

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
ATTORNEY GENERAL

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May 31, 2019

**VIA ELECTRONIC MAIL ONLY**

Ms. Shelly Nichols-Shaw  
1145 N. Main St.  
Las Cruces, NM 88001  
Email: [shanntiles@gmail.com](mailto:shanntiles@gmail.com)

**Re: Inspection of Public Records Act Complaint – City of Las Cruces**

Dear Ms. Nichols-Shaw:

This letter addresses the complaint you submitted to the Office of the Attorney General alleging that the City of Las Cruces (hereinafter the “City”) violated the Inspection of Public Records Act (“IPRA”), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2018), by failing to provide you any records responsive to your request dated February 20, 2019. We have also reviewed the letter sent to us in response to our inquiry regarding this matter by Jennifer Vega-Brown, the Las Cruces City Attorney. Having reviewed both your complaint and the City’s response, we conclude that you have not identified a violation of IPRA.

On February 20, 2019, you sent a request for public records to the City through its electronic public records request system. Specifically, you sought “any and all public records concerning possible ‘nonconformity’ issues and agreements made by the City of Las Cruces and which involve the alleyway from West Fleming Avenue to Chestnut Avenue.” The City responded the same day by way of an electronic message stating that it had received your request and that within three business days you would receive further correspondence. Three business days later, on February 25, 2019, the City sent you a second electronic message containing several documents responsive to your request. Two days later, on February 27, 2019, you contacted the City again, stating that you were unable to access at least some of the electronic records that had previously been provided to you. The next day, February 28, 2019, the City allowed you to inspect the records in person at their office and provided you copies of the records. The City also provided you one additional record that it apparently discovered that day. Your complaint to our Office raises

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two issues: first, that the City allegedly did not provide you with any responsive records, and secondly, that the City denied you the opportunity to inspect the requested records in person.

As to your primary allegation, that the City failed to provide you with any responsive records, the City emphatically maintains that it did, in fact, provide you all records in its possession that were responsive to your request. As proof of this, it provided our Office with a copy of its internal public records system file for your request (identified as request #19-170). This file does show that a number of records were provided to you on February 25, 2019, three business days after the City received your request. Additionally, the file shows that you made an appointment to inspect the records in person on February 28, 2019, and that on that day you were provided copies of the requested records (including another record discovered that day). The City also strongly maintains that it did not withhold or redact any documents, an assertion to which we must defer in the absence of evidence to the contrary. *See Smith Butz, LLC v. Pennsylvania Dep't of Env'tl. Prot.*, 142 A.3d 941, 945 (Pa. Commw. Ct. 2016) (holding that, without “competent evidence” that a public body “acted in bad faith or that the...records exist,” the court must accept as true the public body’s assertion that the public records do not exist). As a result, it appears that the City complied with IPRA by providing the records you requested.

As for your allegation that the City denied you the opportunity to inspect the requested records in person, we note that there is a significant contrast in narratives between your complaint (which alleges that your request “to view the documents at City Hall... was denied”) and the City’s response (which states that, “Ms. Nichols-Shaw was notified that she could view the emails at the City.”). However, once again the City’s internal public records system file shows that on February 27, 2019, you made an appointment for the following day to inspect the records in person. The file shows that you arrived at that appointment, viewed the requested records, and were provided copies. Thus, given the evidence provided to us, it appears that the City fully complied with IPRA in this respect too.

Finally, we would acknowledge that the City did initially fail to provide you with one requested record on February 25, 2019. Given that IPRA requires that public bodies must “explain in writing when the records will be available for inspection” if not available within three business days, it is arguable that the City should have provided you such a letter. Section 14-2-8(D). However, the City provided you a copy of that omitted record on February 28, 2019, which is well within the fifteen calendar day window within which IPRA generally requires public bodies to provide requested records. *See* § 14-2-8(D) (providing that public bodies must permit inspection “not later than fifteen days after receiving a written request”). Thus, even if it may have erred slightly by not sending you an additional letter on February 25, 2019, it is abundantly clear that the City remains in substantial compliance with IPRA. *See Derringer v. State*, 2003-NMCA-073, ¶ 13.

Based on the evidence provided to us, we conclude that the City did not violate IPRA as alleged, and we consider this matter closed. However, the Office of the Attorney General

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appreciates you bringing possible violations to this office and will welcome any further complaints you may submit. If you have any concerns in the future, please do not hesitate to contact us. Additionally, our IPRA Guide is available on the website of the Office of the Attorney General at [www.nmag.gov](http://www.nmag.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "John Kreienkamp". The signature is fluid and cursive, with the first name "John" being particularly prominent.

John Kreienkamp  
Assistant Attorney General

Enclosure

CC: Jennifer Vega-Brown, Esq.  
[jvega-brown@las-cruces.org](mailto:jvega-brown@las-cruces.org)

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## Electronic Complaint Submission

### Submission Detail

<b>ECS Reference Number</b>	NMOAG-ECS-20190226-2b46
<b>Final Submit Date</b>	2/26/2019 2:37:23 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. Shelly Nichols-Shaw**

Person

#### Address

[REDACTED]

#### Contact information

[REDACTED]

## Complaint against

### City of Las Cruces - City Clerk's Office

Public Body (Government Entity)

#### Address

700 N. Main Street  
Las Cruces, New Mexico 88001

#### Contact information

(575) 541-2000

On Feb. 20, 2019, I requested records from the City of Las Cruces - #19-170. When I could not open the documents I called and spoke with Ms. Linda Lewis, City Clerk, and asked to be able to come in and view the files as I did not have the property software/format. I was denied the opportunity and told I would have to go elsewhere to view the documents. This is not the first time my requests to view documents have been denied. All have to do with the ADA violations that the City created when they failed to uphold the ADA laws and maintain a public sidewalk for pedestrians and instead eliminated it continuing to show preferential treatment to one business owner (Steven Mirabal) so he could use the publicly owned area as a "personal parking lot." This problem is more than 6 years old.

## Complaint Specifics

<b>Format of IPRA request:</b>	Written
<b>Date IPRA request was submitted to the public body:</b>	February 20, 2019
<b>Date of all responses received from the public body:</b>	February 25, 2019 - according to their system - the documents were "released." I can see where the documents are made available, but I do not have the software to open these particular documents. I called on February 26, 2019 and requested to view the documents at City Hall and was denied.
<b>Records</b>	Records were provided, but they were not responsive to the request.

## Transaction

## Documents

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

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