

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



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August 19, 2016

Jacquelyn Archuleta-Staehlin
Cuddy & McCarthy, LLP
P.O. Box 4160
Santa Fe, NM 87502-4160

Re: Inspection of Public Records Act Complaint – Los Lunas Public Schools

Dear Ms. Archuleta-Staehlin:

We have reviewed the complaint submitted by Robert Prewitt alleging that the Los Lunas Public School District (“District”) violated the Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 to -12 (2013) (“IPRA”), when it failed to provide him with public records responsive to his inspection request, and your response, on behalf of the District, to our inquiry regarding the complaint. *See* letter to Ms. Patricia M. Salazar from Jacquelyn Archuleta-Staehlin (Apr. 13, 2016) (“Response”). As discussed below, based on the complaint, the District’s Response, and applicable law, we conclude that the District’s response to and the handling of Mr. Prewitt’s request was not fully in compliance with IPRA, as alleged in the complaint.

Mr. Prewitt’s Request for Public Records

The following outlines the pertinent email communications between Mr. Prewitt and the District related to Mr. Prewitt’s public records request.

January 5, 2016. Mr. Prewitt asks Wilson Holland, the Los Lunas High School athletic director, for “a list and copy of any and all Los Lunas High School and Los Lunas School District documents of rules and regulations and policies and procedures regarding the weight room or references to where I can get access to every one of them online.”

January 6, 2016. Mr. Holland directs Mr. Prewitt to “[p]lease contact the principal at LLHS....” Mr. Prewitt notes that he had copied Dan Padilla, the Los Lunas High School principal, on his email to Mr. Holland and asks what additional steps he should take to contact Mr. Padilla.

January 22, 2016. Mr. Prewitt asks Mr. Padilla to provide “the name and email address of your ‘records custodian’ to whom I will properly address my request to inspect the records at issue.”

February 3, 2016. Brian Baca, Assistant Superintendent and, presumably, the District’s records custodian, lets Mr. Prewitt know that he - Mr. Baca – will be the contact for Mr. Prewitt’s request. Mr. Baca apologizes for the time it took Mr. Prewitt to reach him and provides Mr. Prewitt with his office number to call for assistance “if you don’t find what you need on the website.”

February 4 & 5, 2016. Mr. Prewitt responds to Mr. Baca and details his attempts to find documents responsive to his request on the District’s websites. Mr. Prewitt explains that he found old and new websites for the District and Los Lunas High School. Because he could not find search boxes on the new website, Mr. Prewitt used the search boxes on the old website and typed in the search terms “weight room” and “weight training.” His search turned up 65 “Results” for “weight room” and 64 for “weight training” and a message indicating “Document search results are not currently available.” From his emails, it is clear that Mr. Prewitt mistakenly thought that his search had uncovered 129 documents rather than “hits” showing the number of times Mr. Prewitt’s search terms occurred throughout the website. Mr. Prewitt asks Mr. Baca how the 129 documents he thought he had located would be made available for him to review online.

February 9, 2016. Mr. Baca asks Mr. Prewitt to tell him how Mr. Prewitt got to the pages he described so that he could “help [Mr. Prewitt] access the documents you requested.” Mr. Prewitt responds with the links to the websites he found.

March 9-12, 2016. After waiting a month for Mr. Baca to get back to him, Mr. Prewitt requests a “status report” on the assistance he was expecting from Mr. Baca with identifying and accessing the 129 documents Mr. Prewitt believed he had found on the District’s old website. In the email exchanges that follow, Mr. Baca directs Mr. Prewitt to the District’s current website and tells him how to access to the District’s policies and the Los Lunas High School student handbook, Mr. Prewitt accuses Mr. Baca of refusing to provide him with “the identity of the requested documents and how to gain direct access to them,” Mr. Baca explains that “[i]n the interest of time and convenience,” he had directed Mr. Prewitt to the website for electronic documents but that if Mr. Prewitt wanted to view the documents, they could set up a convenient date and time for that purpose, and Mr. Prewitt responds that he expected to “receiv[e] by reply email the identity of each of the ... 64 and 65 requested documents.”

March 17, 2016. Mr. Baca again asks Mr. Prewitt when he would like to come to the District offices and review the District policies, and adds: “As I stated earlier any policies or mention of weight room would be contained in those documents.” Mr. Prewitt expresses his belief that they had “reached an impasse” and states that he was “appealing” his request to the superintendent.

March 18, 2016. Superintendent Dana Sanders emails Mr. Prewitt a letter responding to his original request for public records. Superintendent Sanders states, in pertinent part:

Documents that answer this request are available for your review. These records exist on line and in hard copy. You may access them at www.llschools.net. Or you may request to view them in hard copy....

March 30, 2016. Mr. Prewitt contacts the District's webmaster and repeats his request for a list identifying the 129 search results and "the necessary website information to give me direct, online access to all of the items...."

Issues Resulting from the District's Handling of the Public Records Request

While the email exchanges described above demonstrate the District's good faith efforts to comply with Mr. Prewitt's public records request, they also show that the District's handling of the request did not fully comply with IPRA in two respects.

First, the District did not fully comply with IPRA's requirements for redirecting inspection requests addressed to a person other than the proper records custodian. Specifically, when "a written request is not made to the custodian having possession of or responsibility for public records requested, the person receiving the requests shall promptly forward the request to the custodian of the requested public records, if known, and notify the requester." NMSA 1978, § 14-2-8(E). The notification to the requester must include "the records' location and the name and address of the custodian." *Id.*

Mr. Prewitt made his original request to inspect public records to Mr. Holland on January 5. Mr. Holland directed Mr. Prewitt to contact the principal of Los Lunas High School. Mr. Prewitt subsequently attempted to contact the principal on January 6 and January 22, but apparently did not get a response until February 3, when he received the email from Mr. Baca.

Under IPRA "[e]very person has the right to inspect public records...." NMSA 1978, § 14-2-1(A). Providing persons with information about government affairs is "an integral part of the routine duties of public officers and employees." *Id.* § 14-2-5. Consequently, IPRA, including Section 14-2-8(E), requires a public body to facilitate, not discourage, a person's exercise of the right to inspect public records. In this case, Section 14-2-8(E) precludes District's employees who receive an inspection request from effectively denying the request because they are not the records custodian. When Mr. Holland received Mr. Prewitt's records request, he should have promptly referred the request to the District's records custodian and notified Mr. Prewitt, as required by Section 14-2-8(E). Because the District failed to follow the proper procedure, the District's response to the request and Mr. Prewitt's access to the records he requested were significantly and unnecessarily delayed.

The second issue stemmed from the District's response to Mr. Prewitt's request once it finally made its way to the proper custodian. Under IPRA:

A custodian receiving a written request shall permit the inspection immediately or as soon as is practicable under the circumstances, but not later than fifteen days after receiving a written request. If the inspection is not permitted within three

business days, the custodian shall explain in writing when the records will be available for inspection....

NMSA 1978, § 14-2-8(D). “Inspect,” for purposes of IPRA, “means to review all public records” that IPRA does not exempt from inspection. *See id.* § 14-2-6(C).

Mr. Prewitt’s request was relatively straightforward. He asked for “a list and copy of any and all Los Lunas High School and Los Lunas School District documents of rules and regulations and policies and procedures regarding the weight room or references to where I can get access to every one of them online.”¹ Mr. Baca’s response on February 3, though timely,² does not state that responsive records exist or provide any information about the location of responsive records available for Mr. Prewitt’s inspection. Instead Mr. Baca’s response assumes that Mr. Prewitt will search the District’s website, on his own, for records that respond to his request. When Mr. Prewitt attempted to find responsive records on the District’s old website, using his own search terms, he misinterpreted the search results and was understandably perplexed as to why he could not get access to documents containing his search terms on the District’s old website.

The District’s Response explains that Mr. Prewitt was unable to access responsive documents because they no longer exist on the old website and that the number of search results did not correlate to the number of responsive documents. But, based on the email exchanges outlined above, it appears that this was never explained to Mr. Prewitt. Consequently, although the District eventually informed Mr. Prewitt that the policies he requested were on the new website and explained how to retrieve them, Mr. Prewitt remained convinced that there were 129 documents on the old website to which he was being denied access.

We believe that had Mr. Baca’s initial response to Mr. Prewitt’s inspection request conformed to Section 14-2-8(D), much of the subsequent confusion and miscommunication would have been avoided. Again, IPRA requires public bodies to facilitate, not hinder, a person’s right to inspect public records. Section 14-2-8(D) requires a records custodian to permit inspection of responsive records immediately or explain to the requester when the records will be available for inspection. This puts the burden of finding and making available public records that respond to an inspection request squarely on the public body.

Mr. Baca’s response to Mr. Prewitt on February 3 simply directed Mr. Prewitt to the District’s website, without more, to find responsive records as best he could. In effect, Mr. Baca shifted the burden of finding responsive public records to Mr. Prewitt, contrary to Section 14-2-8(D). If, as

¹ Although IPRA required the District to provide access to the public records Mr. Prewitt requested, it was not required to provide “a list” of rules, regulations, policies and procedures regarding the weight room unless the list existed at the time of the inspection request. IPRA does not require a public body to create a public record in response to an inspection request. *See* NMSA 1978, § 14-2-8(B).

² IPRA’s deadlines for responding to an inspection request are measured from when the records custodian receives the request. *See* NMSA 1978, § 14-2-8(D). Even though Mr. Prewitt initially sent his request to the District on January 5, 2016, Mr. Baca’s response to Mr. Prewitt on February 3 was timely because he reportedly did not receive the request until February 2. *See* Superintendent Sander’s letter dated March 18, 2016 to Mr. Prewitt, described above in the text.

it appears, Mr. Baca knew that the District had responsive records on February 3, he should have responded to Mr. Prewitt that the records were available for inspection immediately. Although it was appropriate in this case to give Mr. Prewitt the option of reviewing the responsive records on the District's website, Mr. Baca's response also should have provided sufficient information to enable Mr. Prewitt to find the records, such as the correct website address, the name, title or other identifying information for the pertinent policies and other responsive records, and the location of the records on the website.

Remedies

To resolve the issues described above, the District should, if it has not already, immediately provide or make available to Mr. Prewitt the records he requested. This being said, we do understand that the District used its best efforts to assist Mr. Prewitt and was not intentionally attempting to block his access to the responsive records or evade IPRA's requirements. We also acknowledge that, according to the District's Response, the District has already taken steps to avoid similar issues in the future, such as reminding school officials of the proper procedures for handling inspection requests under IPRA and identifying the required timelines and persons responsible for fulfilling the requests. In the future, please be aware that our office is always available to help regarding any IPRA compliance issues that arise.

If you have any questions about this determination or IPRA in general, please let me know.

Sincerely,



Dylan K. Lange
Assistant Attorney General

Enclos.

cc: Robert Prewitt

New Mexico Office of the Attorney General

HECTOR H. BALDERAS
Attorney General

ELIZABETH A. GLENN
Deputy Attorney General

Open Government Division

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

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YOUR CONTACT INFORMATION:

First Name: Robert

Last Name: PREWITT

Address: [REDACTED]

City: [REDACTED]

State: [REDACTED]

Zip Code: [REDACTED]

Phone Number: [REDACTED]

Email: mprewitt@comcast.net

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): Los Lunas School District (LLSD) or, as it is also described on its two, existing websites, Los Lunas Schools (LLS).

Format of IPRA Request: x Written (via emails "forwarded" hereafter)

Date IPRA Request was Submitted to the Public Body: It actually depends on how your office interprets the three, unbroken chains of dated email correspondence referred to at the end of this complaint form under "Additional Information."

The first request was dated January 5, 2016, and was emailed to the Los Lunas High School (LLHS) athletic director, Mr. Wilson Holland. That was long before I learned that I was supposed to make the request via the LLSD's records custodian, Mr. Brian Baca, who is also the LLSD's Assistant Superintendent. Furthermore, that one-sentence request was ignorantly limited to the "weight room" as follows:

“Please send me by reply email a list and copy of any and all Los Lunas High School and Los Lunas School District documents of rules and regulations and policies and procedures regarding the weight room or references to where I can gain access to every one of them online.”

Nevertheless, that request still conveyed the essence of my intended focus even while ignorantly excluding the additional words: “weight training.” Those two words were **first published** in my email to Mr. Baca, dated **February 4, 2016**.

Date of all Responses Received from the Public Body: See “Additional Info.”

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: x No records were provided.

This is where explaining what has happened ends up sounding like a “Catch- 22.” My request was for the records **to be** made available for viewing **online** (i.e., in electronic format). According to my search box inquiries on the district’s former or “old” website, “64” and “65” “Results” were “Found” **collectively**, as follows:

http://loslunas.nm.schoolwebpages.com/education/components/layout/default.php?sectionid=2042&&url_redirect=1

“Found **64** Results for **weight training**
Document search results are not currently available.”

<http://loslunas.nm.schoolwebpages.com/education/components/search/search.php?search=weight+room&dosearch=&wholesite=1§iondetailid=9820&submitted=1&filter=>

“Found **65** Results for **weight room**
Document search results are not currently available.”

(Search boxes **do not exist** on the district’s “new” website.)

As of the filing of this complaint, copies of the public records numbered above have **not been provided** in electronic or any other format. After repeated requests,

they remain **unidentified** and **without any guidance** from the district's records custodian, superintendent, or web master as to how I can **access them directly**.

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DENIED REQUESTS TO INSPECT PUBLIC RECORDS This is a prime example of the "Catch-22" situation. They have not officially or formally denied the requests, *as such*. However, **they have made it impossible** for me to inspect the 64 and 65 documents because **they continue to refuse** to say what or where they are **specifically**, be that online or in their administrative office on hardcopy.

(Please refer to the "DETAILED EXPLANATION..." below.)

NOTICE N/A Only the "reasonable fees for copying public records" was ever mentioned, and that was in the superintendent's "response" cited above. I have never visited their "administrative office" and have no knowledge of the rest.

DEADLINES (For purposes of deadlines imposed by the IPRA, the date the request is received is not counted)

x 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.

x 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.

(Please refer to Mr. Baca's email to me, dated **February 9, 2016**, my email reply to it on the same day, my email to him, dated **March 9, 2016**, and his email reply to it on that same day.)

I do not know what happened during the above **month** to make Mr. Baca do a **complete about-face** *from* "so I can try to help you access the documents you requested" *to* "I am confused by what you mean by status report, I am not sure what I am reporting on. Please let me know what you are needing, [This "*comma*" should have been a "*period*".] all of the Los Lunas School Board Policies are online and our [it should read: "*are*"] on the website www.llschools.net from there

click on school board and policies. If you go to the school tab you can click LLHS on the drop box and under that tab they have the LLHS student handbook.” [I point out *his typographical errors* only to emphasize that they are **not mine.**] I have researched the handbook and board policies previously, as they are online.

Mr. Baca’s reply, dated **March 9, 2016**, followed the *district’s standard response* established in Ms. Sanders’ first email to me, dated **February 2nd**. There, she did **not mention** the “weight room” I had stated specifically in my documents request email to Mr. Holland, dated **January 5th**. (The **64** and **65** documents requested by me through Mr. Baca go back to my emails to him dated **February 4 and 5, 2016.**)

My **March 9th**, same-day, email reply to Mr. Baca stated the following: “Unless one can learn the identity of and gain access to these 129 documents at issue, it is simply impossible to make any such comparison. There should certainly be some sort of **index** or **other listing** of these documents to which you must have access. Similarly, you must have access to each and every one of those documents as the district’s records custodian. I am merely requesting that you provide me with the same 129 document **identification** and **access** that you have to have in your administrative position.”

FEES N/A

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.

In her “District’s response,” emailed to me on **March 18, 2016**, the superintendent makes no mention of the above cited **64** and **65** documents. Instead, in the first of her two-paragraphs,” she *incorrectly* quotes my **very first documents request** to any of them. It was emailed to Mr. Wilson Holland, LLHS athletic director, dated **January 5** [not “**6**”], **2016**, when I did not know it should have gone to Mr. Baca.

She said, reference above, “In your request, it appears that you are seeking to inspect the following documents: list and copy of all Los Lunas High School and Los Lunas School District documents of rules and regulations and policies and procedures regarding the weight room or references to where I can gain access to every one of them online.” She **omitted** the words I have inserted in red letters.

(The full paragraph from my above cited email to Mr. Holland is below.)

“Please send me by reply email a list and copy of any and all Los Lunas High School and Los Lunas School District documents of rules and regulations and policies and procedures regarding the weight room or references to where I can gain access to every one of them online.”

In the last paragraph of Ms. Sanders’ above cited “response,” she repeats the same quotation of my **first-ever** request in **bold type** but **without *its last 14 words***: “or references to where I can gain access to every one of them online.” Thus, she is creating the *false impression* that they are and have been complying fully with my requests from the very beginning.

She concludes that paragraph by saying, “Documents that answer this request are available for your review. These records exist on line and in hard copy. You may access them at www.llschools.net.” As I have explained above, that is impossible since they do not **identify** the requested documents or how to **access** them directly.

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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. (*If it turns out that 64 of those 65 documents requested January 5, 2016, are included* within the 65 requested February 4, 2016, then my request for **all of the documents** was actually made on **January 5, 2016**.)

January 5, 2016

Email to Wison Holland, LLHS athletic director,
with my first reference to “weight *room*” (i.e., the “65”)

Quote Please send me by reply email a list and copy of any and all Los Lunas High School and Los Lunas School District documents of rules and regulations and policies and procedures regarding the weight room or references to where I can gain access to every one of them online. Close quote

February 4, 2016

Email to Brian Baca, LLSD records custodian,
with my first reference to “weight *training*” (i.e., the “64”)

Quote While trying to follow Ms. Sanders lead, I have discovered both the **old** and the **new websites** for both "Los Lunas Schools" **and** "Los Lunas High School." Unfortunately, I do not know enough about computers and search engines to see how this can be possible. The new websites do not seem to have open search boxes the way the old ones do. So, when I typed in "weight training" in one of the open search boxes which had "search All District Websites" printed just under it, the following came up: "Found **64** Results for **weight training** (no emphasis added)" [then, on the line immediately below that one, it stated the following, **all in red**]: "Document search results are not currently available." My question, therefore, is how can these "64 documents" be made available to me for review, especially online? Close quote

Pertaining to "...any documentation or evidence you have regarding the alleged IPRA violation," please examine the **three**, unbroken **chains** of **emails** I have sent or received in this case which document all of my correspondence on this subject with LLHS and LLSD personnel. These email chains must be "**forwarded**" to be "attached" as part of this complaint form. Therefore, their sending will follow it.

(Four (4) relevant website addresses are listed for your convenience below.)

http://loslunas.nm.schoolwebpages.com/education/components/layout/default.php?sectionid=2042&&url_redirect=1

gets you to the LLHS's "old" website with search boxes;

http://www.edlinesites.net/pages/Los_Lunas_High

gets you to the LLHS's "new" website without search boxes

<http://loslunas.nm.schoolwebpages.com/education/components/scrapbook/default.php?sectiondetailid=694&>

gets you to the LLSD's "old" website with search boxes; and,

http://www.llschools.net/pages/Los_Lunas_Schools

gets you to the LLSD's "new" website without search boxes.