

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
ATTORNEY GENERAL

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August 30, 2019

Mr. Efren A. Cortez  
City Attorney  
City of Hobbs  
200 East Broadway  
Hobbs, New Mexico 88240

**RE: Inspection of Public Records Act Complaint – Hobbs Police Department**

Dear Mr. Cortez:

On or about December 10, 2018, the Office of the Attorney General, Open Government Division (“OGD”), received a complaint against the Hobbs Police Department (“HPD”) from Jeffery Dwayne Tucker alleging that HPD failed to provide certain records responsive to his request, in violation of the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 to -12 (1993, as amended through 2019) (“IPRA”). More specifically, we understand that on November 1, 2018, Mr. Tucker submitted an IPRA request for records involving two separate incidents – (1) the police incident report involving a theft at Hobbs High School during a sporting event on Thursday, October 25, 2018; and (2) the police incident report involving gunshot victims in the 300 block of East Albertson Drive on October 31, 2018. We further understand that on November 6, 2018, HPD provided the police incident report involving the October 25 thefts at Hobbs High School, but requested additional time to provide the police incident report related to the October 31 gunshot incident. Then, on November 16, 2018, HPD denied Mr. Tucker’s IPRA request for the police incident report related to the gun shots, citing NMSA 1978, Section 14-2-1(A)(4), “records requested are confidential law enforcement records”. In addition to the allegation of a violation of IPRA, Mr. Tucker also references a violation of a May 9, 2006 settlement agreement between the New Mexico Department of Public Safety and several newspapers.

IPRA declares “the intent of the legislature in enacting the Inspection of Public Records Act is to ensure, and it is declared to be the public policy of this state, that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees. It is the further intent of the legislature, and it is declared to be the public policy of this state, that to provide persons with such

information is an essential function of a representative government and an integral part of the routine duties of public officers and employees.” NMSA 1978, § 14-2-5. That is, with limited exceptions, every person has a right to inspect the public records of this state. § 14-2-1.

Notwithstanding the public’s right to access public records, the state supreme court has found that while “the public’s right to access information concerning the inner workings of its government is considerable, it is not without limit.” *Rep. Party of N.M. v. N.M. Taxation & Revenue Dep’t*, 2012-NMSC-026, ¶ 2, 283 P.3d 853. The legislature has expressed its intent to protect from disclosure police investigatory materials in an on-going criminal investigation through IPRA, Section 14-2-1(A)(4). Until the 2019 legislative session, the law enforcement exception included:

(4) law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime. Law enforcement records include evidence in any form received or compiled in connection with a criminal investigation or prosecution by a law enforcement or prosecuting agency, including inactive matters or closed investigations to the extent that they contain the information listed in this paragraph;

NMSA 1978, § 14-2-1(A)(4) (1993, as amended through 2011). This provision plainly demonstrated there is not a complete protection from disclosure of all on-going criminal investigative materials obtained by law enforcement. *See Estate of Romero v. City of Santa Fe*, 2006-NMSC-028, ¶ 14, 139 N.M. 671.

During the 2019 legislative session, the state legislature amended this exception to further clarify what constitutes a law enforcement exception. Effective June 14, 2019, the law enforcement exception shall read:

D. portions of law enforcement records that reveal:

- (1) confidential sources, methods or information; or
- (2) before charges are filed, names, address, contact information, or protected personal identifier information as defined in this Act of individuals who are:
  - (a) accused but not charged with a crime; or
  - (b) victims of or non-law-enforcement witnesses to an alleged crime of: 1) assault with intent to commit a violent felony pursuant to Section 30-3-3 NMSA 1978 when the violent felony is criminal sexual penetration; 2) assault against a household member with intent to commit a violent felony pursuant to Section 30-3-14 NMSA 1978 when the violent felony is criminal sexual penetration; 3) stalking pursuant to Section 30-3A-3 NMSA 1978; 4) aggravated stalking pursuant to Section 30-3A-3.1 NMSA 1978; 5) criminal sexual penetration pursuant to Section 30-9-11 NMSA 1978; or 6) criminal sexual contact pursuant to Section 30-9-12 NMSA 1978.

Law enforcement records include evidence in any form received or compiled in connection with a criminal investigation or prosecution by a law enforcement or

prosecuting agency, including inactive matters or closed investigations to the extent that they contain the information listed in this subsection; provided that the presence of such information on a law enforcement record does not exempt the record from inspection;

NMSA 1978, § 14-2-1(D) (2019).

Under either version of the law enforcement exception, the public entity clearly has the burden of establishing that the records are exempt from inspection. *See City of Farmington v. The Daily Times*, 2009-NMCA-057, ¶¶ 13-14, 146 N.M. 349 (stating that the burden is on “the custodian of the records to demonstrate a reason for non-disclosure.”), *overruled on other grounds by Rep. Party of N.M.*, 2012-NMSC, 026, ¶ 16; *See also Estate of Romero ex rel. Romero*, 2006-NMSC-028, ¶¶ 18-19, 139 N.M. 671 (holding that a public body has the burden of proving that the information requested is not subject to discovery because such information meets the policy interests expressed in the law enforcement exception and that in camera review by the district court of the requested records may be necessary to reach a determination.) “Nothing in the plain language of IPRA authorizes a blanket denial of public access to records, express or implied, solely because those records are the subject of an ongoing criminal investigation.” *Noll v. N.M. Dep’t of Pub. Safety and Town of Edgewood*, A-1-CA-35981, dec. at 15-16 (N.M. Court of Appeals March 19, 2019)(non-precedential) citing Section 14-2-9(A). “[A] public body relying on the law enforcement exception to deny a request to inspect public records has the burden to demonstrate that the requested public records qualify as law enforcement records under the statute’s definition. . .” *Id.* at ¶ 12.

HPD states in its response to the IPRA request that “[b]ecause the shooting at issue is being actively investigated, a suspect has not been named, and criminal charges have not been filed, the request falls within the exception outlined in NMSA 1978, § 14-2-1(A)(4). Our office disagrees.

Before the 2019 amendment, IPRA was not clear as to the applicability of the law enforcement exception to the release of police incident reports. However, the law enforcement exception now states that only “portions of law enforcement records” may be protected. Therefore, confidential information contained in the record itself may be redacted prior to producing the record in response to the IPRA request. Police incident reports are records required to be produced in response to an IPRA request with only the information protected under the law enforcement exception redacted from the document.

If HPD has not produced all requested documents with confidential information redacted, it is recommended that HPD produce those records with the appropriate redactions. As to Mr. Tucker’s allegation that HPD violated the settlement agreement between the New Mexico Department of Public Safety and several newspapers, compliance with said settlement agreement falls outside of IPRA’s purview. As such, we do not offer an opinion.

Mr. Efren A. Cortez  
August 30, 2019  
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Thank you for affording our office this opportunity to be of assistance.

Sincerely,

  
Lori Chavez  
Assistant Attorney General

cc: Jeffery Dwayne Tucker

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
ATTORNEY GENERAL

## Electronic Complaint Submission

### Submission Detail

<b>ECS Reference Number</b>	NMOAG-ECS-20181210-997a
<b>Final Submit Date</b>	12/10/2018 2:14:58 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

**Jeffery Dwayne Tucker**

Person

#### Address

[REDACTED]

#### Contact information

[REDACTED]

### Complaint against

**Hobbs Police Department - Loreno Brito, Records Administrator**

Public Body (Government Entity)

#### Address

Hobbs Police Department  
300 N. Turner St.  
Hobbs, New Mexico 88240

#### Contact information

[LBrito@hobbsnm.org](mailto:LBrito@hobbsnm.org)  
(575) 397-9265

## Complaint Specifics

<b>Format of IPRA request:</b>	Written
<b>Date IPRA request was submitted to the public body:</b>	Nov. 1, 2018
<b>Date of all responses received from the public body:</b>	Nov. 6, 2018, and Nov. 16, 2018
<b>Records</b>	No records were provided.

## Transaction

## Documents



Denial-News Sun.pdf

Denial letter from the Hobbs Police Department

### Comments

On Nov. 1, 2018, I requested from the Hobbs Police Department: "Digital copies, if possible, of Hobbs Police Department police incident reports regarding reported thefts at Hobbs High School during a sporting event on Thursday, Oct. 25, 2018," and "Digital copies, if possible, of Hobbs Police Department police incident reports regarding gunshot victims in the 300 block of East Albertson Drive, to which HPD officers responded at about 11:20 p.m. Oct. 31, 2018." On Nov. 6, 2018, the HPD provided an incident report about the thefts reported at Hobbs High School on Oct. 25, 2018. On Nov. 16, 2018, the HPD denied producing any incident reports about the Oct. 31 gunshot incident, citing "The records requested are confidential law enforcement records protected under Section 14-2-1 (A)(4) of the Inspection of Public Records Act." I believe the city's denial violates a May 9, 2006, settlement agreement, No. CIV 2005-06554, between the NM Department of Public Safety and several newspapers.



IPRA request form.png

IPRA form

### Comments



IPRA request email.png

IPRA email (Some language isn't visible in the IPRA form).

**Comments**



News Sun IPRA Response.pdf

IPRA response

**Comments**

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





# HOBBS POLICE DEPARTMENT

300 N. TURNER • HOBBS, NM 88240 • (575) 397-9284 • FAX (575) 397-3867 • [www.hobbspd.com](http://www.hobbspd.com)

CHRIS MCCALL  
Chief of Police

November 6, 2018

Jeff Tucker  
Hobbs News Sun

Re: Request to Inspect Public Records

Dear Mr. Tucker,

On November 1, 2018, we received your request in reference to incident report 18H54914- Shots fired at 300 block of East Albertsons Drive. We need additional time to respond. Please give us until November 16, 2018.

Sincerely,

A handwritten signature in black ink, appearing to read "Lorena Brito".

Lorena Brito  
Records Administrator

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Accredited By The  
New Mexico Law Enforcement Professional Standards Council



Hey April,

I'm having trouble submitting a couple of IPFAs online via the clerk's website. What do I need to do with the pdf once I fill it out? I save it to my desktop, but it's blank or I can't fit in all the text. Any suggestions?

Here are the two I'm trying to squeeze into the request box:

Digital copies, if possible, of Hobbs Police Department police incident reports regarding reported thefts at Hobbs High School during a sporting event on Thursday, Oct. 25, 2018.

Digital copies, if possible, of Hobbs Police Department police incident reports regarding gunshot victims in the 300 block of East Albertson Drive, to which HPD officers responded at about 11:20 p.m. Oct. 31, 2018.

Thank you,

Jeff

Jeff Tucker  
(575) 391-5438  
managing editor  
[managingeditor@hobbsnews.com](mailto:managingeditor@hobbsnews.com)



**OFFICE OF THE CITY CLERK**

200 East Broadway Street  
Hobbs, New Mexico 88240  
Phone 575-397-9208  
Fax 575-397-9334

**CITY OF HOBBS, NEW MEXICO**

**REQUEST TO INSPECT PUBLIC RECORDS**

DATE: Nov. 1, 2018

Phone: (575) 397-9208  
Fax: (575) 397-9334

TO: JAN FLETCHER, CITY CLERK  
CUSTODIAN OF RECORDS  
200 EAST BROADWAY  
HOBBS, NM 88240

FROM: **Jeff Tucker/Hobbs News-Sun**

NAME OF REQUESTER  
**201 N. Thorp St., Hobbs, N.M. 88240**

ADDRESS

**(575) 391-5438**

TELEPHONE NUMBER

I would like to inspect and copy the following records (describe with "reasonable particularity").  
(Please print clearly)

1. **Digital copies, if possible, of Hobbs Police Department police incident reports regarding reported thefts at Hobbs High School during a sporting event on Thursday, Oct 25, 2018.**
2. **Digital copies, if possible, of Hobbs Police Department police incident reports regarding gunshot victims in the 300 block of East Albertson Drive, to which HPD officers responded at about 11:20 p.m. Oct 31, 2018.**

I agree to pay \$.25 per page, in advance, for copying charges as well as any postage expense incurred in the mailing of documents. Electronic copies are free of charge. If any documents are copied, please provide a receipt indicating the paid copying charges for each document.

If your agency does not maintain these public records, please let me know who does, and include the name and address of the proper custodian.

Thank you for your prompt attention to this matter.

STAMP RECEIVED

Signed:

*Jeff Tucker*

\_\_\_\_\_  
Name of Requester

**Pursuant to Sections 14-2-8(D) of The Inspection of Public Records Act, the information requested shall be ready for inspection within three business days or shall be explained in writing when the records will be available for inspection.**



# HOBBS POLICE DEPARTMENT



300 N. TURNER HOBBS, NM 88240 (575) 397-9265 FAX (575) 397-3867  
www.hobbspd.com

**CHRIS McCALL**  
Chief of Police

November 16, 2018

Jeff Tucker  
Hobbs News Sun

Re: Request to Inspect Public Records

Dear Jeff Tucker :

On November 1, 2018, we received your request to review the following records:

Incident report 18H54914-shots fired at 300 block of East Albertson Dr.

We cannot permit inspection of these records because they are excepted from disclosure for the reason(s) described below.

The records requested are medical records protected under Section 14-2-1 (A)(1) of the Inspection of Public Records Act.

The records requested are letters of reference concerning employment, licensing or permits protected under Section 14-2-1 (A)(2) of the Inspection of Public Records Act.

The records requested are letters or memoranda that are matters of opinion in personnel files or student's files protected under Section 14-2-1 (A)(3) of the Inspection of Public Records Act.

The records requested are confidential law enforcement records protected under Section 14-2-1 (A)(4) of the Inspection of Public Records Act.

The records requested are (Describe Specific Legal Basis for NonDisclosure)

Protected personal identifier information contained in the requested records has been redacted under Section 14-2-1 (B) of the Inspection of Public Records Act.

Sincerely,

Lorena Brito  
Records Administrator