

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
ATTORNEY GENERAL

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July 20, 2021

**VIA ELECTRONIC MAIL ONLY**

Albuquerque Public Schools  
Scott Elder, Superintendent  
P. O. Box 25704  
Albuquerque NM 87125-0704  
Email: [superintendent@aps.edu](mailto:superintendent@aps.edu)

**Re: Inspection of Public Records Act Complaint – Michelle Jenson**

Dear Mr. Elder:

This letter addresses the complaint filed with the Office of the Attorney General by Ms. Michelle Jenson alleging that Albuquerque Public Schools (the “District”) violated the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2019) (“IPRA”). As you may know, Ms. Jenson alleges that the District violated IPRA in connection with her public records requests dated December 16, 2020, January 5, 2021, and January 10, 2021. The District has failed to substantively respond to any of these three requests. As a result, we again find that the District has violated IPRA, in what appears at this time to be a habitual disregard for its statutory obligations.

**Background**

The Inspection of Public Records Act guarantees the people of the State of New Mexico access 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 (8<sup>th</sup> ed. 2015) (“IPRA Guide”).

Ms. Jenson's complaint alleges that the District violated IPRA by failing to respond to her three IPRA requests dated December 16, 2020, January 5, 2021, and January 10, 2021. All of these requests sought records containing certain statistical information as well as other records related to the District's plans for virtual learning during the COVID-19 pandemic. Ms. Jenson sent her first request on December 16, 2020 to you, the District's Superintendent, along with several other public bodies around the state. The District's internal correspondence, some of which was provided to our Office in response to our inquiry into this complaint, shows that this request was forwarded to the District's records custodian the following day, on December 17, 2020, without a corresponding notification to Ms. Jenson. Having received no reply for almost three weeks, Ms. Jenson sent a second identical request to you on January 5, 2021, and the District's internal correspondence shows that this request was forwarded to the District's records custodian on the same day. Once again, however, no response of any kind was sent to Ms. Jenson.

Five days later, on January 20, 2021, having still not received a response from the District, Ms. Jenson sent her third and final request to the District. (She modified this third request with respect to the requested records, but only slightly.) On this occasion, Ms. Jenson sent her request directly to the District's records custodian (among a wide array of District employees and officers) and therefore received the District's generic automatic response. That auto-reply stated, in relevant part, that "[i]n as much [sic] as your correspondence regards request for records, it will be reviewed for response in compliance with the New Mexico Inspection of Public Records Act." Ms. Jenson also received a response from the President of the District's Board of Education, which stated, "I have forwarded your information to make sure someone will respond to you." The President also asked Ms. Jenson, "Did you follow the process for IPRA requests as posted on the APS website?" We understand that the District did not subsequently respond to Ms. Jenson's complaint.<sup>1</sup>

The District's response to our inquiry<sup>2</sup> into Ms. Jenson's complaint generally explained that it was still in the process of responding to her three requests. We understand that it has not yet even located responsive records, since the District stated that it "is still in the process of determining if the records exist." The District also stated, "Records have not been withheld for any of the records responsive to these records requests, because the completion of these requests is still in the process of resolution."

Ms. Jenson argues in her complaint that the District violated IPRA in responding to all of her three public records requests. Specifically, she alleges that the District was noncompliant with IPRA's applicable deadlines and effectively denied her request without explanation. Because the District failed to respond at all to Ms. Jenson, we will address these allegations in tandem.<sup>3</sup>

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<sup>1</sup> Our inquiry to the District specifically requested, "All documentation sent to or received from Ms. Jenson in connection with these records requests."

<sup>2</sup> As with previous inquiries into complaints filed against the District, our Office experienced difficulties in receiving the District's cooperation with our investigation into Ms. Jenson's complaint. Our inquiry dated February 3, 2021 requested a response by March 15, 2021. Even after we had reminded the District of this deadline, we received no response. We contacted the District several days later, on March 17, 2021, stating that we would wait no longer than close of business on March 19, 2021 to receive a response. Finally, less than an hour before the close of business on March 19, 2021, we received a (brief) response from the District.

<sup>3</sup> Please see our previous letters dated \_\_\_\_\_ regarding the District's noncompliance with Section 14-2-8(E) and the proper procedures public bodies must follow in responding to IPRA requests sent to employees other than the records

### Failure to Respond

As you undoubtedly by this time are aware, IPRA sets forth specific deadlines that public bodies must meet in responding to public records requests. Within three (3) business days of receipt of any request, the public body must either provide the requested records or “explain in writing when the records will be available for inspection or when the public body will respond to the request.” Section 14-2-8(D). More critically, even after sending an initial acknowledgement letter, the public body must permit inspection of the requested records “not later than fifteen days after receiving a written request.” *Id.* The only exception to this fifteen (15) calendar day deadline is for requests that have been designated in writing by the public body to be “excessively burdensome or broad,” in which case the public body has “an additional reasonable period of time” to respond. Section 14-2-10.

IPRA’s deadlines are also important because of their association with the statute’s enforcement mechanisms. IPRA expressly provides that a requestor may deem the request denied after fifteen calendar days unless the public body has previously designated the request as excessively burdensome. *See* § 14-2-11(A) (“Unless a written request has been determined to be excessively burdensome or broad, a written request for inspection of public records that has not been permitted within fifteen days of receipt by the office of the custodian may be deemed denied.”). This also permits the requestor to pursue “the remedies provided in the Inspection of Public Records Act,” which include attorney’s fees and damages of up to \$100 per day. Section 14-2-11.

Here, the District entirely failed to respond to all three of Ms. Jenson’s public records requests. The District did not send a three-day acknowledgement letter, a broad and burdensome designation, or any other substantive response within or after fifteen calendar days. As a result, Ms. Jenson is clearly correct that the District did not abide by IPRA’s deadlines. In addition, she would be well within her rights to deem all three of her requests denied and seek judicial enforcement, including financial penalties, as IPRA expressly provides that “a written request for inspection of public records that has not been permitted within fifteen days of receipt by the office of the custodian may be deemed denied.” Section 14-2-11(A).

With respect to the District’s claim that it has not denied Ms. Jenson’s requests because “the completion of these requests is still in the process of resolution,” this is entirely immaterial because the District never communicated this information to Ms. Jenson. Had the District expressly designated her request as “excessively burdensome or broad,” as permitted by Section 14-2-10, and informed her that it would need additional time to respond, this argument might have merit. But instead, the District failed to communicate at all with Ms. Jenson, meaning that it effectively denied her request without explanation.

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custodian. *See id.* (“In the event that a written request is not made to the custodian having possession of or responsibility for the public records requested, the person receiving the request shall promptly forward the request to the custodian of the requested public records, if known, and notify the requester.”).

Conclusion

It is apparent that Albuquerque Public Schools violated IPRA in failing to respond to Ms. Jenson's multiple public records requests. This was not an especially difficult or intellectually challenging conclusion, since the District simply did not respond at all to Ms. Jenson's public records requests dated December 16, 2020, January 5, 2021, and January 10, 2021. She received no records or information whatsoever; in what appear to be obvious and flagrant violations of IPRA. Presently, whatever process the District has in place simply does not function and must be fixed immediately.

The District must respond timely and thoroughly to all IPRA requests, whether by assigning additional staff to the task, implementing better supervisory practices over its employees, training its officers and staff, or utilizing other means. Clearly, IPRA requires that the District now must take action as quickly as possible to locate all records responsive to Ms. Jenson's requests and then provide those to her. If not, the District will no doubt be subject to financial penalties associated with its ongoing noncompliance, see Section 14-2-11(C).

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](http://www.nmag.gov). If you have any questions regarding this determination or IPRA in general, please let me know.

Sincerely,

  
John Kreienkamp  
Assistant Attorney General

Enclosure

cc: Michelle Jenson