

STATE OF NEW MEXICO
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September 8, 2016

Rigo Chavez
Director, APS Communications
Albuquerque Public Schools
Suite 630E
PO Box 25704
Albuquerque, NM 87125-0704

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

Dear Mr. Chavez:

We have completed our review of your response to the complaint against the Albuquerque Public Schools (APS) from Ms. Laura Lucero y Ruiz de Gutierrez ("Complainant") and conclude that APS 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's allegations against APS include failure to post its process for IPRA requests conspicuously, to provide records in the format requested, to respond timely to her records requests, and to supply all of the requested records or allow for inspection and as required by IPRA.

Your response to our inquiry based on the complaint documented that APS largely complied with IPRA in responding to Complainant's scores of records requests. Your response regarding inspection and posting of the IPRA process satisfied IPRA requirements of § 14-2-7(E),

establishing requirements for posting IPRA notices, as it is evident APS has posted appropriate notices regarding the process for IPRA requests appropriately on your website at <http://www.aps.edu/about-us/public-record-requests>.

Your response to one of Complainant's requests for electronic records, indicating that you had the records only on paper, was also compliant with IPRA. See § 14-2-8 (stating that a public body is not required to create a public record) and § 14-2-9 (B) (requiring a records custodian to provide a copy of a record in electronic format, but only when it is already available in that format).

Your response also documents your many attempts to schedule time for the Complainant to inspect the requested records, advising her which documents were available at \$.50/page. While you acknowledge that APS failed to respond timely to Complainant's first request,¹ answering an August 19 request on September 2, beyond the three-day limit for an initial response, your thorough response dated September 2, 2015 provided substantive compliance with IPRA. See *Derringer v. State*, 2003-NMCA-073 ¶10, 131 N.M. 721 (2003), 68 P.3d 961 (finding that "[O]nce the [records] custodian complies, the public body is no longer subject to an enforcement action" even if the response was made after the statutorily required time frames).

However, your response indicated that you failed to satisfy some IPRA obligations in responding to Complainant's requests of November 2, December 16, 17, and 23, 2015, indicating that you did not receive Complainant's requests. Evidently, Complainant sent these requests to various APS departments including APS police rather than directly to the APS records custodian. The APS records custodian is responsible for making records available when requested, regardless of any interdepartmental or interagency mail problems and, thus, APS violated IPRA when it did not gather and send the responsive requested records from all of its departments. Further, even if the records were likely to be in the custody of a different agency, the APS custodian had a duty to forward the request to the proper custodian, if known, and to notify the requester. See § 14-2-8 (E) (discussing the "wrong custodian" obligations of a public body). Complainant noted her confusion over the location of documents she needed, stating to you that, "When I have requested records from the APS Police Department previously, they have referred me to your office. I am confused as to the process in receiving records from APS at this point." An email timestamped January 22, 2016 repeated concerns about production of records.

¹ The "Original Request" of August 19, 2015 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 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."

Your response did not document that the requested records had been produced as of your May 13, 2016 response to our inquiry.

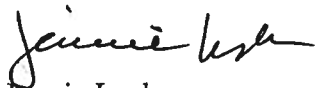
IPRA requires an agency to provide access to requested records. See, § 14-2-7 (C)(requiring a records custodian to “provide proper and reasonable opportunities to inspect public records”) and § 14-2-8 (D)(requiring a records custodian to permit as soon as is practicable under the circumstances). It also provides for a response for excessively burdensome requests § 14-2-10 (permitting a records custodian to respond in a reasonable period of time to an excessively burdensome request). It provides for an agency’s denial of the request, § 14-2-11, in particular for exceptions including certain law enforcement records and a student’s protected personal identifier information. See, §§ 14-2-1(A)(4), (B).

However, your response indicated that you did not deny any of Complainant’s requests and did not inform Complainant of a need to extend the time required to comply with the requests. As detailed above, APS did not respond at all to Complainant’s November and December records requests and thus, violated IPRA. Through issuance of this determination, we encourage you to comply as soon as possible by releasing responsive documents in your custody, as requested by Complainant in November and December 2015, making them available for inspection, informing Complainant you do not have the records, forwarding the requests to the appropriate custodian if misdirected, or denying her request.

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 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,



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 Calca 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 Public Schools - 6400 Lupton Blvd NE, Albuquerque, NM 87110. / Albuquerque Public Schools Police Department / Risk Management / Chief Operating Officer
Format of IPRA Request: Written Oral
Date IPRA Request was Submitted to the Public Body: 12/15/15; 12/17/15; 8/19/15; 9/9/15; 9/9/15; 11/19/15; 11/19/15; 11/19/15; 12/17/15; 8/19/15; 11/2/15; 12/16/15; 12/17/15; 12/23/15;
Date of all Responses Received from the Public Body: 9/22/15; 9/10/15; 10/19/16; 9/11/15;

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.

The responses that were provided by APS did NOT address the requested TPZA documents.

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.