

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



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Chief of Staff for Policy & Public Affairs

July 26, 2016

Mary Ann Hatchitt, Records Custodian
Erin McSherry, General Counsel
Department of Cultural Affairs
407 Galisteo St. Ste. 260
Santa Fe, New Mexico 87501

Re: Inspection of Public Records Act Complaint

Dear Ms. Hatchitt and Ms. McSherry:

We have reviewed the complaints submitted by R. G. Wakeland alleging that the New Mexico Department of Cultural Affairs ("DCA") violated the Inspection of Public Records Act ("IPRA"), NMSA 1978, §§ 14-2-1 to -12 (1947, as amended through 2013). The complaints addressed by this letter are related to Ms. Wakeland's IPRA requests to DCA dated January 14, 2016 and January 15, 2016, and the redaction of "LA" numbers from various documents. We have reviewed the complaints and documentation attached to those complaints, DCA's response letter to our inquiry dated April 8, 2016 and related documents, and the IPRA. We have concluded that because DCA has addressed the concerns raised in the complaints, DCA is in substantive compliance with the IPRA in relation to these requests. *See Derringer v. State*, 2003-NMCA-073, 133 N.M. 721.

Allegations in the Complaint

Ms. Wakeland alleges a variety of violations in her complaints. For the January 14, 2016 IPRA request to DCA, Ms. Wakeland filed a complaint stating that she had not received the requested records, and a follow-up complaint to which she attached DCA's denial letter, dated February 5, 2016, for that January 14, 2016 request. For her January 15, 2016 request, Ms. Wakeland attached the DCA response letter, dated January 29, 2016, where DCA provided her instructions on accessing the public records online as well as the option to review the gathered information in hard copy, with an accounting of the costs for the hard copy documents or for obtaining the documents in digital format. The complaint expressed concern that the URL provided did not work and that the website did not contain all the documents requested. Ms. Wakeland's final complaint relayed the concern that DCA was improperly redacting "LA" numbers from some documents, while providing those numbers in other documents.

Ms. Mary Ann Hatchitt
Ms. Erin McSherry
July 26, 2016
Page 2

Response and Discussion

In response to Ms. Wakeland's January 14, 2016 IPRA request, DCA sent her a letter on January 15, 2016, stating it would need until January 29, 2016 to respond, and ultimately sent a letter on February 5, 2016, stating it had no responsive records. While Ms. Wakeland expressed concern with DCA's failure to have these records, "[n]othing in the Inspection of Public Records Act shall be construed to require a public body to create a public record." NMSA 1978, § 14-2-8(B).

We reiterate our conclusion from our December 8, 2015 Determination Letter, that with relation to the photography of fragile documents "because DCA did allow for inspection of the documents, and otherwise allowed for reproduction, we do not find a violation of the IPRA." *See* Letter from Jennifer N. Salazar, Assistant Attorney General, New Mexico Office of the Attorney General, to R.G. Wakeland (Dec. 8, 2015). While DCA was nearly a week late in providing a denial letter in response to the January 14, 2016 request, by having provided this response, DCA substantively complied with the request.

With relation to the January 15, 2016 request, DCA included an option for reviewing the hard copy of the requested documents along with the online resources. We have been able to access the URL, and DCA stated in its response that "[t]he requester did not seek a time to inspect the hard copy of the records in person, nor did she ask for the copies that were offered." Because the IPRA simply requires that a requester be permitted the opportunity to review existing records, we have determined that DCA complied with this request.

As to the complaint stating that DCA erroneously redacted "LA" numbers, we remind you that the IPRA requires that "[r]equested public records containing information that is exempt and nonexempt from disclosure shall be separated by the custodian prior to inspection, and the nonexempt information shall be made available for inspection." NMSA 1978, § 14-2-9(A). Ms. Wakeland attached to her complaint a document with redacted "LA" numbers. At this time, DCA has taken steps to ensure that Ms. Wakeland received an unredacted copy of the document with the erroneously redacted "LA" numbers. As such, DCA is now in substantive compliance with regard to the improperly redacted document.

We strongly encourage DCA to provide timely written responses to future requests for inspection, as well as provide properly redacted documents for review. Please review the requests for which Ms. Wakeland has filed complaints and ensure that any outstanding IPRA requests are responded to correctly and permit inspection of any documents improperly redacted by DCA. Should you have any questions regarding the issues raised in this complaint, please do not hesitate to contact our Office.

Sincerely,



Dylan K. Lange
Assistant Attorney General

cc: Ms. R.G. Wakeland

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

YOUR CONTACT INFORMATION:

First Name: RG Last Name: Wakeland
Address: [REDACTED]
City: [REDACTED] State: [REDACTED] Zip Code: [REDACTED]
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): Department of Cultural Affairs
Format of IPRA Request: Written Oral
Date IPRA Request was Submitted to the Public Body: 1-14-16
Date of all Responses Received from the Public Body: none

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.

14 days has passed since request.

2016-03-1 AM 8:43

INSPECTION OF PUBLIC RECORDS ACT ("IPRA") COMPLAINT FORM

New Mexico Office of the Attorney General
Open Government Division

YOUR CONTACT INFORMATION:

First Name: R.G Last Name: Wakefield

Address: [REDACTED]

City: [REDACTED] State: [REDACTED] Zip Code: [REDACTED]

Phone Number: [REDACTED]

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): Department of Cultural Affairs

Format of IPRA Request: Written Oral

Date IPRA Request was Submitted to the Public Body: 1-15-16

Date of all Responses Received from the Public Body: 1-29-2016

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.

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- ___ 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 URL provided does not work; on 1-30-16 this URL was not functional: indianartsandculture.org/library
Further, the indices I requested are not contained
Page 2 in the nmarchaeology.org/publications.html URL
Reviewed

TO: NM attorney general IPRA complaints PO Drawer 1508 Santa Fe NM 87504-1508	FROM: R.G. Wakeland <i>R.G. Wakeland</i> 501 Quincy PL SE SPC C Albuquerque NM 87108 PHONE: 505-473-4036 Fax: 505-508-5376
RE: violation of IPRA by DCA for failure to provide copies of laboratory of anthropology indices	DATE: 1/31/16

Enclosed is a copy of one page from one of the above-referenced indices which DCA has failed to produce. It's page 14 from the county index. Indices also exist by LA number, date and possibly by author. The OAS catalog posted on the DCA website, referenced in DCA 1/29/16 letter in response to my request, is only a numeric list, and only between 1954-1991. As stated on the website itself, reports from 1990-present are cataloged elsewhere. Furthermore, this catalog, even for 1955-1991, does not comprise or consist of the separate indices I have requested, and seen myself previously in the laboratory of anthropology library. If you have any questions or need any further info, you can call or send letter or fax.

RECEIVED FEB 29 2016

2016 FEB 28 AM 8:33
GENERAL

INSPECTION OF PUBLIC RECORDS ACT ("IPRA") COMPLAINT FORM

New Mexico Office of the Attorney General

Open Government Division

YOUR CONTACT INFORMATION:

First Name: RG Last Name: Wakeland

Address: [REDACTED]

City: [REDACTED] State: [REDACTED] Zip Code: [REDACTED]

Phone Number: [REDACTED]

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): Department of Cultural Affairs (DCA)

Format of IPRA Request: Written Oral

Date IPRA Request was Submitted to the Public Body: 1-14-16

Date of all Responses Received from the Public Body: 1-15-16, 2-5-16

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:**
- Not allowed to copy existing 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.

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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)

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- ___ 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.

DCA denied my right to photograph records.
See my 2-8-16 fax with supporting documents

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.

RECEIVED FEB 16 2016
3m

TO: New Mexico Attorney General office Inspection of Public Records Act violations PO Box 1508 Santa Fe NM 87504 FAX: (505) 827-6478 PHONE: (505) 827-6063	FROM: R. G. Wakeland <i>R. G. Wakeland</i> 501 Quincy PL SE SPC C Albuquerque NM 87108 Phone: 505-473-4036 FAX: 505-508-5376
RE: inspection of public records act (IPRA) NMSA 1978 §14-2-1 through 14-2-12 Department of Cultural Affairs (DCA)	TOTAL PAGES: DATE: 2/8/16

I submitted a complaint on 2/4/16 that DCA violated IPRA by not responding to my 1/14/16 request because the statutory 14 days had passed. Enclosed please find DCA's response to that request. However, this response is also in violation of IPRA. It states DCA does not have any criteria, description, guidelines, or list of acceptable camera equipment which will not disturb the fragile records. Thus DCA admits it gives permission to the public to photograph its fragile records, without providing them the ability to do so (without providing a list of acceptable equipment). Thus this is an IPRA violation. Having determined that the fragile records are photographable with certain equipment, DCA violates IPRA by not providing a description of the required equipment. Under IPRA, DCA cannot implement a secret, non-public screening policy/criteria. The public is not required, as Hatchitt suggests, to randomly purchase camera equipment for submittal to DCA experts, on the hopes it will be approved.

Enclosed are the following relating to this issue:

1. 6/25/15 letter from Hatchitt (DCA) to me, stating some fragile records can be photographed with approved camera equipment
2. 1/15/16 letter from Hatchitt to me, first response to my IPRA request
3. 2/5/16 letter from Hatchitt to me, stating there are no records describing approved camera equipment required for photographing fragile records
4. 2/8/16 my fax to Hatchitt, reiterating my request for this criteria so I can purchase the correct camera equipment and take photos of these fragile records

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

2016 IPRA
MAY 8 30

YOUR CONTACT INFORMATION:

First Name: RG Last Name: Wakeland
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): Dept of Cultural Affairs

Format of IPRA Request: Written Oral

Date IPRA Request was Submitted to the Public Body: 5-13-15, 6/4/15, 6/23/15

Date of all Responses Received from the Public Body: 2-4-2016
12/8/15 NM AG - Salazar 5/29/15, 6/25/15 - DCA

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:

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- 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. - redacted LA numbers in error
- 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.

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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. Records were produced 2-4-16, but LA numbers were redacted in error. See attached report by David V. Hill, also produced by OCA, with LA numbers, and attached Mera records with LA numbers redacted in error. Total 57 pages with redacted LA numbers