

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



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Chief of Staff for Operations

SONYA CARRASCO-TRUJILLO
Chief of Staff for Policy & Public Affairs

August 18, 2016

Brittany Mayer-Schuler, General Counsel
Summit Food Service Management
1751 County Road B West
Suite 300
Rosenville, MN 55113

**Re: Inspection of Public Records Act Complaint - New Mexico
Corrections Department/Summit**

Dear Ms. Schuler:

We have reviewed the complaint submitted by Michael Crohan, alleging that the New Mexico Corrections Department ("NMCD") violated the Inspection of Public Records Act ("IPRA" or the "Act"), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2013), the response on behalf of the NMCD to our inquiry regarding the complaint, and the response by Summit Food Service Management ("Summit"). As explained in more detail below, we conclude that the IPRA requests for inspection have been fulfilled, except for records regarding Summit invoices relating to NMCD.

Based on the documentation provided to us, it appears that many of the records that Mr. Crohan requested in January 29, 2015 and February 25, 2015 were provided by NMCD and its contractor, Summit on February 23, 2015 and March 20, 2015, respectively. Summit withheld certain responsive records, specifically recipes and information about Summit's culinary training programs, by claiming they were protected trade secrets. This exception to inspection is allowed pursuant to NMSA 1978, § 14-2-1(A)(8) ("[e]very person has a right to inspect public records of this state except ... as otherwise provided by law"); and NMRA 11-508 (a person may refuse to disclose and may prevent others from disclosing a trade secret owned by him).

Although many of the responsive records requested were timely provided by NMCD or Summit, it appears to us that as of November 6, 2015, the following four records had not been provided: (1) "list of inventory order received for the past two months"; (2) "documentation on meals that were or had substitutions"; (3) "list of items on the menu that consist of vegetable soy protein"; and (4) "invoices of items ordered and delivered and how often." We received a copy of

Summit's supplemental response, dated December 10, 2015, and confirmed that they have now provided to all records responsive to the requests listed in (1) – (3). Therefore, we believe that Summit is in substantive compliance with the IPRA in relation to requests (1) – (3). *See Derringer v. State*, 2003-NMCA-073, 133 N.M. 721.

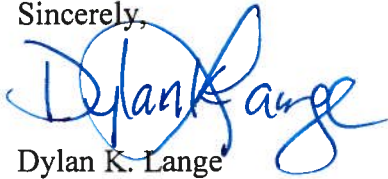
However, regarding the request for invoices (# 4 above), Summit contends in its December 10th letter that the invoices are not public records because they are third-party invoices that Summit received from an outside third-party vendor, and that the invoices were not used, created, received, maintained or held by or on behalf of a public body. *See*, NMSA 1978, § 14-2-6(G) (providing that “ ‘public record’ means all documents ... that are used, created, received, maintained or **held by or on behalf** of any public body **and relate to public business**, whether or not the records are required by law to be created or maintained.”)(*Emphasis added*). Though, Summit states that the invoices are used for Summit's routine business practice, and not held by or on behalf of a public body, if the invoices relating to NMCD exist they more likely that not are public records subject to the IPRA for they are held by or on behalf of NMCD and relate to the public business of NMCD. We encourage Summit to reevaluate whether the invoices responsive to the request do in fact meet the definition of a public record, available for inspection. If they do relate to public business of NMCD then Summit is responsible for providing these invoices for they are public records. *See, Tomey v. City of Truth or Consequences*, 2012-NMCA-104 (holding that a private company that contracted with a city to manage the city's public access cable TV channel was acting on the city's behalf, which meant that video recordings of city commission meetings held by the contractor were public records covered by IPRA's disclosure requirements).

The New Mexico Office of the Attorney General's enforcement responsibility under the IPRA include educating public bodies about their obligations under, and how they can comply with, the IPRA. Please review the invoices in question and produce to the requestor in a timely fashion. Please provide our office with a copy of the correspondence and any attachments submitted to Mr. Crohan in response to this determination or his IPRA request regarding relevant invoices, or otherwise respond to our office within fifteen days of receipt of this letter. Summit and NMCD should keep in mind that the IPRA provides consequences for failure to comply with the requirements of IPRA. This includes district court jurisdiction wherein a court, upon determining a public body has illegally denied access to requested records, “may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of the IPRA.” § 14-2-12(B).

Brittany Mayer-Schuler, General Counsel
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Thank you for your attention to this matter and please do not hesitate to contact our office with any questions you may have.

Sincerely,

A handwritten signature in blue ink that reads "Dylan K. Lange". The signature is written in a cursive style with a large, stylized "D" and "L".

Dylan K. Lange
Assistant Attorney General

cc: James R. Brewster, General Counsel, New Mexico Corrections Department
Michael Crohan

5-1-2015

TO: ASSISTANCE ATTORNEY GENERAL
FOR ENFORCEMENT OF I.P.R.A.
FROM: MICHAEL PORY COHAN #02337
RE: NON-COMPLIANCE OF I.P.R.A.

GREETINGS,

THIS LETTER IS TO ASK THE ATTORNEY GENERAL'S OFFICE OF NEW MEXICO TO ASSIST IN ENFORCEMENT OF THE INSPECTION OF PUBLIC RECORDS ACT.

THE RECORDS THAT I AM REQUESTING ARE DOCUMENTS WITH THE FOOD SERVICE CONTRACTOR FOR THE NEW MEXICO CORRECTIONS DEPARTMENT.

THE CONTRACTOR SUMMIT REFUSES TO PROVIDE REQUESTED DOCUMENTS OF WHICH THE HAS REQUESTED FIRST REQUESTED FROM NMCO PER NMJA 14-2-1, THEN FROM SUMMIT FOOD SERVICE MANAGEMENT COMPANY.

THE LETTER FROM GENERAL COUNSEL FOR SUMMIT DATED MARCH 20, 2015 STATED THEY (SUMMIT) DID NOT HAVE TO COMPLY WITH MY REQUEST, EVEN THOUGH IT CLEARLY STATES THAT IT MUST PER THE CONTRACT, THEY (SUMMIT) IS USING PROTECTED BY TRADE SECRETS. THIS IS CLEARLY INCORRECT.

I REQUIRE COMPLIANCE IN THIS MATTER

SINCERELY
MICHAEL PORY COHAN