

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
ATTORNEY GENERAL

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August 30, 2019

**VIA ELECTRONIC MAIL ONLY**

Bernalillo County  
Michael I. Garcia, Esq.  
520 Lomas Blvd NW, Fl. 4  
Albuquerque, NM 87102-2147  
Email: [mikgarcia@bernco.gov](mailto:mikgarcia@bernco.gov)

**Re: Inspection of Public Records Act Complaint – Melissa Kelly Williams**

Dear Mr. Garcia:

Thank you for your response to our inquiry regarding the complaint submitted to the Office of the Attorney General by Ms. Melissa Kelly Williams 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, Ms. Williams alleges that the County violated IPRA by failing to provide records responsive to her request dated June 4, 2019. Having thoroughly reviewed Ms. Williams’ complaint and your response to our inquiry, we conclude that the County violated IPRA by failing to provide Ms. Williams with a proper “written explanation of the denial” as required by law. NMSA 1978, § 14-2-11(B). Accordingly, we strongly recommend that the County take remedial action.

**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 San Juan Agr. Water Users Ass’n v. KNME-TV*, 2011-NMSC-011, ¶ 16 (noting that, “IPRA is intended to ensure that the public servants of New Mexico remain accountable to the people they serve.”). To that end, IPRA specifically states that the public has the right to inspect and copy all “public records” with only limited and specifically enumerated exceptions. Section 14-2-1(A). All of IPRA’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”).

Ms. Williams contacted the County via email on June 4, 2019, requesting “all arrest records” relating to a particular individual who was apparently a minor. The County’s Communication Services Specialist responded to this request within ten minutes, denying Ms. Williams’ request outright. As justification for this denial, the County stated that “as of 1/1/2019 we are no longer releasing mug shots and arrest records per CYFD unless you have the juvenile’s parent/guardian/custodian or the court grant permission in writing before there is any release of information to the public, including records and images.” The County also attached a copy of a news release to its email, which stated: “The Bernalillo County Youth Services Center is announcing revised state juvenile detention standards that impact the release of juvenile records to the public.” The news release cited to an administrative rule promulgated by the Children, Youth and Families Department (“CYFD”), 8.14.14.11 NMAC.

Ms. Williams’ complaint to our Office argues that the County improperly denied her request. She argues in particular that the County’s asserted basis for its denial was grounded not in law but in CYFD policy. In addition, our review of the supporting documents provided to us by Ms. Williams<sup>1</sup> raised an issue with respect to the legality of the County’s written explanation of its decision to withhold the responsive records. We will discuss each issue in turn.

#### Substantive Basis for the Denial

As outlined by the County’s response to our inquiry, the legal basis for its decision to withhold responsive records in this case appears to be 8.14.14.11 NMAC. Ms. Williams argues that this administrative rule represents CYFD policy rather than law and that it therefore was not a sufficient justification to withhold responsive records. Unfortunately, we are unable to opine definitively as to the legality of the County’s denial for the simple reason that we have not reviewed the records withheld by the County. Our Office, at present, does not have the same fact-finding capacity as a District Court and so cannot directly compel the production of records. Having not reviewed these records ourselves, we cannot say whether the County’s cited legal basis applies to them.

We would clarify that administrative rules can, in some circumstances, provide an adequate justification to redact or withhold records. *Republican Party of N.M.*, 2012-NMSC-026, ¶ 13. Generally, this is not the case, as “[i]n most cases, a regulation or ordinance, by itself,

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<sup>1</sup> In our inquiry into this complaint, we asked the County to provide us with “all documentation sent to or received from Ms. Williams in connection with this records request.” We received no documents whatsoever. Therefore, we proceed on the assumption that the documents provided to us by Ms. Williams represent the totality of the communications associated with her records request.

may not be used to deny access to public records.” IPRA Guide, p. 19. However, as we explain in our IPRA Guide, “a regulation making certain records private may be proper if the regulation is authorized by a statute and is necessary to carry out the statute’s purposes.” IPRA Guide, p. 19. *See also City of Las Cruces v. Pub. Employee Labor Relations Bd.*, 1996-NMSC-024, ¶ 5 (holding that, “Whether a rule has the force of law depends on whether the rule was promulgated in accordance with the statutory mandate to carry out and effectuate the purpose of the applicable statute.”) and *Edenburn v. New Mexico Dep’t of Health*, 2013-NMCA-045, ¶ 26 (noting that “a regulation may prohibit the release of records under IPRA but only when it has the force of law”). Thus, the administrative rule’s own statutory authorization is dispositive as to whether it provides a basis to deny an IPRA request.

In this case, it is likely that 8.14.14.11 NMAC has sufficient statutory authorization to carry “the force of law.” *Edenburn*, 2013-NMCA-045, ¶ 26. As the County indicated in response to our inquiry, CYFD has the express statutory authority to “promulgate updated standards for all detention facilities, including standards for site, design, construction, equipment, care, program, personnel and clinical services.” Section 32A-2-4(A). And the County is also correct that the Children’s Code contains a relatively broad statutory provision exempting from disclosure “[a]ll records pertaining to the child, including ... records from local detention facilities.” Section 32A-2-32(A). Based on these provisions, it is likely that a court would conclude that 8.14.14.11 NMAC, as an administrative rule promulgated by CYFD, was a law providing a valid basis to withhold records under IPRA. But, again, having not reviewed these records we cannot say whether this exception would apply.

#### Written Explanation of Denial

Irrespective of whether it *could* withhold the documents in question, the question remains as to whether the County did so in accordance with IPRA. The County’s response to our inquiry letter did not address this issue (even though we directly asked about it), presumably because it must recognize that the written correspondence it sent to Ms. Williams in response to her IPRA request was inadequate. Even a cursory review of the County’s email response to Ms. Williams’ request shows that it omitted several specific pieces of information that IPRA expressly requires.

Whenever a public body withholds or redacts a record, IPRA requires it to provide the requestor a “written explanation of the denial.” Section 14-2-11(B). This written explanation, often referred to as a “denial letter,” must contain three key pieces of information: the specific exception in law justifying the denial, a description of the records sought, and “the names and titles or positions of each person responsible for the denial.” Section 14-2-11(B); *see also* IPRA Guide, p. 40 (stating that a denial letter must “describe the records sought to be inspected, set forth the names and titles or positions of each person responsible for the denial, and explain the reason for the denial”). As our Court of Appeals has emphasized, denial letters convey vital information to the requestor and are therefore

critical to the operation of IPRA. *See American Civil Liberties Union of New Mexico v. Duran*, 2016-NMCA-063, ¶ 38 (stating that, “Denials are valuable information-gathering tools. With respect to any given record request, the absence of either (1) production of responsive records or (2) a conforming denial based upon a valid IPRA exception sends a strong message to the requester that no responsive public record exists.”).

Here, the County’s response to Ms. Williams’ records request omitted much, if not all, of the information it was required by IPRA to provide. It did not “describe the records sought.” Section 14-2-11(B)(1). It did not “set forth the names and titles or positions of each person responsible for the denial.” Section 14-2-11(B)(2). By omitting these required pieces of information, the County’s response was therefore plainly insufficient and unlawful.

In addition, we note that Ms. Williams’ complaint to our Office was prompted by the fact that the County’s response did not actually, at least in the text of the email itself, cite to the particular exception (8.14.14.11 NMAC) upon which it relied. Rather, the County appeared to rely on its “policy” of not providing records related to juveniles as a justification for its decision to withhold responsive records. While we recognize that the County did attach a previously-issued press release which cited to CYFD’s administrative rules, we must also recognize the understandable confusion caused by this denial letter. As we emphasize in our IPRA Guide, “The reason provided in the denial notice must be authorized by the Act, another law, court rule, or the U.S. or state constitution.” IPRA Guide, p. 40. In practice, this means that public bodies should cite to the *law* justifying their decision to deny a request. Although we are not necessarily prepared to state that the County violated IPRA in this respect, we do think that it could have avoided the entirety of this situation by clearly and plainly articulating that the legal basis for its denial was 8.14.14.11 NMAC.

### Conclusion

Because it sent Ms. Williams an insufficient written explanation of the denial of her request, the County should send her a revised denial letter fully conforming to IPRA’s requirements as soon as possible. This letter must include three pieces of information: the specific exception in law justifying the denial, a description of the records sought, and the names and titles of all those responsible for the decision to deny her request. Going forward, we would strongly encourage the County to be more cognizant of its obligations under IPRA and to provide greater clarity to those whose records requests are being denied.

Lastly, we would caution the County against summarily denying records requests as it did in this case. Given that it denied Ms. Williams’ request within mere minutes, it is clear that the County did not conduct even a brief search for responsive records. This practice flies in the face of IPRA, which requires that public bodies conduct a diligent search for responsive records and then separate “information that is exempt and nonexempt from disclosure” prior to inspection. Section 14-2-9(A). Blanket denials are impermissible under

IPRA. *See Noll v. New Mexico Department of Public Safety*, No. A-1-CA-35981, mem. op. at 15 (N.M. Ct. App. Mar. 19, 2019) (non-precedential) (holding that “[a]bsent an effort by the public body to separate information that is exempt from disclosure from that which is nonexempt and make any nonexempt records available for inspection ... Defendants failed to satisfy their statutory responsibilities to process and fully respond to Plaintiff’s requests without delay”). Outside of revising its explanation of denial, therefore, we would encourage the County to reopen Ms. William’s request and conduct a search for responsive records in accordance with IPRA’s obligations. This would enable the County to ensure that any records it possesses are actually shielded from disclosure.

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,

A handwritten signature in blue ink, appearing to read "John Kreienkamp", is written over a light blue rectangular background.

John Kreienkamp  
Assistant Attorney General

Enclosure

cc: Melissa Kelly Williams

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
ATTORNEY GENERAL

## Electronic Complaint Submission

### Submission Detail

<b>ECS Reference Number</b>	NMOAG-ECS-20190604-7b3d
<b>Final Submit Date</b>	6/4/2019 1:48:01 PM

**Disclosure of your complaint:** This complaint is a public record, thus available under provisions of the NM Inspection of Public Records Act.

**Disclosure to other entities:** This complaint, its content, and other information may be disclosed to other law enforcement and regulatory agencies.

**I understand this complaint and any submitted documents are public record and may be shared with other law enforcement and regulatory agencies.**

**DECLARATION:** By submitting this form, I attest that the information in this complaint is true and accurate to the best of my knowledge. I further understand that by submitting this form I may be called to testify as a witness in this matter.

**I understand declaration statement.**

*The New Mexico Office of the Attorney General cannot give legal advice regarding this complaint and will not act as your personal attorney. If you have questions regarding your rights please contact a private attorney.*

*Submission of this complaint is not confirmation that an investigation will be initiated.*

## Complaint Detail

**Complaint Type** Inspection of Public Records (IPRA) Complaint

**Retained Attorney**

## Parties

### Complainant

**Ms Melissa Kelly Williams**

Person

#### Address

[REDACTED]

#### Contact information

[REDACTED]  
[REDACTED]

### Other Party

**Bernalillo County - Larry Gallegos**

Public Body (Government Entity)

#### Address

One Civic Plaza, NW  
10th Floor  
Albuquerque , New Mexico 87102

#### Contact information

[lagallegos@bernco.gov](mailto:lagallegos@bernco.gov)  
(505) 468-1273

Larry Gallegos is the Communications Services Specialist for Bernalillo County. He first denied my request verbally in a phone conversation and then sent a written denial.

## Complaint against

### Bernalillo County - Larry Gallegos

Public Body (Government Entity)

#### Address

One Civic Plaza, NW 10th Floor  
Albuquerque, New Mexico 87102

#### Contact information

[lagallegos@bernco.gov](mailto:lagallegos@bernco.gov)  
(505) 468-1273

Larry Gallegos first verbally denied my request and then sent me an email with a denial. I'll upload two documents, my request with his denial and an attachment he sent with his denial. The attachment was a copy of a 2019 press release.

## Complaint Specifics

**Format of IPRA request:** Written

**Date IPRA request was submitted to the public body:** June 4, 2019

**Date of all responses received from the public body:** June 4th, 2019 I made the request and got a denial within minutes. Mr. Gallegos says he is denying my request for juvenile records because of a change to CYFD policy. IPRA deals with state law, not individual department policy or standards. I believe based on state law the records should be released. The CYFD juvenile detention standards is a policy--not state law.

**Records** No records were provided.

## Transaction

## Documents



zamora email.pdf

Email shows request and denial

**Comments**

This email shows my request emailed to Bernalillo County and his denial. He also sent an attachment with a 2019 press release. I will upload that separately.



BernCo News Release Juvenile Records FINAL.pdf

Email Attachment

**Comments**

This copy of a January press released was sent as an attachment to the denial letter citing a CYFD change in standards for the reason for my request being denied.

\*\*\* END OF COMPLAINT \*\*\*

## Williams, Melissa

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**From:** Larry Gallegos <lagallegos@berncoco.gov>  
**Sent:** Tuesday, June 4, 2019 11:52 AM  
**To:** Williams, Melissa  
**Cc:** Tia Bland  
**Subject:** RE: KOAT IPRA Request | Xavier Zamora  
**Attachments:** BernCo News Release Juvenile Records FINAL.docx

Melissa,

Xavier Zamora is a juvenile and as of 1/1/2019 we are no longer releasing mug shots and arrest records per CYFD unless you have the juvenile's parent/guardian/custodian or the court grant permission in writing before there is any release of information to the public, including records and images. I have attached the original news release regarding this change in policy.

Larry Gallegos  
Communication Services Specialist  
Bernalillo County  
(505) 468-1273

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**From:** Williams, Melissa <melissawilliams@hearst.com>  
**Sent:** Tuesday, June 4, 2019 11:45 AM  
**To:** Larry Gallegos <lagallegos@berncoco.gov>  
**Subject:** KOAT IPRA Request | Xavier Zamora

**CAUTION:** This email originated from outside of Bernalillo County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Mr. Gallegos,

This is a formal request under the New Mexico Inspection of Public Records Act. I wish to inspect all arrest records relating to Xavier Zamora, including mug shots. His date of birth is 4-2-2002. I wish to receive all records electronically at my email address, [melissawilliams@hearst.com](mailto:melissawilliams@hearst.com). You can reach me at 479-652-0503 if you have questions about my request.

Thank you,  
Melissa

**Melissa Williams**  
Assistant News Director

3801 Carlisle Blvd NE  
Albuquerque, NM 87107  
T: +1 505-884-6315  
M: +1 479-652-0503  
[melissawilliams@hearst.com](mailto:melissawilliams@hearst.com)



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@KOAT7NEWS

HEARST  
television

## **Melissa Williams**

Assistant News Director

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[melissawilliams@hearst.com](mailto:melissawilliams@hearst.com)



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# NEWS RELEASE

For Immediate Release  
Jan. 3, 2019

[www.bernco.gov](http://www.bernco.gov)



Contact: Larry Gallegos  
lagallegos@bernco.gov  
O. 505.468.1273  
C. 505.228-6668

## **BernCo Youth Services Center Announces Changes to Juvenile Records Policy**

**Bernalillo County** – The Bernalillo County Youth Services Center is announcing revised state juvenile detention standards that impact the release of juvenile records to the public.

Effective Jan. 1, 2019, changes to the state juvenile detention standards, which are issued by the Children Youth and Families Department, require that a juvenile's parent/guardian/custodian or the court grant permission in writing before there is any release of information to the public, including records and images.

The State of New Mexico's Children Youth and Families Department regulates all juvenile detention centers in the state.

The complete version of the revised juvenile detention standards can be accessed on the State Records and Archives website. The relevant portion is copied below for reference.

New Mexico Register / Volume XXIX, Issue 24 / December 27, 2018

TITLE 8 SOCIAL SERVICES  
CHAPTER 14 JUVENILE JUSTICE  
PART 14 NEW MEXICO JUVENILE DETENTION STANDARDS

### 8.14.14.11 JUVENILE RECORDS:

G. The center shall use a release of information form that complies with applicable state and federal laws. The juvenile's parent/guardian/custodian or the court shall sign a release of information form before any release of information, including records and images, to the public. Once signed, a copy of the release of information form is maintained in the juvenile's record. Without parental or court consent, no records, images, or information about adjudicated juveniles shall be released if, by law, it is to be sealed in the future. Without parental or court consent, no information, including records and images about pre-adjudicated juveniles, shall be released. Images include any photographs, mug-shots, and video.

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### **About Bernalillo County**

*Bernalillo County is 1,160 square miles and is New Mexico's most populous county with more than 674,000 residents. Bernalillo County government provides a wide range of public services to residents who live in Albuquerque, Los Ranchos and Tijeras and the 111,000 residents who live outside the village and city limits in the unincorporated areas of the county. Bernalillo County employs approximately 2,500 people and has an*

*annual operating budget and capital investments of more than \$650 million. Elected officials include five county commissioners, assessor, clerk, probate judge, sheriff and treasurer.*