

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

June 07, 2018

Sharis Lyons
2907 Pecan Drive
Alamogordo, New Mexico 88310

Re: Inspection of Public Records Complaint – City of Alamogordo

Dear Ms. Lyons:

We have reviewed your complaint dated March 28, 2017 alleging that the City of Alamogordo (“City”) violated the Inspection of Public Records Act, NMSA 1978, ch. 14, art. 2 (as amended through 2013) (“IPRA”), by improperly denying your requests to inspect public records. We also have reviewed the City’s response to our inquiry regarding the complaint, *see* letter from Lauren Truitt, City Attorney, and Petria Schreiber, Assistant City Attorney to Dylan Lange, Assistant Attorney General (undated) (“City’s Response”). Based on our review, as discussed in more detail below, we conclude that the City did not violate IPRA as alleged in the complaint.

From the complaint and the City’s Response, it appears that you submitted a request to the City on March 14, 2017 for “names of employees and the disciplinary actions received for any positive drug or alcohol test” for the period of January 1, 2012 to the present. The City responded on March 17, 2017 and denied inspection of the requested public records because they “are letters or memoranda that are matters of opinion in personnel files or students’ files protected under Section 14-2-1(A)(3) of [IPRA].” On March 23, 2017, you submitted a second request for “any and all disciplinary actions received on any employees who tested positive on drug and/or alcohol tests” for the period of January 1, 2012 to the present. By letter dated March 27, 2017, the City denied your second request for the same reason it denied your first request.

IPRA provides “[e]very person” with the “right to inspect public records of this state,” with certain exceptions. NMSA 1978, § 14-2-1. When a public body denies a written records request in whole or in part, the records custodian is required to “provide the requester with a written explanation of the denial” within fifteen days after receiving the records request. NMSA 1978, § 14-2-11(B). The written explanation must include a reason for the denial. To justify a denial, the reason provided must be among the exceptions specified in IPRA or “as otherwise provided by” another law, court

Ms. Sharis Lyons

June 07, 2018

Page 2

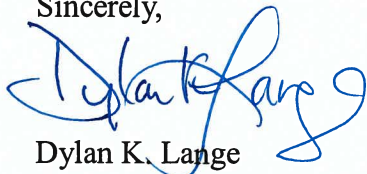
rule, or the U.S. or New Mexico constitution. *Id.* § 14-2-1(A). *See also* Attorney General's IPRA Compliance Guide, p. 40 (8th ed. 2015) ("IPRA Compliance Guide") (available on the Office of Attorney General's website at www.nmag.gov).

In its letters explaining the City's denial of your requests for disciplinary actions involving employees with positive drug or alcohol tests, the City relied on Section 14-2-1(A)(3) of IPRA. In pertinent part, that provision excepts from the right to inspect public records "letters or memorandums which are matters of opinion in personnel files...." Section 14-2-1(A)(3) has been judicially interpreted to include personnel records "concerning infractions and disciplinary action." *State ex rel. Newsome v. Alarid*, 1977-NMSC-076, ¶ 12, 568 P.2d 1236, *overruled in part on other grounds by Republican Party v. New Mexico Taxation & Revenue Dep't*, 2012-NMSC-026, ¶ 16, 283 P.3d 853. *See also Cox v. New Mexico Dep't of Pub. Safety*, 2010-NMCA-096, ¶ 21, 242 P.3d 501 (personnel records protected under Section 14-2-1(A)(3) include "disciplinary reports or documentation"), IPRA Compliance Guide, pp. 9-10 (discussing IPRA's exception for matters of opinion).

Your requests asked for public records of the City pertaining to disciplinary actions against employees with positive drug or alcohol tests. Based on the case law in New Mexico at this time, a court would likely find that those records fall squarely under Section 14-2-1(A)(3)'s exception for personnel records concerning "matters of opinion," which the City cited as the basis for denying your requests. Consequently, we determine that the City's denial of your requests complied with IPRA.

Although we did not find a violation of IPRA as alleged in the complaint, we appreciate your bringing the issues discussed above to our attention and allowing us the opportunity to address them. If you have any questions about this determination or IPRA in general, please let me know.

Sincerely,



Dylan K. Lange
Assistant Attorney General

cc: Lauren Truitt, City Attorney
Petria Schreiber, Assistant City Attorney

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

1017 MAR 30 AM 8:31

YOUR CONTACT INFORMATION:

First Name: Sharis Last Name: Lyons

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): City of Alamogordo, Alamogordo, N.M. 88310

Format of IPRA Request: Written Oral

Date IPRA Request was Submitted to the Public Body: 1st one March 14th 2017. and one March 23rd, 2017

Date of all Responses Received from the Public Body: March 16, 2017 & March 27th, 2017

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.

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.

March 14th 2017 I submitted public records request names & disciplinary actions received on positive drug and alcohol test. The records were denied due to matter of opinion. I then submitted a second request ^{March 23rd} for just disciplinary actions, feeling that asking for names was a HIPAA violation. And again was denied due to matter of opinion. I believe that the IPRA has been violated because the drug test are regulated DOT tests.

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.



City of Alamogordo



March 27, 2017

Sharis Lyons
[REDACTED]

RE: *Request to Inspect Public Records*

Dear: Sharis Lyons

On March 23, 2017, we received your request to review the following records:

Any and all disciplinary actions received on any employees who tested positive on drug and/or alcohol tests from 1/01/2012-current.

We cannot permit inspection of these records because they are excepted from disclosure for the reason(s) described below.

_____ The records requested are medical records protected under Section 14-2-1(A)(1) of the Inspection of Public Records Act.

_____ The records requested are letters of reference concerning employment, licensing or permits protected under Section 14-2-1(A)(2) of the Inspection of Public Records Act.

XX _____ The records requested are letters or memoranda that are matters of opinion in personnel files or students' files protected under Section 14-2-1(A)(3) of the Inspection of Public Records Act.

_____ The records requested are confidential law enforcement records protected under Section 14-2- 1(A)(4) of the Inspection of Public Records Act.

_____ Protected personal identifier information contained in the requested records has been redacted under Section 14-2-1(B) of the Inspection of Public Records Act.

Sincerely,

Rachel Hughs
City Clerk

cc: Lauren Truitt, City Attorney
Petria Schreiber, Assistant City Attorney



City of Alamogordo



OFFICE OF THE CITY CLERK

1376 E. NINTH STREET • ALAMOGORDO, NEW MEXICO 88310-5838 • (575) 439-4205 FAX (575) 439-4396

March 16, 2017

Sharis Lyons

RE: *Request to Inspect Public Records*

Dear: Sharis Lyons

On March 14, 2017, we received your request to review the following records:

Names of employees and the disciplinary actions received for any positive drug or alcohol test from 1/01/2012-current. Also, the results of the tests.

We cannot permit inspection of these records because they are excepted from disclosure for the reason(s) described below.

_____ The records requested are medical records protected under Section 14-2-1(A)(1) of the Inspection of Public Records Act.

_____ The records requested are letters of reference concerning employment, licensing or permits protected under Section 14-2-1(A)(2) of the Inspection of Public Records Act.

XX _____ The records requested are letters or memoranda that are matters of opinion in personnel files or students' files protected under Section 14-2-1(A)(3) of the Inspection of Public Records Act.

_____ The records requested are confidential law enforcement records protected under Section 14-2- 1(A)(4) of the Inspection of Public Records Act.

_____ Protected personal identifier information contained in the requested records has been redacted under Section 14-2-1(B) of the Inspection of Public Records Act.

Sincerely,

Rachel Hughes
City Clerk

cc: Lauren Truitt, City Attorney
Petria Schreiber, Assistant City Attorney