

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



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ATTORNEY GENERAL

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Deputy of Civil Affairs

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Chief of Staff for Operations

SONYA CARRASCO-TRUJILLO
Chief of Staff for Policy & Public Affairs

August 23, 2016

Mark A. Whaley
1583 June Drive
Xenia, Ohio 45385

Re: **Inspection of Public Records Act Complaint - Albuquerque Police Department**

Dear Mr. Whaley:

This determination letter addresses the complaint you filed with the Office of the Attorney General alleging that the Albuquerque Police Department ("APD") violated the Inspection of Public Records Act ("IPRA"), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2013), by failing to provide documents responsive to your January 28, 2015 request and by attempting to charge an excessive copying fee. We have reviewed your complaint, as well as APD's response, and based on the information available to us at this time, we are unable to conclude that APD violated the IPRA as alleged in the complaint.

In your complaint, you allege that APD's former records custodian informed you that the estimated cost of copying approximately 1,001 pages of documents responsive to your request would be \$561.25. You stated that you requested an explanation of the proposed charges and also requested a copy of APD's "fee" policy. You further explained that APD closed your IPRA request "due to no follow up on your part in supplying additional information." You allege that you never received a copy of APD's "fee" policy, nor did you receive copies of the requested records.

Under Section 14-2-9(C) of the IPRA, a records custodian is prohibited from charging a fee in excess of one dollar (\$1.00) to copy a document eleven inches by seventeen inches in size or smaller. In your case, you allege that APD attempted to charge you a copying fee of \$1.85 per page; however, your letter to our Office fails to include copies of the correspondence exchanged between you and the APD records custodian. Similarly, APD was also unable to provide relevant correspondence when requested by our office. Nonetheless, based upon the information provided in your complaint, as well as Assistant City Attorney Kevin Morrow's letter to our Office, we conclude that APD could not have assessed a copying fee of \$1.85 per page because, if it had,

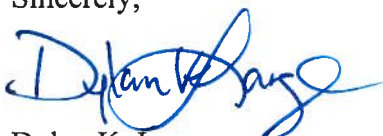
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the total cost for copying 1,001 pages would have been \$1,851.85 instead of \$561.25, the estimate that you allege was provided by APD's former records custodian.

The City of Albuquerque's Administrative Instruction No. 1-7, provides the following guidance regarding copying charges: "[f]or photocopying pages of 8.5 by 14 inches or less, the fee is \$0.50 per page for black and white copies and \$1.00 per page for color copies."¹ This policy seems to align with the total estimated cost of \$561.25 provided to you because a copying fee of \$0.50 per page would have yielded a total fee of \$500.50, excluding shipping costs. For these reasons, we are unable to conclude that APD violated the IPRA.

Although we did not find a violation of the IPRA, we thank you for bringing this matter to our attention. Please do not hesitate to contact our Office should you have any questions regarding the IPRA or about the matters raised in your complaint.

Sincerely,



Dylan K. Lange
Assistant Attorney General

Enclos.

cc: Kevin Morrow, Assistant City Attorney, without enclosure
Javier Urban, Records Custodian

¹ A copy of the City of Albuquerque's Administrative Instruction No. 1-7 can be found online at [http://library.amlegal.com/nxt/gateway.dll/New%20Mexico/albuqwin/cityofalbuquerque/newmexicocodeofordinanc?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:albuquerque_nm_mc](http://library.amlegal.com/nxt/gateway.dll/New%20Mexico/albuqwin/cityofalbuquerque/newmexicocodeofordinanc?f=templates$fn=default.htm$3.0$vid=amlegal:albuquerque_nm_mc). A printed copy of this policy is also enclosed for your reference.

New Mexico Attorney General
Attn: Attorney General Hector Balderas
P.O. Box 1508
Santa Fe, New Mexico 87504

October 15, 2015

Dear Attorney General Hector Balderas,

My name is Mark A. Whaley. I will be, in as much detail as I can, my dealings with the Albuquerque Police Department. A story was printed in the Dayton Daily News January 2015. The title of the story, "**2 New Mexico officers charged with murder.**" the story was about the shooting death of James Boyd by Police Officer Dominique Perez and Police Officer Keith Sandy of the Albuquerque, New Mexico Police Department.

On January 28, 2015, I sent a letter to Albuquerque Police Department, Attn: Chief of Police, requesting information on the shooting, plus information involving Albuquerque Police Department involved shooting for the last twenty (20) years and information on how many Police Officers who work for the Albuquerque Police Department who were veterans of the United States Military.

I received a letter with a date stamp FEB 4 pm 1:59 from the Office of the APD Records Custodian, Reynaldo Chavez APD Records Custodian/IPRA Manager. In Mr. Chavez letter, he stated, "**Your IPRA request dated February 4, 2015. Has an estimated amount of 1001 pages. We are estimating our anticipated copying cost will be an estimated amount \$561.25. Please provide payment of at least \$153.00.**"

The letter also talked about NMSA 1978, 14-2-9(c) (5) "**The right of advance payment.**" Dealing with the New Mexico law.

On February 13, 2015, I wrote back to Mr. Reynaldo Chavez from the Office of the APD Records Custodian. In my letter, I sated the following, "**After reviewing the estimated cost of \$561.25 for copying and mailing of the reports, seemed quite extravagant amount of money for 1001 pages. Therefore, I am requesting a complete breakdown in which the monies will be spent.**"

I also requested again the information on twenty (20) years shooting and military information.

I also sent a copy of the letter dated February 13, 2015 to the Chief of the Albuquerque Police Department and the Mayor of Albuquerque, New Mexico.

On Feb 24 pm 1:24 Letter from Mr. Reynaldo Chavez from the Office of the APD Records Custodian, stated that "**My request dated February 4, 2015 has been closed due to no follow up on your part in supplying additional information.**"

On Feb 25 am 8:27 Letter from Mr. Reynaldo Chavez from the Office of the APD Records Custodian, stated "**As discussed in my previous letter of the deposit is just an estimate. Please read the estimate again and the terms of the deposit. Also, included is your original request as to why the amount of the deposit is \$153.00.**"

On March 25, 2015, I wrote back to Mr. Reynaldo Chavez from the Office of the

APD Records Custodian. Again asking him to explain the cost of \$561.25 for 1001 pages and if they could send me the Albuquerque Police Department "**FEE**" policy or the City of Albuquerque "**FEE**" policy, because \$1.85 per page seemed way to much, for 1001 pages. that were copied. I stated, "**Please send me the policy by April 25, 2015.**"

I also sent a copy of the letter dated March 25, 2015 to the Chief of the Albuquerque Police Department and the Mayor of Albuquerque, New Mexico.

On MAR 30 am 10:10 Letter from Mr. Reynaldo Chavez from the Office of the APD Records Custodian, stated that "**My request dated February 4, 2015 has been closed due to no follow up on your part in supplying additional information.**"

On April 12, 2015, I wrote back to Mr. Reynaldo Chavez from the Office of the APD Records Custodian. Again asking him to explain the cost of \$561.25 for 1001 pages and if they could send me the Albuquerque Police Department "**FEE**" policy or the City of Albuquerque "**FEE**" policy, because \$1.85 per page seemed way to much, for 1001 pages. that were copied. I stated. "**Please send me the policy by April 25, 2015.**"

I also sent a copy of the letter dated May 10, 2015 to the Chief of the Albuquerque Police Department and the Mayor of Albuquerque, New Mexico.

On May 28, 2015, I wrote back to Mr. Reynaldo Chavez from the Office of the APD Records Custodian. Asking for the Albuquerque Police Department "**FEE**" policy or the City of Albuquerque "**FEE**" policy.

I also sent a copy of the letter dated May 10, 2015 to the Chief of the Albuquerque Police Department and the Mayor of Albuquerque, New Mexico.

In June 2015 and in July 2015, I called and let a message on the City of Albuquerque, New Mexico City Manager and Mayor.

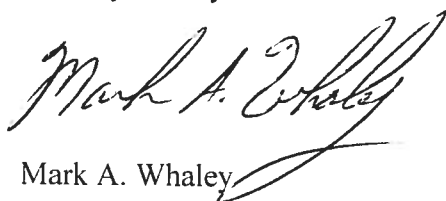
On August 26, 2015 I wrote to the New Mexico Attorney General, Attn: Attorney General Hector Balderas in Albuquerque, New Mexico, which your office sent me a package called. "**Inspection of Public Records Act (IPRA) Complaint Form.**"

I do not understand or why the Albuquerque Police Department or the City of Albuquerque are dealing with my request the way they are doing. it seems to me, that they were braking the law and got caught. So they just acted like nothing happen and hoped I would go away, when they could have done the right thing and just stand up and tell me "They made a mistake." It just seems like it was a game to them, it is to late now.

Please send the information listed above to Mark A. Whaley [REDACTED]

[REDACTED] If you have any questions, please feel free to contact me by mail.

Thank you for your time


Mark A. Whaley