

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
ATTORNEY GENERAL

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January 25, 2021

**VIA ELECTRONIC MAIL ONLY**

Bernalillo County  
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**Re: Inspection of Public Records Act Complaint – Chris M. Bryant**

Dear Mr. Grubestic:

Thank you for your response to our inquiry into the complaint filed with the Office of the Attorney General by Mr. Chris M. Bryant alleging that Bernalillo County (hereinafter the “County”) violated the Inspection of Public Records Act (“IPRA”), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2019). As you know, Mr. Bryant’s complaint alleges that the County violated IPRA in connection with his records request dated October 1, 2019. Having carefully considered both Mr. Bryant’s complaint and your response to our inquiry, we do not have sufficient information to conclude definitively that the County violated IPRA. However, we do have some reservations as to the copying fee charged to Mr. Bryant.

**Background**

In New Mexico, the people are entitled to “the greatest possible information” about governmental affairs pursuant to the Inspection of Public Records Act. NMSA 1978, § 14-2-5. *See also Am. Civil Liberties Union of New Mexico v. Duran*, 2016-NMCA-063, ¶ 25 (explaining that, “IPRA’s purpose—to promote the existence of (1) an informed electorate and (2) transparency in governmental affairs—is documented in the legislation itself and in our appellate case law.”). IPRA provides the public the right to inspect and copy all “public records” with only limited and specifically enumerated exceptions. Section 14-2-1. All of the statute’s provisions must be interpreted in light of this public policy and 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”).

Mr. Bryant submitted an IPRA request to the County on October 1, 2019, seeking access to a number of audio recordings in the possession of the Bernalillo County Emergency Communications Department. Although the documentation that we have been provided is unclear as to the dates and content of the communications that followed, it is uncontested that the County initially proposed to charge Mr. Bryant a \$25.00 fee to obtain a CD containing the requested audio recordings. This appears to have been an accident: an employee was unaware that the County had recently modified its IPRA fee policy and proposed to charge Mr. Bryant the older \$25.00 standard fee charged previously to all requestors seeking any recordings irrespective of the circumstances of the request. Mr. Bryant further alleged in his complaint to our Office that this \$25.00 fee was proposed by the County as a prerequisite to both obtaining a copy of the audio recordings and inspecting those records without obtaining a copy. In any case, the County later reduced the fee to \$6.75, and Mr. Bryant obtained the requested recordings after sending the County this required payment. In its response to our inquiry, the County did not inform us of how the reduced \$6.75 fee was calculated.

#### Analysis

As a preliminary matter, Mr. Bryant alleges that the County initially stated that it would cost \$25.00 for him to inspect (as opposed to obtain a copy of) the audio recordings he sought. For its part, the County appears to dispute this allegation, stating that its staff “discussed options with Mr. Bryant, including coming into the Emergency Communications Office to listen to the recordings.” Based on these conflicting accounts, we are unable to determine exactly what was communicated to Mr. Bryant. We would, however, emphasize that IPRA does not permit public bodies to charge a fee to a requestor for the right to inspect public records. By its express terms, IPRA permits only “reasonable fees for copying the public records.” Section 14-2-9(C)(1). Thus, if either Mr. Bryant or the County had any doubt as to whether IPRA permits public bodies to charge an inspection fee, let us be clear: it does not.

Assuming that the County proposed a copying fee and not an inspection fee, our analysis differs with respect to the initial \$25.00 fee imposed by the County accidentally and the later \$6.75 that it charged Mr. Bryant subsequently. As for the earlier, larger fee, our Office had previously determined, in response to another complaint against the County, that this flat \$25.00 fee was inconsistent with IPRA. *See* N.M. Atty. Gen. Letter to W. Ken Martinez, Bernalillo County, at 3 (Aug. 30, 2019) (stating that, “There is no question ... that the County’s \$25.00 fee for the production of DVD’s or CD’s is excessive given the limitations set forth by IPRA.”). In that determination, we had observed that “the County’s fee is entirely unrelated to its ‘actual costs,’ as is demonstrated by the fact that its \$25.00 fee does not vary depending on the type or volume of records involved, or the circumstances of individual cases.” *Id.* Because “for electronic records public bodies are only allowed to charge their ‘actual costs’ associated with transmitting or downloading the records,” we explained that the County’s fee was impermissible under IPRA. *Id.*

With respect to the County’s reduced \$6.75 fee, we cannot express a definitive opinion because we do not know exactly how this fee was calculated. The County did not explain its method of calculation in response to our inquiry, and the fee policy we have obtained from the County’s

website still reflects the previous flat \$25.00 fee for all records provided on CD. However, notwithstanding our lack of information on this issue, we would still caution the County that even a smaller copying fee must still comply with Section 14-2-9(C). For electronic records, this means that it must represent only “the actual costs” associated with downloading or transmitting those copies, although our IPRA Guide does state that this fee may include personnel costs. Section 14-2-9(C)(3). *See also* IPRA Guide, p. 36 (explaining that actual costs may include “any personnel time involved”). If the County has responded to our previous letter determining that its older \$25.00 flat fee was inconsistent with IPRA by replacing it with a similarly flat but lower \$6.75 fee, it should review this fee again to ensure its compliance with Section 14-2-9(C). On the other hand, if \$6.75 represented the County’s actual costs in this case, then it was a fee compliant with IPRA.

### Conclusion

We do not have sufficient information to conclude that the County has violated IPRA as alleged. Indeed, much of the preceding analysis is arguably moot in light of the fact that Mr. Bryant paid the \$6.75 fee and received the records he originally requested. Moreover, we are encouraged by the steps the County has taken in recent months to amend its IPRA fee policies to more closely adhere to the statutory limits. We appreciate the County’s efforts and consider them evidence of its commitment to abiding by IPRA’s mandate of providing the public with access to “the greatest possible information” about governmental affairs. Section 14-2-5. However, given that we are not entirely sure of how the County’s fee in this case was calculated, we do advise it to continue to scrutinize its policies in accordance with Section 14-2-9(C).

If you have any questions regarding this determination or IPRA in general, please let me know. 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).

Sincerely,



John Kreienkamp  
Assistant Attorney General

Enclosure

cc: Chris M. Bryant