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July 15, 2016

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321 N. Connelly
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Doug Ford, Clovis Police Chief
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321 N. Connelly
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Re: Inspection of Public Records Act Complaint – Clovis Police Department

Dear Mr. Richards and Chief Ford:

Thank you for your response dated November 20, 2015, on behalf of the City of Clovis to our request for information regarding the complaint submitted by the Clovis News Journal and New Mexico Foundation for Open Government alleging the Clovis Police Department (“CPD”) violated the Inspection of Public Records Act (“IPRA”), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2013). The complaint alleges that CPD violated IPRA (1) when it changed its procedures and stopped providing immediate access to police reports, and (2) by requiring the payment of a fee, including a charge for personnel time, before records can be inspected.

We have reviewed the complaint and the documentation attached, your response dated November 20, 2015 and the supplemental records attached, and the relevant law. As discussed below, we find: (1) no violation regarding the timeliness of inspection under IPRA, and (2) IPRA does not permit CPD to charge a fee prior to allowing inspection of police reports. However, CPD may charge fees for copies of public records, if requested, and may include personnel time for making the copies. Although we do not find a violation, we advise the CPD to be as transparent as possible and not delay the production of any request for information from members of the public.

1. IPRA’s Deadlines for Inspection

Mr. Dave Richards
Chief Doug Ford
July 15, 2016
Page 2

IPRA states “that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees.” § 14-2-5. To implement this policy, IPRA establishes certain requirements for public bodies. Among these is the requirement to permit “inspection immediately or as soon as is practicable under the circumstances, but not later than fifteen days after receiving a written request.” § 14-2-8(D). The complaint alleges that the procedures implemented by CPD violate Section 14-2-8(D) because they do not permit inspection of police reports “immediately.” The complaint does not allege that CPD exceeded the fifteen-day deadline for permitting inspection.

We understand that CPD no longer creates paper copies of police reports, and instead inserts that data directly into an electronic database where the records are stored. According to your response, the software program used does not permit electronic redaction. To protect protected personal identifier information and other information that is exempt from inspection, CPD must print the reports and physically redact this information before making the nonexempt information in the reports available. *See* NMSA 1978, § 14-2-9(A) (requiring the separation of exempt information from nonexempt information in public records before inspection).

CPD did not violate IPRA when it stopped making police reports available for inspection immediately. Section 14-2-8(D) requires a public body to permit inspection “immediately or as soon as is practicable under the circumstances” but no later than fifteen days after receipt of a written request. Here, CPD’s switch from paper to electronic police reports evidently made it impossible for CPD to permit inspection immediately. Nevertheless, CPD is still in compliance with Section 14-2-9(D) if it permits inspection “as soon as is practicable under the circumstances” and within the fifteen day deadline. This being the case, the CPD should ensure that they have a policy in place to be able to consistently meet its responsibility to produce records “as soon as practicable” and not further delay the production of records.

2. Charging Reasonable Fees for Copying Public Records

As indicated above, CPD now maintains its police reports solely in electronic format and must print a report and redact it before providing the report in response to an inspection request. The complaint alleges that CPD is improperly charging a fee, which includes personnel time, before allowing inspection of police reports.

Although CPD maintains police reports in electronic format, we understand that it is providing inspection of the reports in printed format. Under IPRA, a records custodian “may charge reasonable fees for copying ... public records.” NMSA 1978, § 14-2-9(C)(1). Reasonable fees for copying printed records may not exceed one dollar per page for documents 11 inches by 17 inches or smaller and may not include “the cost of determining whether any public record is subject to disclosure.” *Id.* § 14-2-9(C)(2), (6). Copying fees under IPRA “may reflect only the actual cost of copying,” which may include personnel time for making copies. *See* Attorney General’s Inspection of Public Records Act Compliance Guide, p. 36 (8th ed. 2015) (available on our website, www.nmag.gov). However, a records custodian may not “charge a fee for the

Mr. Dave Richards
Chief Doug Ford
July 15, 2016
Page 3

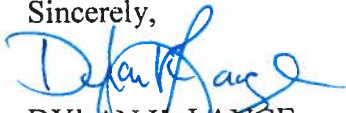
cost of determining whether any public record is subject to disclosure.” NMSA 1978, § 14-2-9(C)(6).

Unless “otherwise prescribed by law,” *id.* § 14-2-9(C)(1), a public body may not charge fees beyond those expressly authorized under IPRA. We understand that because of its system for storing police reports electronically, CPD must make printed copies in response to an inspection request so that it can redact exempt information. It is important to remember however, that the IPRA does not allow CPD to charge a person – in advance or otherwise - to inspect printed copies of police reports or for personnel costs related to redacting exempt information. IPRA allows CPD to charge for copies of police reports only if the person seeking inspection requests copies. As discussed above, if copies are requested, Section 14-2-9(C) allows CPD to charge a reasonable fee for copying the reports, including the personnel time for making the copies, and may require advance payment before making the copies.¹

In summary, we conclude that CPD did not violate IPRA by failing to permit inspection of police reports immediately upon request; the IPRA prohibits CPD from charging fees to inspect printed copies of police reports; the IPRA permits CPD to charge fees for making copies of police reports, if requested; and that the fees may include personnel time for making the copies. Although we understand this circumstance and find no violation, the New Mexico Office of the Attorney General strongly discourages any type of behavior that curtails a public body’s ability to comply with the IPRA or any other state law.

If you have any questions about the IPRA or the specific matters addressed in this determination, please do not hesitate to contact us.

Sincerely,



DYLAN K. LANGE
Assistant Attorney General

cc: David Stevens, Clovis News Journal
Susan Boe, New Mexico Foundation for Open Government

¹ We do not believe that NMSA 1978, Section 14-3-18 applies in this situation. Section 14-2-18(E) permits a municipality to charge a fee for an electronic copy of a “computer database,” including the cost of personnel time to research and retrieve the electronic copy, or to search, manipulate or retrieve information from a computer database. Although CPD maintains police reports in an electronic database, it does not respond to requests to inspect police reports by giving the requester access to the entire database or provide electronic copies of the database. Instead, it allows inspection of individual police reports in printed format. Under Section 14-3-18(C), “information contained in a computer database shall be a public record and shall be subject to disclosure in printed or typed format in accordance with the [Inspection of] Public Records Act.” As discussed in the text, IPRA does not permit a public body to charge a fee for inspecting public records and, if copies of public records are requested, specifies the fees that may be charged for making the copies.