978, §§ 14-2-7(A), (B). Further, IPRA provides that a "written request"

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to inspect public records “includes an electronic communication, including email...” § 14-2-8(F).

The above provisions require a records custodian to receive requests to inspect public records by e-mail. A public records request submitted by e-mail is a "written request" and is subject to IPRA's timelines and penalties. § 14-2-8. Therefore, we conclude that the Acequia violated IPRA when, rather than responding to Mr. Mann's e-mail request for public records, the Acequia required Mr. Mann to re-submit his request by U.S. mail before the Acequia would respond.

Although we have determined that the Acequia violated IPRA, the Acequia has since provided Mr. Mann with all responsive records he requested. Consequently, absent additional evidence showing otherwise, this matter appears to have been resolved. *See Derringer v. State Livestock Board, 2003-NMCA-073* (a public body is not liable for damages under IPRA in an action brought after the public body has complied with IPRA).

To avoid future complaints, we recommend that the Acequia review its procedures for responding to public records requests and make changes, if necessary, to ensure they comply with IPRA's requirements. If you have any questions about this determination or IPRA in general, please let me know.

Sincerely,



Dylan K. Lange  
Assistant Attorney General

Enclosure

cc: Bill Mann

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

New Mexico Office of the Attorney General

Open Government Division

2016 NOV -3 AM 8:45

**YOUR CONTACT INFORMATION:**

First Name: Bill Last Name: Mann

Address: [REDACTED]

City: [REDACTED] State: [REDACTED] Zip Code: [REDACTED]

Phone Number: [REDACTED]

Email: [REDACTED]

**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): Acequia Las Ranchitas de Anton Chico

PO Box 206 Anton Chico, NM 87711

Format of IPRA Request:  Written  Oral

Date IPRA Request was Submitted to the Public Body: May 12, 2016

Date of all Responses Received from the Public Body: June 1, 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.
- 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.

On 5/12/16 I requested via email to examine the financial records. Jan 1st the president of the acequia responded with the demand I make request in writing via US Mail.

Page 2 I replied that by as stated by IPRA written notice not required.

on 10/20/16 I emailed a reminder.

