

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
ATTORNEY GENERAL

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October 27, 2017

Daniela Bowman  
119 La Placita Circle  
Santa Fe, NM 87505

**Re: Inspection of Public Records Act Complaint – Bernalillo County Assessor’s Office**

Dear Ms. Bowman:

We have reviewed your complaint dated July 28, 2016 alleging that the Bernalillo County Assessor’s Office (“BCAO”) violated the Inspection of Public Records Act (“IPRA”), NMSA 1978, Sections 14-2-1 to -12 (as amended through 2013), by improperly denying your request to inspect public records. We also have reviewed BCAO’s response to our inquiry regarding the complaint, *see* letter from Michael I. Garcia, Assistant County Attorney (Aug. 18, 2016) (“BCAO’s Response”), and your reply to BCAO’s Response, *see* e-mail from Daniela Bowman (11-30-16). Based on our review, as discussed in more detail below, we are unable to conclude that BCAO violated IPRA as alleged in the complaint.<sup>1</sup>

According to the complaint, you submitted a request on June 29, 2016 for “all sales records of real estate properties that have occurred in Bernalillo Co in 2015. The records could be found at the Bern. Co. appraiser office, and they are 8,541. I am requesting an electronic spreadsheet file of those records (Excel format preferred).” When you did not get a response, you resubmitted the request on July 6, 2016. The County’s IPRA Coordinator acknowledged receipt of the request on the same day. On July 13, 2016, the BCAO notified you that it was denying your request because the sales records you requested were confidential under NMSA 1978, Section 7-38-12.1(C).

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<sup>1</sup> This determination is limited to issues the complaint raises regarding BCAO’s compliance with IPRA. Other allegations in the complaint concerning BCAO’s failure to provide sales data in a protest hearing on July 14, 2016 are outside the scope of this determination and we do not reach any conclusions regarding those allegations.

The complaint raises three issues under IPRA. Specifically, the complaint alleges that BCAO: (1) violated IPRA by failing to respond to your June 29, 2016 records request within three business days; (2) improperly denied your request; and (3) should have provided you with responsive records in the form of an electronic spreadsheet, as specified in your records request.

1. Three-Day Response

In pertinent part, IPRA requires a records custodian who receives a written request for public records to:

permit the inspection immediately or as soon as is practicable under the circumstances, but not later than fifteen days after receiving [the] written request. If the inspection is not permitted within three business days, the custodian shall explain in writing ... when the public body will respond to the request. The three-day period shall not begin until the written request is delivered to the office of the custodian.

Section 14-2-8(D).

Section 14-2-8(D) provides that the three-day period for acknowledging a records request does not begin until the request is delivered to the records custodian. From the information available at this time, there is no evidence that BCAO intentionally failed to respond to your initial request submitted on June 29, 2016. BCAO states that they became aware of it only after until you resubmitted the request on July 6, 2016. Once the July 6 request was received, the County's IPRA Coordinator acknowledged it immediately, in compliance with Section 14-2-8(D).

2. Denial of the Request

IPRA provides: "Every person has a right to inspect public records," with limited exceptions. Section 14-2-1(A). IPRA lists exceptions for specific categories of public records and a catch-all exception for public records "as otherwise provided by law." *Id.* Section 14-2-1(A)(8). When a written records request is denied, IPRA requires the records custodian to "provide the requester with a written explanation of the denial" within fifteen days after receiving the records request. Section 14-2-11(B). The written explanation must include a reason for the denial, which must be authorized by IPRA or "as otherwise provided by" another law, court rule, or the U.S. or New Mexico constitution. *See* Attorney General's IPRA Compliance Guide, p. 40 (8<sup>th</sup> ed. 2015) ("IPRA Guide") (available online at [www.nmag.gov](http://www.nmag.gov)).

As noted above, BCAO provided you with a written explanation of its denial of your July 6 request, which cited NMSA 1978, Section 7-38-12.1(C) (2005) as the justification for the

denial. Section 7-38-12.1(C) requires a buyer or seller of residential property to file an affidavit with the applicable county assessor that contains information concerning the transfer, including “the full consideration, including money or any other thing of value, paid or exchanged for the transfer and the terms of the sale including any amount of seller incentives.” *Id.* § 7-38-12.1(B)(4). The county assessor is required to “retain the original affidavit as a confidential record....” *Id.* § 7-38-12.1(C). “The affidavit and its contents” are not part of the assessor’s valuation records. *Id.*

With certain exceptions, NMSA 1978, Section 7-38-12.2 (2003) provides that a person “who willfully releases information in violation of [Section 7-38-12.1]... is guilty of a misdemeanor and shall be fined not more than one thousand dollars (\$1,000).” The exceptions are for disclosures made as part of a protest proceeding under NMSA 1978, Section 7-38-24 and disclosures authorized by NMSA 1978, Section 7-38-4, which generally prohibits county assessors from disclosing information they maintain about specific properties or property taxpayers.<sup>2</sup> Neither Section 7-38-12.2 nor Section 7-38-4 authorizes the disclosure of information protected by Section 7-38-12.1 in response to a public records request under IPRA.

Your request described the records you sought as “all sales records of real estate properties” in Bernalillo County in 2015. In the absence of information suggesting otherwise, it appears that the only responsive records maintained by BCAO were the affidavits required under Section 7-38-12.1. Because those affidavits are “confidential” under Section 7-38-12.1, we believe BCAO’s denial of your request was appropriate.

#### Request for Electronic Copy

BCAO’s Response contends that it was not required to comply with your request for “an electronic spreadsheet file” of those records.

A written request to inspect public records must, among other things, “identify the records sought with reasonable specificity.” Section 14-2-8(C). A public body must provide a requester with access to responsive, nonexempt public records that exist at the time of the request. IPRA does not require a public body to create a public record in response to a request. *Id.* § 14-2-8(B). *See also* IPRA Compliance Guide, p. 32.

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<sup>2</sup> Section 7-38-4 (1991) broadly prohibits, with certain exceptions, a county assessor from disclosing “information ... about a specific property or a property taxpayer gained as a result of a report or information furnished ... by a taxpayer or as a result of an examination of property or records of a taxpayer.” *Id.* § 7-38-4(A). The exceptions include information “that is limited to the information contained in those valuation records that are public records and the identity of the owner or person in possession of the property” and information “used for statistical purposes in a way that the information revealed is not identified or identifiable as applicable to any property owner or person in possession of the property.” *Id.* § 7-38-4(A)(1), (5). Section 7-38-4 imposes the same penalty for violating its prohibition against disclosure as Section 7-38-12.2. *See* NMSA 1978, § 7-38-4(B).

Ms. Daniela Bowman

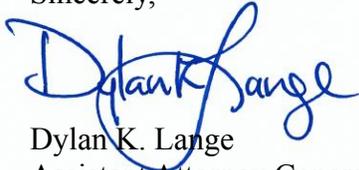
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BCAO did not provide you with public records covered by your request because, as discussed above, all responsive records were excepted from disclosure under IPRA. Even if nonexempt records had been available, BCAA would have been required only to provide records that existed at the time of your request. According to BCAA's Response, BCAA does not keep records of residential property sales in the form of a spreadsheet. Consequently, BCAA was under no obligation to compile previously un-compiled information from its existing records to create a spreadsheet responding to your request. *See IPRA Guide, p. 32, Examples 47 & 49 (records custodian not required compile a list from its files in response to an inspection request).*

To summarize, we conclude that (1) upon receiving your public records request, BCAA acknowledged it within three business days, as required by Section 14-2-8(D); (2) BCAA properly denied the request under Section 14-2-11(B); and (3) under Section 14-2-8(B), BCAA was not required to create a spreadsheet in response to the request that did not exist when the request was made. Although we did not determine that BCAA violated IPRA as alleged in the complaint, we appreciate your bringing this matter to our attention. If you have any questions about this determination or IPRA in general, please let me know.

Sincerely,



Dylan K. Lange

Assistant Attorney General

cc: Michael I. Garcia, Assistant County Attorney, Sr.

**INSPECTION OF PUBLIC RECORDS ACT ("IPRA") COMPLAINT FORM**  
New Mexico Office of the Attorney General  
Open Government Division

**YOUR CONTACT INFORMATION:**

First Name: DANIELA Last Name: BOWMAN  
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 / ASSESSOR

Format of IPRA Request:  Written  Oral

Date IPRA Request was Submitted to the Public Body: 6/29/2016 & 7/6/2016

Date of all Responses Received from the Public Body: 7/13/2016 & 7/14/2016  
(VIA EMAIL) (DURING HEARING)

**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. Denial 7/13/2016 & 7/14/2016
- 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.

*Denial 7/13/2016 & 7/14/2016*

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. *Request dated 6/29/2016*

**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.

*IPRA Request dated 6/29/2016 was submitted via Bern. Co. web site. No receipt was provided for this request.*

IPRA request dated July 6, 2016 → see Attach. 1

Denial of IPRA records was provided July 13, 2016 → see Attach. 2

Attach. 3 Bern. Co. Appraiser claims confidentiality of records under § 7-38-12.1.C NMSA 1978

However, the taxpayer had a protest hearing scheduled on July 14, 2016 and under § 7-38-4.A(3) NMSA 1978 records material to protest hearing may be released. There is a Presumption in favor of the right to inspect. In addition, the sale price of transferred properties is stated in Warranty Deeds which are filed w/ County Clerk and are also a public record.

**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.

See Attachment 1  
Attachment 2  
Attachment 3

Thank you.

**Attachment 1**

**RECEIPT OF IPRA REQUEST**

Transparency <[transparency@bernco.gov](mailto:transparency@bernco.gov)>

Jul 6 (12  
days  
ago)

to me, Daniel, Damian

Good Afternoon Ms. Bowman,

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 Assessor's Office for completion.

The assigned Record Custodian will contact you on or before 7/11/2016. The expected date of completion will be on or before 7/21/2016.

Please reference Work Order #242744 in any future correspondence to this email.

Thank you,

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**Brandi E. Sanchez**

*IPRA Coordinator/ AOII*

Compliance Office

415 Tijeras NW, First Floor, Albuquerque, NM 87102

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

O: [\(505\) 468-1384](tel:(505)468-1384)

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

**From:** IT Service Desk [mailto:[trackitsd@bernco.gov](mailto:trackitsd@bernco.gov)]

**Sent:** Wednesday, July 06, 2016 1:35 PM

**To:** Transparency <[transparency@bernco.gov](mailto:transparency@bernco.gov)>

**Subject:** New WO#242744 IPRA Request

Priority :9 - PIO IPRA

Assignments:

Wednesday, July 06, 2016 9:43:39 AM by EmailRequestManagement - (Public)

Work Order created via E-mail Monitor Policy: Default

From: [berncoview@bernco.gov](mailto:berncoview@bernco.gov)

To: [trackitsd@bernco.gov](mailto:trackitsd@bernco.gov)

CC:

Subject: FW: An IPRA request was submitted online

Information submitted 7/6/2016 9:43:53 AM by berncoview :

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From: Brandi E. Sanchez

Sent: Wednesday, July 6, 2016 9:43:15 AM (UTC-07:00) Mountain Time (US & Canada)

To: berncoview

Subject: FW: An IPRA request was submitted online

Brandi E. Sanchez

IPRA Coordinator/ AOII

Compliance Office

[\(505\) 468-1384](tel:5054681384)

-----Original Message-----

From: [mailservices@sks.com](mailto:mailservices@sks.com) [<mailto:mailservices@sks.com>]

Sent: Wednesday, July 06, 2016 9:24 AM

To: Brandi E. Sanchez

Subject: An IPRA request was submitted online

First Name:

Daniela

Last Name:

Bowman

Mailing Address:

119 La Placita Cir

City:

Santa Fe

State:

New Mexico

Zip Code:

87505

Phone:

5059207516

Email:

zagora.68@gmail.com

Specific Request:

I am requesting all sales records of real estate properties that have occurred in Bernalillo Co in 2015. The records could be found at the Bern. Co. appraiser office, and they are 8,541. I am requesting an electronic spreadsheet file of those records (Excel format preferred).

Comments:

Please call if you have any questions about this request. Please call in order to inform me when I could collect the records.

I have submitted the same request on June 29, 2016 but I have not received any response or feedback. I will submit this request every day until I obtain a confirmation that my request is being obtained and worked on.

Inmates Related Request: Enter Inmate's First Name, Last Name and DOB.

E-mail received with no Attachments

Attachments area

**Attachment 2**

**DENIAL OF IPRA REQUEST**

July 13, 2016

Dear Daniela Bowman,

Thank you for submitting your recent Inspection of Public Records Request to the Bernalillo County Assessor's Office. Your specific request was for all sales records within Bernalillo County for 2015. Unfortunately according to New Mexico State Statute §7-38-12.1 C. Upon receipt of the affidavit required by Subsection A of this section, the county assessor shall place the date of receipt on the original affidavit and on a copy of the affidavit. The county assessor shall retain the original affidavit as a confidential record and as proof of compliance and shall return the copy marked with the date of receipt to the person presenting the affidavit. The assessor shall index the affidavits in a manner that permits cross-referencing to other records in the assessor's office pertaining to the specific property described in the affidavit. The affidavit and its contents are not part of the valuation record of the assessor.

Thus, the sales information you are requesting is not considered public record according to state statute, therefore I will be closing out this work order. If you have any questions, please feel free to contact me.

Best,

**Daniel Manzano**

*Special Projects Coordinator*

Assessor's Office

501 Tijeras NW, Albuquerque, NM 87102

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

Direct: [\(505\) 222-3927](tel:(505)222-3927) / Main: [\(505\) 222-3700](tel:(505)222-3700)

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

**Attachment 3**  
Violations by Bernalillo County Assessor

**FACTS**

On June 29, 2016, the complainant submitted IPRA request via the Bern. Co. web site, but it never received a receipt for her request.

On July 6, 2016, the complainant submitted a second IPRA request for the same records via Bern. Co. web site, which request was denied on July 13, 2016 claiming the requested records were confidential under the Subsection C of statute 7-38-12.1 NMSA 1978.

On July 14, 2016, the complainant had scheduled protest hearing during which the complainant repeated her request for the records. The Bern. Co. Assessor representative denied the records again claiming confidentiality under the same statute.

**VIOLATIONS**

No receipt was provided for the IPRA request on June 29, 2016. The complainant cannot provide a proof for this request since the only manner of submitting an IPRA request is via Bern. Co. website which does not provide a record of the request by simply “clicking” on the “Submit” button.

Bern. Co. Assessor office did not provide a response to the complainant IPRA request within 3 days but it responded the day before a scheduled protest hearing being aware that the requested information is material to the hearing.

Bern. County Assessor denied the requested IPRA records on July 13, 2016 in writing via email, and confirmed its denials of the same records during the protest hearing of the complainant on July 14, 2016 claiming records are confidential under Subsection C of 7-38-12.1 NMSA 1978. Page 7 of the AG Compliance Guide for IPRA states

Because of the presumption in favor of the right to inspect, public bodies acquiring information should keep in mind that the records they keep generally are subject to public inspection. Merely declaring certain documents to be confidential by regulation or agreement will not exclude them from inspection. Similarly, an agency cannot deny access to a record simply because the agency obtained it under a promise of confidentiality. To exclude a record from inspection, the custodian must be prepared to show that a specific law, court rule or constitutional privilege supports confidentiality. Because of the presumption in favor of inspection and to effectively protect personal privacy, the public body should be sure that the information it gathers is actually needed.

1. Subsection A of 7-38-4 NMSA allows release of requested records, especially when they are material in a protest hearing.
2. In addition, the sale prices (requested records) of transferred properties are provided in the Warranty Deeds which are filed with the County Clerk, and which are also public records.
3. In addition, the Opinion of **Court of Appeals of New Mexico, Robert GORDON, Plaintiff-Appellee, v. SANDOVAL COUNTY ASSESSOR, Defendant-Appellant. No. 21,400** explains:

{17} The district court did order that information specifically listed in Section 7-38-19(E) be redacted from the property record cards ordered to be disclosed. Thus, the questions we must answer are whether the possible presence of other information on the cards makes the entire card confidential and whether the information in itself is confidential. There are two possible types of other information. First, there is standard appraisal information, such as we described in paragraph 3-e.g., square footage of buildings and types and grades of construction materials. Second, there is information that the Assessor claims sometimes exists on property cards, such as sales price data. In the briefs, the Assessor speculated that there might be information on why a particular sale price might have been low, such as that the owner had some disease or illness and needed to sell the property quickly. The Assessor claims that both of these types of information should be confidential pursuant to the policy that supports citizens' open and unguarded disclosure to the tax authorities of all relevant information.

{18} While we are not unsympathetic to the Assessor's point, in considering all of the statutes at issue, we cannot agree with it. The statutory scheme, as we see it, has the two conflicting general policies, but still contains a specific provision making valuation records public and only excepting certain types of information. We believe that the overall scheme evinces a legislative intent to have the general policy favoring openness in government control, at least as concerns any information on valuation records that is not the specific information listed in Section 7-38-19(E).

The legislature intent in IPRA favors release of information collected by public entities.