

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



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September 8, 2016

Kevin Morrow
Albuquerque Police Department
400 Roma NW, Room 226
Albuquerque NM 87102

Re: Inspection of Public Records Act (IPRA) Complaint by Laura Lucero y Ruiz de Gutierrez
against Albuquerque Police Department

Dear Mr. Morrow:

We have completed our review of your response to a complaint against the Albuquerque Police Department (APD) from Ms. Laura Lucero y Ruiz de Gutierrez ("Complainant") and conclude that APD violated the Inspection of Public Records Act, ("IPRA"), NMSA 1978, §§ 14-2-1 to -12 (1947, as amended through 2013) in its dealings with Complainant.

Our purpose in writing you is to bring the violation to your attention in an effort to prevent a recurrence of this type of error and to encourage correction in response to this letter. The purpose of IPRA, one of the state's "sunshine" laws, is to hold public bodies to the state's assurance that "all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees." See NMSA, 1978 § 14-2-5.

Complainant alleged that APD failed to provide records responsive to her request, failed to forward her request to the proper custodian, and did not explain why it failed to produce some of the records. Complainant sent a lengthy "Original Request"¹ of August 19, 2015, to the APD

¹ The "Original Request" of August 19, 2015, sent to APD as well as two other agencies, requested the following: "progress reports, report cards, deficiency notices, correspondence to and from parents and others, awards, standardized test results, staff memos, interoffice memos, emails, letters, notes and comments of any kind, including notes of telephone calls, multidisciplinary meetings and observations of child, attendance records, including notices of truancy, suspension, expulsion, police referrals, police reports, police investigations, requests for and notices of Section 504, and IEP meetings, medical and schools health records, notes of psychologist, speech and language therapist, resource specialists and other personnel who have provided services to, evaluated or otherwise been involved in or responsible for the provision of a free and appropriate education, class schedules, referrals for

custodian of records. She also sent an August 20 letter requesting all the documents listed in the "Original Request" but, in addition, requests for records of police investigations, dispatch calls, police referrals and "morning reports" turned over to other agencies regarding her minor child.

Your response to our inquiry based on the complaint acknowledged receiving both the August 19 and 20 requests and documented that you responded to the requests on August 20, well within the three-day period permitted by IPRA. Your response to Complainant suggested that your search for responsive records would be more successful with information on a case number. Complainant replied to the request for a case number by sending APD the name of the officer who handled the case. On August 27, APD informed Complainant that four of the items requested in the "Original Request" were available for her to pick up and billed her for copies. Complainant responded on September 15 by asking whether any documents were not included.

On November 2, 2015, Complainant sent another letter to APD, and APD responded by email November 18, 2015 outlining responsive information located. That information included: an evidence log, 52 images on a photo CD submitted to the Metro Crime Lab for processing and a field investigator's "supplemental report." The same letter identified as "pending" documents including an interoffice memo completed November 6, 2014 and three written documents provided by APD to a named detective.

The November 18 response to Complainant also stated that APD did not have some items requested, indicated that it had sent some 13 CDs and 6 DVDs to Albuquerque Public Schools (APS) police, and advised Complainant to contact APS police. On February 1 and February 3, 2016, Complainant requested APD booking records on APS personnel involved in the matter, and APD responded on February 3, advising Complainant to ask APS police for the records, as APD did not house the records.

APD erred by advising Complainant to direct her November 2, February 1, and 3 requests to APS. IPRA requires an agency to forward a "wrong custodian" letter when it suspects the information requested is available elsewhere. Under the Act, APD was obligated to forward Complainant's requests to APS and then inform her that had done so. See § 14-2-8 (E). Because of its failure to forward the information, APD violated IPRA.

We urge APD to take note of its responsibility to refer Complainant's request to an appropriate records custodian who may have responsive records, if known, and to inform Complainant it has done so. We request that training be provided to the APD records custodian regarding the custodian's obligations under § 14-2-8 (E), in this regard.

For more information about IPRA, please see the *Inspection of Public Records Act Compliance Guide*, available on our website at: www.nmag.gov. If you have questions about the specific matters addressed in this determination or IPRA in general, you may reach me directly at

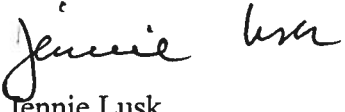
evaluations, evaluations and assessments, third-party report or writings of any kind, notices of placement and statement of rights that were provided to parents, including notes from multi-disciplinary team meetings and observations of the child, all IEPs and any documents related to the IEPs, videos and audiotapes."

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jlusk@nmag.gov or contact the Open Government Division of the Office of the Attorney General at (505) 827-6070.

Thank you for your prompt attention to this important matter.

Sincerely,

A handwritten signature in black ink that reads "Jennie Lusk". The signature is written in a cursive style with a large initial "J" and a stylized "L".

Jennie Lusk
Assistant Attorney General

cc: Laura Lucero y Ruiz de Gutierrez

INSPECTION OF PUBLIC RECORDS ACT ("IPRA") COMPLAINT FORM
New Mexico Office of the Attorney General ("OAG")
Open Government Division

Date complaint submitted to OAG: 4/8/16

YOUR CONTACT INFORMATION (Required):

First Name: Laura

Last Name: Bruening (aka - Lucero y Ruiz de Gutierrez)

Address: [REDACTED]

City: [REDACTED]

State: [REDACTED]

Zip Code: [REDACTED]

Phone Number: [REDACTED]

Email: [REDACTED]

IPRA REQUEST TO THE PUBLIC BODY (Required):

Name of the Public Body that is the subject of this complaint (including city/town, county or region, if applicable): Albuquerque Police Department

Format of IPRA Request: Written Oral

Date IPRA Request was Submitted to the Public Body: 2/3/16; 8/19/15; ~~8/20/15~~; 8/20/15; 8/20/15; 8/27/15; 9/15/15; 11/2/15; 2/1/16; 2/3/16;

Date of all Responses Received from the Public Body: 8/20/15; 8/20/15; 8/27/15; 11/4/15; 11/8/15; 11/4/15 - responded requesting extra time; 12/1/15 - turned info over to ADS; 11/18/15; (acknowledged) 11/4/15; 12/12/15; 2/3/16;

ALLEGED VIOLATIONS OF IPRA BY THE PUBLIC BODY (Required): 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.

Albuquerque ~~Police~~ Police Department did provide some records but did not provide all records requested.

ADDITIONAL INFORMATION: Please provide a copy of your original inspection request (if written), and any documentation or evidence you have regarding the alleged IPRA violation.