

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

December 10, 2019

Ms. Anna Delgado
No. 83961
P. O. Drawer 250
Grants, NM 87020

Re: Inspection of Public Records Act Complaint – Luna County

Dear Ms. Delgado:

The Office of the Attorney General, Open Government Division (“OGD”) has received your complaint alleging violations of the Inspection of Public Records Act (“IPRA”), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2019), by Luna County (the “County”). The OGD is charged with enforcement of the IPRA and in that capacity has reviewed the facts and allegations in your complaint. *See* NMSA 1978, § 14-2-12(A).

In New Mexico, “all persons are entitled to the *greatest possible information* regarding the affairs of government and the official acts of public officers and employees.” Section 14-2-5. *See also Republican Party of New Mexico v. New Mexico Taxation & Revenue Dep’t*, 2012-NMSC-026, ¶ 38, 283 P.3d 853, 867 (observing “IPRA’s guiding purpose of promoting government transparency”). This vital public policy is reflected in the Inspection of Public Records Act, which is broadly written to give individuals the right to inspect all “public records” with only limited and specifically enumerated exceptions. *See* § 14-2-1(A) (setting forth eight narrow exceptions to disclosure). In line with the IPRA’s purpose, courts employ a “presumption in favor of the right to inspect.” Attorney General’s Inspection of Public Records Act Compliance Guide, p. 7 (8th ed. 2015) (“IPRA Guide”).

In the complaint you submitted to us, your sole allegation is that the County did not provide you with records responsive to your requests dated June 10, 2019, July 17, 2019, and September 9, 2019. However, the documentation you provided to us shows that the County informed you in a letter dated August 25, 2019, that it would provide you with all responsive records upon receipt of payment from you in the amount of \$66.50. *See* § 14-2-9(C)(5) (authorizing public bodies to “require advance payment of the fees before making copies of public records”). Your complaint to our Office does not argue that this represented an excessive fee. With respect to your apparent assertion that the County violated IPRA by failing to create a new one-page record for you in response to your

Ms. Anna Delgado
December 10, 2019
Page 2

request, we would simply note that the IPRA does not require public bodies to create public records in response to a request. *See* § 14-2-8(B) (providing that, “Nothing in the Inspection of Public Records Act shall be construed to require a public body to create a public record.”). As a result, we must conclude that your complaint has not identified a violation of the IPRA, and we consider this matter closed.

The Office of the Attorney General appreciates you bringing possible violations to this office and will welcome any further complaints you may submit. If you have any concerns in the future, please do not hesitate to contact us. Additionally, our IPRA Guide is available on the website of the Office of the Attorney General at www.nmag.gov.

Sincerely,



John Kreienkamp
Assistant Attorney General

Enclosure

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

New Mexico Office of the Attorney General

Open Government Division

YOUR CONTACT INFORMATION:

First Name: Anna Last Name: Delgado # 83961

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): Luna County Sheriff's - Deming New Mexico
Luna County Managers - Deming New Mexico

Format of IPRA Request: Written Oral

Date IPRA Request was Submitted to the Public Body: June 10, 2019, July 17, 2019
September 9, 2019

Date of all Responses Received from the Public Body: June 20, 2019, July 25, 2019
August 25, 2019, September 23, 2019

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.

On May 21, 2015 Writ of Execution was issued on a Civil Suit filed against myself. On May 28, 2015 the Luna County Sheriff's office served a Warrant for the Writ of Execution. Personal Assets and real property was seized. As of this date October 1, 2019 the sheriff's office has not provided me with any information what-so-ever. I believe there is a criminal conspiracy or possible embezzlement by the Luna County Sheriff's, this is illegal, unethical and immoral behavior on there behalf. The victim that filed the Civil Suit on November 7, 2013 is the one that should have received payment from these assests. This payment also did not show up or apply on the restitution showing owed to her on my criminal case filed on April 6, 2015 so there fore the Sheriff's office has denied the other victims of their rightful restitution, the D.A. office had full knowledge of this as well. The Luna County Manager appears "suspect" in this action denying me access to court copies of all my documents to the Luna County Sheriff's, etc,

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.

October 1, 2019

State of New Mexico
Attorney General's Office
P.O. Box 1508
Santa Fe NM 87504

Dear Sir or Madam

I am hereby writing to you in hopes that you can help me with this matter. Attached are copies of all my letters and responses. I am incarcerated and therefor indigent. All the information I have requested in this matter has not been provided to me.

I thank you in advance for all and any help.

Respectfully

~~Anna Delgado~~

Anna Delgado #83961

P.O. Drawer 250

Grants NM 87120

attachments:

LFD # 150384005950

Received

JUN 14 2019

LCSO, Deming NM

June 10, 2019

Anna Delgado # 83961

P.O. Drawer 250

Grants, NM 87020

Records Custodian
Luna County Sheriff
2462 J. St SE
Deming NM 88030

Re: IPRA request, pursuant to NMSA 1978, Sections 14-2-1
through 14-2-12

Case # M-34-FR-201500065

DA # L-2015-C-113

The sheriff's dept. on the above case has not provided me with an inventory of all assets, real and personal properties, including cash confiscated from me on the above case as restitution. Since 2015 the only cash used to offset my restitution debt has been \$40,000.00 from my bond money. By law there must be an accounting and a reconciliation from the auction(s) held on an amount applied to my debt. So far there has been \emptyset .

If your dept. does not respond in a reasonable period of time allowed by law (15 days from receipt of letter) then I shall file a formal

4/23/2015 2019

complaint with the State Attorney General,
Hector Calderas, and the Governor's office

Thank You

~~Amal~~

KELLY GANNAWAY
SHERIFF



JOSE MARTINEZ
CAPTAIN

LUNA COUNTY SHERIFF'S DEPARTMENT

2462 J STREET, S.E.
DEMING, NEW MEXICO 88030
PH: (575) 546-2655 FAX: (575) 546-8533

June 20, 2019

Anna Delgado #83961
PO Drawer 250
Grants, NM 87020

RE: Request for records – M-34-FR-201500065

This letter is to advise you that upon checking our records/data base system I have found no records on this case as it was a Deming Police Department case. Please contact Magistrate Court or the Deming Police Department regarding this case (DPD #150304005950).

If you require anything further, please let me know.
Sincerely,

A handwritten signature in black ink, appearing to read "Stephanie Young".

Stephanie Young
Administrative Assistant
Luna County Sheriff's Office

July 17, 2019

Anna Delgado # 836

P.O. Drawer 250

Grants, NM 8702

Stephanie Young
Administrative Assistant
Luna County Sheriff's Office
2462 J. Street, SE
Deming, NM 88030

Re: Inspection of Public Records Act, pursuant to NMSA 1978
14-2-1; it sequential; IPRA request; M-34-FR-2015-00065

This is in response to your June 20, 2019 letter in
which you claim you have NO records in your archi-
on data base system pertaining to:

Levied Property Inventory Sheet (Date 5/28/2015)
[Plaintiff and Execution #D-619-CV-2013-00337]
Property in storage located at 2462 J. St. SE-Deming NM 88

I need to know where and when the auction was held,
and an inventory of all sold items, including, but not
limited to real property and physical assets, land and
mobile homes, 321 S. Whittier, 2701 W. Tangerine, 21c
located on Poplar St. and mobile home

(1)

If you cannot find the auction sheets and how much monies were applied to restitution, I will be forced to file a formal complaint with State Attorney General, Hector Balderas, claiming fraud and embezzlement. The sheriff's office has a fiduciary duty to keep account records of all such property, monies, etc, it confiscates on an execution warrant / order.

The IPRA request was addressed to Record's Custodian in charge of archives, I am in possession of the inventory sheets and signatures, Therefore, your records exist somewhere or if destroyed, represent a criminal intent to not only defraud the defendant in this case, but any and all victims to whom restitution is owed.

Respectfully

Mrs. [Signature]

STATE OF NEW MEXICO

County of Luna

Barbara L. Reedy
Commissioner, District 1

Linda M. Smrkovsky, Chair
Commissioner, District 2

John S. Sweetser
Commissioner, District 3



David X. McSherry
County Manager

Byron N. Hollister
Deputy County Manager

700 South Silver Avenue · Post Office Box 551 · Deming, New Mexico 88031
Telephone (575) 546-0494 Facsimile (575) 544-4293

July 25, 2019

Ms. Ana Delgado #83961
PO Drawer 250
Grants, NM 87020

Re: Request to Inspect Public Records

Dear Ms. Delgado:

On July 23, 2019 we received your request to inspect certain records in regard to the levied property. We believe that your request is excessively burdensome or broad and we need additional time to respond, until August 25th, 2019.

Thank you for your patience.

Sincerely,

Laura H Garcia
Administrative Assistant

STATE OF NEW MEXICO

County of Luna

Barbara L. Reedy
Commissioner, District 1

Linda M. Smrkovsky, Chair
Commissioner, District 2

John S. Sweetser
Commissioner, District 3



David X. McSherry
County Manager

Byron N Hollister
Deputy County Manager

700 South Silver Avenue · Post Office Box 551 · Deming, New Mexico 88031
Telephone (575) 546-0494 Facsimile (575) 544-4293

August 25, 2019

Ms. Ana Delgado #83961
PO Drawer 250
Grants, NM 87020

Re: Final Response
Inspection of Public Records Request dated July 23, 2019

Dear Ms. Delgado:

The Inspection of Public Records Act (IPRA) request, received on July 23, 2019, pertaining to records regarding levied property, is available in the Luna County Manager's office as of today. The fee per one sided, black and white copy is \$.50 cents a page, there are 128 pages for a total of \$64.00, plus \$2.50 for the postage for a grand total of 66.50, if you wish to get this mailed please let me know. Documents will be mailed upon receipt of payment for copies and postage.

Luna County is providing you with what we deem are responsive records per the Act. Please accept this as a final response for IPRA. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Laura H Garcia". The signature is written in a cursive style and is positioned above a horizontal line.

Laura H Garcia
Executive Assistant

September 9, 2019

Luna County Manager
David X McSherry
P.O. Box 551
Deming NM 88031

Anna Delgado #83961
P.O. Drawer 250
Grants NM 87020

Re: Unfinished IPRA request dated July 25, 2019 -
Sheriff's Auction Sales

Thank you for your response, however, what I need, is simply a (One page) document listing when, where and how the sheriff's office conducted the auction(s) of my personal assets and real estate, how much money was raised, and how much went to victim's restitution? You have a number of these documents, but the County needs to answer these questions or I'll be left with no option but to file a formal complaint with the State General's and Governor's Office

cc: Bryon N. Hollister
Barbara L. Reedy
Linda M. Smrkovsky
John S. Sweetser

Respectfully

Anna Delgado

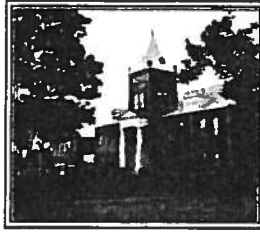
STATE OF NEW MEXICO

County of Luna

Barbara L. Reedy
Commissioner, District 1

Linda M. Smrkovsky, Chair
Commissioner, District 2

John S. Sweetser
Commissioner, District 3



David X. McSherry
County Manager

Byron N Hollister
Deputy County Manager

700 South Silver Avenue • Post Office Box 551 • Deming, New Mexico 88031
Telephone (575) 546-0494 Facsimile (575) 544-4293

September 23, 2019

Ms. Ana Delgado #83961
PO Drawer 250
Grants, NM 87020

Re: Final Response
Inspection of Public Records Request dated July 23, 2019

Dear Ms. Delgado:

The Inspection of Public Records Act (IPRA) request, received on July 23, 2019, pertaining to records regarding levied property, is available in the Luna County Manager's office as of today. Be advised that records we are offering you is what we have pertaining to your levied property. We do not have records on how much went to the victim's restitution nor one-page record of the listings you mentioned in your last letter.

Luna County is providing you with what we deem are responsive records per the Act. Please accept this as a final response for IPRA. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Laura H Garcia". The signature is written in black ink and is positioned above a horizontal line.

Laura H Garcia
Executive Assistant

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

INSPECTION OF PUBLIC RECORDS ACT COMPLAINT FORM

Under the Inspection of Public Records Act (“IPRA”), the Office of the Attorney General (“OAG”) has the discretion and authority to enforce the IPRA’s provisions. NMSA 1978, § 14-2-12. Generally, the OAG reviews and issues determinations regarding whether public agencies have violated the IPRA. All IPRA complaints submitted to the OAG, including any attached materials and any correspondence regarding those complaints, are public records subject to public inspection. Additionally, IPRA complaints and determinations from the OAG may be posted on our website.

All complaints submitted to the OAG will be reviewed for potential IPRA violations. The OAG may dismiss those complaints that fall outside IPRA’s purview and those for which there is no remedy available under IPRA, or forward IPRA complaints to another appropriate agency for resolution. Please note that the OAG does not represent complainants in suits against public bodies.