

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
ATTORNEY GENERAL

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May 12, 2017

Michael I. Garcia  
Senior Assistant County Attorney  
Bernalillo County Clerk's Office  
520 Lomas Blvd, NW, 4th Floor  
Albuquerque, NM 87102  
Email: [mikgarcia@bernco.gov](mailto:mikgarcia@bernco.gov)

**Re: Inspection of Public Records Act Complaint**

Dear Mr. Garcia:

Thank you for responding to our request for information regarding the complaint filed by Nancy Laflin (the "Complaint"), which alleges the County of Bernalillo (the "County") violated the New Mexico Inspection of Public Records Act ("IPRA" or the "Act"), NMSA 1978, Sections 14-2-1 to -12. The County provided responsive records to Ms. Laflin's initial request. However, the Complaint alleges that the County did not provide responsive records when Ms. Laflin requested additional records on October 18, 2016. The County denied this request under the law enforcement records exception to the IPRA. Our office reviewed the Complaint and associated documents, as well as the County's response to our inquiry, and has determined the County violated the IPRA when it failed to provide adequate responses and clearly explain why it did not provide responsive records to the request. Additionally, the County failed to comply with the applicable timelines required under the Act by failing to respond to the Complainant's inspection request timely.

On October 18, 2016 Ms. Laflin requested the following records from the Bernalillo County Public Information Officer:

"Any updated calls and visits [to Michelle Martens, Fabian Gonzales and Jessica Kelley] (Updated from the prior request)"

Although the county previously provided such logs to Ms. Laflin prior to her October 18, 2016 request, on November 17, 2016, the County denied her request. In the County's Response, Mr. Garcia states that the County denied Ms. Laflin's request after consultation with the Albuquerque

Police Department (“APD”). Mr. Garcia further states that APD asked the County to refrain from producing any more records because of APD’s on-going investigation. Ms. Laflin was informed of this decision on November 17, 2016, thirty (30) days after the County received Ms. Laflin’s updated request.

### **1. The County Failed to Send a Proper Denial Letter**

The County issued a denial letter that lacked the minimum requirements under the IPRA. The language of the Act is clear that when a written request is denied, a records custodian must provide a written explanation that (1) describes the records sought; (2) set forth the names and titles or positions of each person responsible for the denial; and (3) be delivered or mailed to the person requesting records within fifteen days after the request for inspection was received.” NMSA 1978, § 14-2-11(B). Furthermore, public bodies should also explain the reason for denying the request. *See N.M. Att’y Gen. Inspection of Public Records Act Compliance Guide* at 40, (8th ed. 2015).

The County received the request to inspect public records on October 18, 2016. On that same day, the County informed Ms. Laflin that the Records Custodian with the County would contact her on or before October 21, 2016, and that the expected date of completion would be November 2, 2016. However, the County did not respond to Ms. Laflin again until November 17, 2016. On November 17, 2016, thirty days after the initial request, the County sent an email stating that the denial was based on the fact that the request was for information that was part of an active law enforcement investigation. Such a denial does not comply with the requirements of IPRA. Specifically, the County fails to set forth the names and titles of each person responsible for the denial, fails to adequately explain the reason for deny the request, and failed to deliver the denial within fifteen day after the request for inspection was received.

### **2. The County’s Use of the Law Enforcement Exception**

It is clear that the County maintained responsive records to the request, which included Michelle Martens, Fabian Gonzales and Jessica Kelley telephone and visitor logs from the Bernalillo County Metropolitan Detention Center. What is not clear is the justification for why the telephone and visitor logs of inmates of a county jail qualify for this exception.

The basis for the withholding of the records provided by the County was that “such records were being withheld due to an active law enforcement investigation.” Section 14-2-1(A)(4), states that all persons have a right to insect records except:

law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime. Law enforcement records include evidence in any form received or compiled in connection with any criminal investigation or prosecution by any law enforcement or prosecuting agency,

including inactive matters or closed investigations to the extent that they contain the information listed above;

The law enforcement exception only applies to records that are "created or used by a law enforcement agency in connection with a criminal investigation or prosecution and reveal confidential sources, methods, information or individuals accused but not charge with a crime." Although we recognize that certain records, or portions of those records, may be covered by the law enforcement exception, and not subject to inspection under the IPRA, by denying the request without producing any records, or redacting non-exempt records, or providing the basis for invoking how the exception applies, the County has failed to comply with its obligations under the IPRA. As such, the County has not met their burden for justifying the withholding of records pursuant to the law enforcement exception.

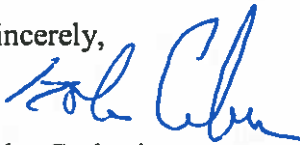
### Conclusion

The County violated the IPRA by failing to respond in a timely manner and by failing to provide an adequate and complete written explanation for denying this IPRA request. The County should provide an adequate and complete written explanation for why the requested records are being withheld to the Complainant as soon as possible. The County should further, allow for any non-exempt records requested with redaction of specific details related to the criminal investigation which would constitute protected information. This approach follows the Office of the Attorney General's recommendation for public bodies to redact records when possible instead of withholding, and follows the preferred practice followed by other jurisdictions.

For more information about IPRA you may refer to the Office of the Attorney General's Inspection of Public Records Act Compliance Guide, available on our website at [www.nmag.gov](http://www.nmag.gov). If you have any questions about the specific matters addressed in this letter or about the Inspection of Public Records Act in general you may contact me directly or the Office of the Attorney General Open Government Division.

Thank you for your attention to this important matter.

Sincerely,



John Grubestic  
Assistant Attorney General

cc: Nancy Laffin  
3801 Carlisle Blvd. NE  
Albuquerque, NM 87107

**INSPECTION OF PUBLIC RECORDS ACT ("IPRA") COMPLAINT FORM**

New Mexico Office of the Attorney General

Open Government Division

**YOUR CONTACT INFORMATION:**

First Name: Wance Last Name: LAFELIN  
 Address: [REDACTED]  
 City: [REDACTED] State: [REDACTED] Zip Code: [REDACTED]  
 Phone Number: [REDACTED]  
 Email: [REDACTED]

**IPRA REQUEST TO THE PUBLIC BODY:**

Name of the Public Body that is the subject of this complaint (including city/town, county or region, if applicable): Bernalillo County  
 Format of IPRA Request:  Written  Oral  
 Date IPRA Request was Submitted to the Public Body: October 18, 2016  
 Date of all Responses Received from the Public Body: OCT. 18, NOV 2, NOV. 17, 2016

**ALLEGED VIOLATIONS OF IPRA BY THE PUBLIC BODY:** 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.

**Lafflin, Nancy S**

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**To:** Lafflin, Nancy S  
**Subject:** FW: New IPRA Request WO#250861

**From:** Nataura C. Powdrell-Moore [<mailto:ncpowdrell@bernco.gov>]  
**Sent:** Thursday, November 17, 2016 1:59 PM  
**To:** Shepperd, Greg <[GShepperd@hearst.com](mailto:GShepperd@hearst.com)>  
**Cc:** Lafflin, Nancy S <[nlafflin@hearst.com](mailto:nlafflin@hearst.com)>; Nataura C. Powdrell-Moore <[ncpowdrell@bernco.gov](mailto:ncpowdrell@bernco.gov)>; Victoria C. Araujo <[varaujo@bernco.gov](mailto:varaujo@bernco.gov)>  
**Subject:** RE: New IPRA Request WO#250861

Good Afternoon-

I just spoke with Ms. Lafflin and informed her as well, the calls requested via IPRA#250861 will not be released. These calls are a part of an active law enforcement investigation.

If you have any further questions, or request more detail, you may call Mr. Martinez 505-314-0180

Thank you-



**Nataura Powdrell-Moore**  
*Public Information Officer*  
*Local Custodian of Public Records*  
Bernalillo County Metropolitan Detention Center  
Bernalillo County Department of Substance Abuse  
Email: [ncpowdrell@bernco.gov](mailto:ncpowdrell@bernco.gov)  
Office: (505) 839-8703 Fax: (505) 462-9806

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

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**From:** Nataura C. Powdrell-Moore  
**Sent:** Thursday, November 17, 2016 1:34 PM  
**To:** Shepperd, Greg  
**Subject:** Re: New IPRA Request WO#250861

Good Afternoon-

This request has been extended twice. I spoke with Ms. Laflin Tuesday and explained to her the reason for the delay, as well as the fact that I am waiting for approval to release or deny the request from the APD legal team and Bernalillo county legal team. I will follow up with her again today, once I again ask those two departments for an update.

Nataura Powdrell-Moore.

On Nov 17, 2016, at 12:56 PM, Shepperd, Greg <[GShepperd@hearst.com](mailto:GShepperd@hearst.com)> wrote:

Hi Nataura,

I'm trying to track down the progress of KOAT's public records request, which was originally made October 18th. Please direct me to the folks in the respective legal departments that are reviewing the request.

With nearly 30 days passing since our initial request, your office is obligated to produce the records or provide reasoning for a denial of our request.

Thank you for your assistance.

<image001.png>

**From:** Nataura C. Powdrell-Moore [<mailto:>]

**Sent:** Wednesday, November 02, 2016 2:37 PM

**To:** Laflin, Nancy S <[nlaflin@hearst.com](mailto:nlaflin@hearst.com)>

**Cc:** Ray Gonzales <[ragonzales@bernco.gov](mailto:ragonzales@bernco.gov)>; Nataura C. Powdrell-Moore <[ncpowdrell@bernco.gov](mailto:ncpowdrell@bernco.gov)>

**Subject:** RE: New IPRA Request WO#250861

Good Afternoon Nancy-

Your request for records work order deadline will need to be extended. This is under review by both county legal and city legal departments. I am extending your work order for a week, with a new due date of 11/9/16.

If you have any questions, please feel free to contact me directly.

Thank you-

<image002.jpg><image003.png>**Nataura Powdrell-Moore**

*Public Information Officer*

*Local Custodian of Public Records*

Bernalillo County Metropolitan Detention Center

Bernalillo County Department of Substance Abuse

Email: [ncpowdrell@bernco.gov](mailto:ncpowdrell@bernco.gov)

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**From:** Laflin, Nancy S [<mailto:nlaflin@hearst.com>]  
**Sent:** Tuesday, October 18, 2016 2:43 PM  
**To:** Rachel Floryance  
**Cc:** Nataura C. Powdrell-Moore; Ray Gonzales  
**Subject:** Re: New IPRA Request WO#250861

Thank you all! Appreciate your help!

Sent from my iPhone

On Oct 18, 2016, at 2:04 PM, Rachel Floryance <[rfloryance@berncogov](mailto:rfloryance@berncogov)> wrote:

Good Afternoon Ms. Laflin ~

Thank you for submitting your recent Inspection of Public Records Request. Your request has been received by the Bernalillo County Compliance Office and has been forwarded to the appropriate Record Custodian with the Bernalillo County Metropolitan Detention or completion.

The assigned Record Custodian will contact you on or before October 21, 2016. The expected date of completion will be on or before November 2, 2016.

Please reference Work Order #250861 in any future correspondence to this email.

Thank you,

**Rachel Floryance**  
*Executive Assistant to Robert D. Kidd, Compliance Officer*  
Compliance Office  
415 Tijeras NW, 1<sup>st</sup> Floor, Albuquerque, NM 87102  
Email: [rfloryance@berncogov](mailto:rfloryance@berncogov)  
O: (505) 468-1382  
[www.berncogov](http://www.berncogov)

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From: Nataura C. Powdrell-Moore  
Sent: Tuesday, October 18, 2016 11:06:00 AM (UTC-07:00) Mountain Time (US & Canada)  
To: [berncoview](mailto:berncoview)  
Subject: FW: Nat --

From: Laflin, Nancy S [<mailto:nlaflin@hearst.com>]  
Sent: Tuesday, October 18, 2016 11:01 AM  
To: Nataura C. Powdrell-Moore  
Subject: Nat --

First---thank you for help with the phone calls and visits from Michelle Martens, Fabian Gonzales and Jessica Kelley.

I'm now requesting any updated calls and visits (updated from my prior request).

Thank you and I appreciate all your help.

Kind regards --

Attachment 1: image001.jpg



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.

*East Hall KOAT-TV requested visit logs and phone logs (conversations) with inmates Tessica Healey, Michelle*

Martens) and Fabian Gumbles.  
 MDC provided those calls and logs involving  
 inmates Martens and Gumbles.  
 (there were no calls recorded by Jessica Kelly)

• These recorded phone conversations are public  
 records. Conversations involving legal matters  
 (calls with their legal counsel, were not provided)  
 \* The report with portions of these calls dated Oct. 12, 2016.

• On October 18<sup>th</sup>, 2016, KUTV-TV requested additional  
 phone conversations of Michelle Martens, Fabian  
 Gumbles and Jessica Kelly.

\* The second request was denied. (Please see  
 attached emails).

**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.

\* Note: This is in no way a complaint  
 involving Natanael Dorell Moore.  
 as the public information officer for  
 MDC, she has always been incredibly  
 helpful.

Kind regards —  
 Nancy J. Allen