

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



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September 8, 2016

Pauline Alvarado  
233 Romana SE  
Albuquerque, NM 87102

Re: Inspection of Public Records Act Complaint – Pauline Alvarado

Dear Ms. Alvarado:

We have completed our review of your complaint, which was received by our office on April 11, 2016, alleging that the City of Albuquerque (“City”) violated the Inspection of Public Records Act (“IPRA”) NMSA 1978, § § 14-2-1 to -12 (2011), by failing to allow for inspection of all the documents you requested in your October 1, December 3, 2015, and February 3, 2016 IPRA requests. Additionally, you allege that the City did not comply with the timeframes proscribed under the IPRA.

We have also reviewed the City’s response, copy attached, and the IPRA. After doing so, we find that while the City failed to send a “three day letter” in one instance, it provided records responsive to your IPRA requests and therefore was in substantial compliance with the IPRA. *See Derringer v. State*, 2003-NMCA-073, 133 N.M. 721 (2003) (finding that the New Mexico Livestock Board was in substantial compliance with the IPRA when it “ultimately produced or allowed for the inspection of all responsive records in their possession”). Thus, our Office has concluded that the City substantially complied with the IPRA.

**February 3, 2016 Request**

The City acknowledged receipt of your February 2, 2016, IPRA request on February 3, 2016, complying with the “three day rule” of the IPRA. *See* NMSA 1978, § 14-2-8(D) (requiring that a record custodian respond to a requester in writing if inspection is not to be permitted within three business days and inform the requester when the records will be available). At that time, the City stated notified you it would need additional time, not to exceed 15 days, to compile the response.

On February 18, the City provided a portion of the documents requested February 2 that included requests for all applications for educational leave, information in Complainant's personnel file, communications among various City departments including its legal department regarding Complainant and time-stamped reports for "all Code Enforcement employees", in some cases requesting that documents cover a 10-year period.

Along with producing some documents, the City stated it would need additional time to fulfill the remainder of your request. The IPRA allows a custodian an "additional reasonable period" of time to comply with a request that the custodian has deemed to be excessively burdensome. *See* § 14-2-10 (allowing a reasonable time for compliance with a broad or burdensome request). The City notified you February 24, 2016 that many documents it assembled were available for inspection and could be uploaded. It remained in communication with you throughout March and April and informed you April 27 that it had assembled some two thousand emails related to your request and denied some 79 records. The City completed collecting all the requested records relating to your February 3<sup>rd</sup> request and copied the records onto a memory stick. For any records withheld, the City cited an appropriate exception from the IPRA. *See* § 14-2-1(A) (providing a list of records that are exempt from disclosure). By putting all records on a memory stick, citing appropriate exemptions, and emailing you to arrange a time for you to get the memory stick, the City correctly responded to your February 3 IPRA request.

You added to your complaint questions to this office on April 19, 2016 regarding the City's duty to notify you that your request was burdensome when it sought more time to respond, as well as the City's duty to accommodate your viewing of documents by making a table available during your review and allotting ample time to view 800 documents, rather than allowing you only one hour. The IPRA requires only that a requester be informed in writing that "additional time will be needed to respond to the written request" and that the requester may deem a request denied if the records custodian does not permit records to be inspected within a "reasonable period of time." § 14-2-10. In this case, the period between your request and the date the records were provided was not unreasonably long, especially given the size of the request. Further, the IPRA requires a records custodian to "provide proper and reasonable opportunities to inspect public records," § 14-2-7(C) but does not specify how those opportunities should be made available. In this case, the fact that the City made information available to you on a memory stick indicates that the City did not fail to accommodate you or your documents request.

### **October 1, 2015 Request**

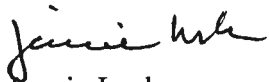
The City acknowledged it received your IPRA request on October 1, 2015 and informed you it would attempt to fulfill the request in three days, although it might take up to 15. *See* 1978, § 14-2-8(D). On October 16, 2015, the City informed you that it had no responsive documents. The IPRA does not require a public body to create a public record in response to an IPRA request. § 14-2-8(B). Additionally, nothing in the IPRA requires public bodies to keep or store personal notes taken at meetings. Thus, the City's timely response that the records requested were not kept by the City fulfilled its obligations under the IPRA.

**December 3, 2015 Request**

On December 3, 2015, the City received your forwarded IPRA complaint from the Attorney General's Office. On December 9, 2015, the City sent a response indicating that it did not maintain the particular records that you requested. Again, the IPRA does not require a public body to create records in response to an IPRA request. § 14-2-8(B). However, the City should have sent you a "three day letter" notifying you that it would take more than three days to fulfill the request. Still, because the City produced or allowed for the inspection of all responsive records in its possession, the City is in substantial compliance with the IPRA. *See Derringer, Id.*

We now consider this matter closed. Thank you for affording our Office with the opportunity to be of assistance. Please do not hesitate to contact our Office if you have questions about this determination or the IPRA in general.

Sincerely,



Jennie Lusk  
Assistant Attorney General

Encl: City's response to complaint

cc: Kevin Morrow, Assistant City Attorney

RECEIVED APR 11 2016

2016 APR 11 AM 7:17

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

YOUR CONTACT INFORMATION:

First Name: Pauline Last Name: Alvarado  
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 Albuquerque, Bernalillo County

Format of IPRA Request:  Written  Oral

Date IPRA Request was Submitted to the Public Body: 2/3/16, 12/3/15, 10/1/15

Date of all Responses Received from the Public Body: 2/3/16 Receipt. Conf., 2/18/16 provided me one (3 page) document with request for more time, 2/23/16 request for clarification, 2/29/16 more clarification, 3/2/16 Request for clarification, 3/14/16 - Apologies for unreasonable inspection, 3/14/16,

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.

- ① ~~The public body did not provide the documents in 15 days : 2/18/16~~
- ② ~~The public body did not indicate the request : 2/3/16 was voluminous and would be responded to over periods of time : 2/18/16~~

- ③ The public body indicated that they did not retain documents that should be kept.
- ④ The records inspection was not reasonable.
- ⑤ Public body not adhering to retention schedule.
- ⑥ Request to meet with the City Clerk was unanswered.
- ⑦ Public body disposing of documents that are required to be kept according to the retention schedule.

**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.