

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



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August 1, 2016

Justin Horwath  
Reporter  
The Santa Fe New Mexican  
202 E. Marcy Street  
Santa Fe, NM 87501

Re: Inspection of Public Records Act Complaint – New Mexico Department of Corrections

Dear Mr. Horwath:

We have reviewed the complaint you filed with the Office of the Attorney General alleging that the New Mexico Department of Corrections (“Department”) violated the Inspection of Public Records Act (“IPRA”), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2013) by failing to provide you with documents in an Excel format. Additionally, we have reviewed the Department’s response, the IPRA, and other information available to us at this time. We evaluate each allegation further below.

On January 28, 2016, you emailed the Department with your request to inspect “records that show each type of medication given to New Mexico State prison inmates, how many inmates received the medications, how many doses of the medications they received and the cost of the medications given to inmates” during the Department’s current contract term with Corizon. You also requested “to inspect the records electronically and in Excel file if available.” On January 28, 2016, the Department acknowledged receipt of your request and explained that it would respond by February 12, 2016. The Department sent you another letter on February 12, 2016, attaching, at no charge, a .PDF document containing information responsive to your request. Your complaint is that the Department failed to provide the requested documents in Excel format.

The IPRA requires a custodian to “provide a copy of a public record in electronic format if the public record is available in electronic format and an electronic copy is specifically requested.” NMSA 1978, § 14-2-9(B). Pursuant to this provision, a person may specifically request an electronic copy of a record – as opposed to a paper copy – if an electronic copy exists. This

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provision does not, however, permit a requester to specify a file format for the electronic document. *See* THE NEW MEXICO OFFICE OF THE ATTORNEY GENERAL'S INSPECTION OF PUBLIC RECORDS ACT COMPLIANCE GUIDE 36 (8th ed. 2015). In this case, the document at issue contained confidential medical information which existed in two electronic forms - .PDF and Excel. In order to preserve the confidentiality of the medical information contained in the Excel format, the Department provided a copy of the document in .PDF format. *See* NMSA 1978, § 14-2-1(A)(1) (authorizing an exception from the public's right to inspection for "records pertaining to physical or mental examinations and medical treatment of persons confined to an institution"). By doing so, the Department complied with Section 14-2-9(B) as well as Section 14-2-1(A)(1) and otherwise fulfilled its duty to provide responsive documents. For these reasons, the Department did not violate the IPRA.

Finally, included in the complaint is an allegation that the Department produced "nearly illegible" copies of the .PDF due to the redactions made by the Department. When requested public records contain both exempt and nonexempt information, the custodian shall separate the exempt information before allowing the inspection. NMSA 1978, § 14-2-9(A). However, if redaction is necessary, the public body must redact in a way to ensure that the nonexempt information contained in the document is legible and not obscured. Public records must be accessible to the public and every copy produced must reflect the integrity of the record with the utmost clarity. The Department should immediately reproduce the information to the complainant in a legible clear format at no additional cost.

We thank you for bringing this matter to our attention. If you have any questions regarding this determination, please let me know. I can be reached by phone at (505) 827-7479 or email at [dlange@nmag.gov](mailto:dlange@nmag.gov).

Sincerely,



Dylan K. Lange  
Assistant Attorney General

cc: Jim Brewster, General Counsel, NM Department of Corrections

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

**YOUR CONTACT INFORMATION:** The Santa Fe New Mexican

First Name: Justin Last Name: Horwath

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email: \_\_\_\_\_

**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): New Mexico Department of Corrections

Format of IPRA Request:  Written  Oral

Date IPRA Request was Submitted to the Public Body: Jan. 28, 2016

Date of all Responses Received from the Public Body: Feb. 12, 2016

**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. (Not provided in format requested.)

### 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.

The New Mexican, through its reporter, Justin Horwath, specifically requested Excel files containing medication lists given to state prison inmates. By the Corrections Department's own admission, such files existed at the time of the request in Excel format. Yet the Department has

refused to provide the Excel files, instead providing nearly illegible .PDF copies. The NM  
Legislature in passing SB 52 in 2011 clearly intended that government agencies provide electronic  
records in the format requested if such format exists at the time of the request. That intent  
was codified in 14-2-9 (B). The Department's intent in providing practically unreadable,  
unsortable .PDF files can only be to prevent an honest examination of the public records. A copy  
of a sample page is provided as an attachment to this letter, along with an email chain between  
The New Mexican and the Department beginning with the original request. Thank you in  
advance for your attention to this matter.

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**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.