

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

May 31, 2019

VIA ELECTRONIC MAIL ONLY

Luna County Humane Society
Matt Robinson, President
P.O. Box 70
Deming, NM 88030
Email: mattrob722@gmail.com

Re: Inspection of Public Records Act Complaint – Michelle R. Whitehurst

Dear Mr. Robinson:

Thank you for your response to our inquiry regarding the complaint submitted by Ms. Michelle Whitehurst to the Office of the Attorney General alleging that the Luna County Humane Society (hereinafter “LCHS”) violated the Inspection of Public Records Act (“IPRA”), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2018). As you know, the complaint alleges that LCHS failed to provide all records in its possession that were responsive to her request for public records dated November 12, 2018. Having thoroughly reviewed the facts surrounding Ms. Whitehurst’s complaint, we have a number of concerns as to the completeness of LCHS’s response to her request. Additionally, we advise LCHS to be more cognizant of IPRA’s timelines, at least to the extent that it is subject to IPRA as an organization.

Background

The Inspection of Public Records Act provides the public access to “the greatest possible information” about governmental affairs. NMSA 1978, § 14-2-5. IPRA specifically states that “[e]very person has a right to inspect public records of this state” with certain enumerated exceptions. Section 14-2-1(A). The statute is interpreted in light of its purpose, meaning that courts employ a strong “presumption in favor of the right to inspect” when interpreting IPRA’s various provisions and all exceptions to disclosure are construed narrowly. Attorney General’s Inspection of Public Records Act Compliance Guide, p. 7 (8th ed. 2015) (“IPRA Guide”); *see also San Juan Agr. Water Users Ass'n v. KNME-TV*, 2011-NMSC-011, ¶ 15 (noting that “IPRA creates a presumption in favor of access.”).

Ms. Whitehurst submitted a records request to LCHS on November 12, 2018. LCHS did not respond, however, until she sent a Facebook Message to you, LCHS's President, on November 26, 2018. At that time, you informed her that, "We did receive it. I am working on a response." No further written communication was apparently provided to Ms. Whitehurst from LCHS until December 11, 2018. On that date, LCHS provided her "the records we have been able to collect in response to your request." LCHS also noted that it was skeptical as to whether, as a nonprofit organization, it was subject to IPRA in the first place and that responding to Ms. Whitehurst's "extremely broad" request had "been a cumbersome process." Ms. Whitehurst subsequently filed this complaint with our Office, alleging that LCHS had withheld a number of responsive records without providing an explanation.

Completeness of LCHS Response

As a preliminary matter, we first must address the scope of LCHS's obligations under IPRA given that it is a private, nonprofit organization. LCHS, to its credit, did not argue in response to our inquiry that it is totally immune from IPRA; instead, LCHS maintained that it is subject to IPRA only in certain aspects of its operation. We agree. In fact, we specifically addressed LCHS's status under IPRA in a recent determination involving Luna County. *See* N.M. Atty. Gen. Letter to Charles C. Kretek, Luna County Attorney, at 4 (May 8, 2019) ("Kretek Letter") (concluding that LCHS was subject to IPRA insofar as it was "acting on behalf of Luna County"). Citing to *State ex rel. Toomey v. City of Truth or Consequences*, 2012-NMCA-104, this Office concluded that LCHS was subject to IPRA, to the extent LCHS "is the appointed designee for Luna County to provide services both by contract and through ordinance to include care of animals, issuance and enforcement of site permits and licenses, inspections to ensure compliance with the Ordinance and business is conducted on property maintained by Luna County." Kretek Letter, p. 4. In other words, while LCHS records strictly involving its private operations are not subject to IPRA, those records that relate to *public* business, such as the contract services it provides to or the licensing and enforcement functions it performs on behalf of Luna County, are subject to inspection under IPRA.

With respect to the central allegation of Ms. Whitehurst's complaint, that LCHS provided only some but not all records responsive to her request, we do find cause for concern. In its response to our inquiry, LCHS largely denied this allegation but, in explaining this denial in the context of Ms. Whitehurst's original itemized records requests, also made a number of statements suggesting that, at a minimum, it may not have done a thorough search for all responsive records. In order to clarify our concerns, we will address each potentially-incomplete item individually.

The first item of note, listed in LCHS's response as item "c," was Ms. Whitehurst's request for, "All documents from 2015 to present pertaining to the Ruff Ruff Animal Sanctuary regarding licensure, inspections and Sanctuary visits, including proof of vaccinations of animals." In explaining how it responded to this item, LCHS stated that it withheld some records because it "did not believe information held about private individuals or medical records was subject to inspection through a public request." While we are not certain whether LCHS improperly withheld any records responsive to this request, we would inform the organization that a document need only "relate to public business" in order to constitute a public record for the purposes of IPRA.

Section 14-2-6(G). Even if the record does contain information specific to an individual, it is still a public record for the purposes of IPRA if it relates to public business, and it must be provided to a requestor unless the public body can cite to a valid exception to disclosure. *See generally* § 14-2-1. The exceptions to IPRA include individual information, such as the exception for protected personal identifier information in Section 14-2-1(B), and medical information. *See* § 14-2-1(A)(1) (creating an exception to IPRA disclosure for “records pertaining to physical or mental examinations and medical treatment of persons confined to an institution”). If LCHS relied on these exceptions (or any other exception in law) in order to withhold any records, it was required to provide a “written explanation of the denial” to Ms. Whitehurst. Section 14-2-11(B).

Ms. Whitehurst also requested, “All documents from 2015 to present pertaining to the Ruff Ruff Animal Sanctuary and LCHS financial agreements, Luna County financial agreements or City of Deming financial agreements and income grossed from the sales of metal shipping containers.” LCHS stated that it did not provide any records in response to this request because it “concerns private donations to LCHS and, thus, is outside the scope of IPRA.” Although this statement is partially correct insofar as this request involved purely private donations to LCHS, we think the organization interpreted this request too narrowly. We think it is clear that Ms. Whitehurst sought all records related to financial agreements involving Luna County or the City of Deming and the Animal Sanctuary. *See generally San Juan Agr. Water Users Ass'n v. KNME-TV*, No. A-1-CA-35839, mem. op. at 21 (N.M. Ct. App. Apr. 16, 2019) (non-precedential) (noting that, “A public record is ‘responsive’ to an inspection request when the request identifies the public record with reasonable particularity.”). If such records were in the possession of LCHS at the time of Ms. Whitehurst’s request, then those records would almost certainly constitute public records and would need to be provided to Ms. Whitehurst in the absence of a valid exception to IPRA.

Lastly, our greatest source of concern relates to Ms. Whitehurst’s request for, “Any and all other documents related to Ruff Ruff Animal Sanctuary that exists between LCHS, Luna County, or City of Deming and Ruff Ruff Sanctuary 2015 to present.” LCHS explained its denial of this request by stating that, “This request is broad and vague to such an extent that no direct response was possible.” However, this was not a sufficient justification to deny Ms. Whitehurst’s request. IPRA grants a public body additional time to respond to a broad request but still specifically requires it to fulfill the request. *See* § 14-2-10 (providing that where “a custodian determines that a written request is excessively burdensome or broad, an additional reasonable period of time shall be allowed to comply with the request”). Because LCHS interpreted Ms. Whitehurst’s request as excessively broad and burdensome, it should have responded in writing that it required more time to respond, not deny the request because of its breadth. As for its contention that Ms. Whitehurst’s request was too vague, again we disagree: requestors can indeed seek “any and all other documents.” LCHS was required to do a search for other responsive records in good faith and then provide them unless it could cite to a specific exception in law.

More broadly, outside of these particular items, it is important that LCHS understand IPRA, at least as it pertains to them. Upon receipt of a request, LCHS must determine if it has any public records in its possession. This requires reviewing its contract and Ordinance obligations with Luna County and determining whether it has any records related to those services and responsive to the records request. If responsive records do exist, than LCHS must provide them to the requestor

within IPRA's specified timeframes unless it can cite to a particular exception in law. *See* § 14-2-8(D) (providing that, "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.") and IPRA Guide, p. 40 (explaining that all responsive records must be provided within fifteen calendar days unless the public body provides a written denial letter stating the specific exception in "the Act, another law, court rule, or the U.S. or state constitution" providing the legal basis for the denial).

IPRA's Timeframes

The remaining issue for our review is whether LCHS complied with IPRA's specified timeframes and deadlines in handling Ms. Whitehurst's request. There appears to be no debate as to this issue, as LCHS itself acknowledged in response to our inquiry that "it appears the timeframes were not met." To that end, the documentation provided to us shows that LCHS did not acknowledge receipt of her request within three business days and did not provide her the responsive records or a denial letter within fifteen calendar days. We recognize that it may have been an open question until recently as to whether LCHS was subject to IPRA at all, but we must agree with Ms. Whitehurst that the organization did not timely handle her request.

For the purposes of informing LCHS generally as to IPRA and assisting the organization with complying with the statute, we provide the following general summary of IPRA's mandated deadlines. First, upon receipt of an IPRA request, the public body must respond within three business days. *See* § 14-2-8(D) (providing that, "If the inspection is not permitted within three business days, the custodian shall explain in writing when the records will be available for inspection or when the public body will respond to the request."). This initial response must either provide the requested records or state "when the records will be available or when the agency will respond." IPRA Guide, p. 33. If unable to provide the requested records within three business days, IPRA generally requires public bodies to provide all requested records within fifteen calendar days. Section 14-2-8(D). This fifteen-day period begins upon the records request's receipt by the public body's designated records custodian. *Id.* The only exception to this fifteen-day deadline is for records requests determined to be "excessively burdensome or broad" by the public body, for which IPRA grants the public body an additional, reasonable amount of time to respond (to be determined individually, dependent on the circumstances). Section 14-2-10. However, in any event, the public body must either provide the requested records, deny the request, or designate the request as broad and burdensome in writing within fifteen calendar days. Section 14-2-11(A).

Conclusion

Because it appears to us that LCHS may not have completely responded to Ms. Whitehurst's records request, or at least that it may not have thoroughly evaluated its potentially responsive records, we strongly advise it to take remedial action. *See Derringer v. State*, 2003-NMCA-073, ¶ 13. This should consist of reevaluating both Ms. Whitehurst's records request and all potentially responsive LCHS records so as to determine which records relate to public business. Additionally, going forward LCHS should familiarize itself with IPRA so that it can better comply with its statutory responsibilities, such that they are, and more thoroughly respond to records requests.

Luna County Humane Society

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Our Office hopes to conduct a training for the public on both the Inspection of Public Records Act and the Open Meetings Act in July of 2019 in Deming. Please visit our website for more information on the exact date, time and location, <https://www.nmag.gov/events.aspx>, and make plans to attend. Additionally, for your reference, a copy of the IPRA Guide is available on the website of the Office of the Attorney General at www.nmag.gov. If you have any questions regarding this determination or IPRA in general, please let me know.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Kreienkamp".

John Kreienkamp
Assistant Attorney General

Enclosure

CC: Michelle R. Whitehurst

Charles C. Kretek, Luna County Attorney

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

Electronic Complaint Submission

Submission Detail

ECS Reference Number	NMOAG-ECS-20190309-6e20
Final Submit Date	3/9/2019 9:57:06 AM

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

Mrs. Michelle R. Whitehurst

Person

Address

[REDACTED]

Contact information

[REDACTED]
[REDACTED]

Complaint against

Luna County Humane Society

Organization

Address

P.O. Box 70
2135 Onate Rd. SE
Deming, New Mexico 88030

Contact information

(575) 546-2024
unknown

Complaint Specifics

Format of IPRA request:	Written
Date IPRA request was submitted to the public body:	11/12/2018
Date of all responses received from the public body:	November 26 via messenger that it was recvd after I messaged if in fact it was. December 11, 2018 via e-mail (see attached)
Records	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.
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.
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.

Transaction

Documents



ruffruffdocrequest.docx

My IPRA request

Comments

I have an e-mail response from Mr. Robinson on December 11, 2018 with the documents he provided that I can forward if needed as well.

*** END OF COMPLAINT ***

11/12/2018

Matt Robinson
President of the Board
Luna County Humane Society
P.O. Box 70
Deming, NM 88031

RE: Luna County Humane Society/Ruff Ruff Animal Sanctuary

Dear Mr. Robinson,

This letter is a request under N.M. Stat Ann 14-2-1 et seq.

I request copies of the following documents:

All documents from 2015 to present pertaining to the Ruff Ruff Animal Sanctuary regarding the total intake of cats impounded, returned to owner, euthanized or transferred to a rescue group or another facility.

All documents from 2015 to present pertaining to the Ruff Ruff Animal Sanctuary regarding the total intake of dogs impounded, returned to owner, euthanized or transferred to a rescue group or another facility.

All documents from 2015 to present pertaining to the Ruff Ruff Animal Sanctuary regarding licensure, inspections and Sanctuary visits, including proof of vaccinations of animals.

All documents from 2015 to present pertaining to the Ruff Ruff Animal Sanctuary and LCHS financial agreements, Luna County financial agreements or City of Deming financial agreements and income grossed from the sales of metal shipping containers.

Any and all other documents related to Ruff Ruff Animal Sanctuary that exists between LCHS, Luna County, or City of Deming and Ruff Ruff Sanctuary 2015 to present.

All County Manager Reports from LCHS to County Manager/Commissioners from 2015 to present. (see January 2013 County Commissioner Minutes of Meeting)

Any contract for services between Luna County Humane Society and City of Deming or Luna County 2015 to present.

Any contract for services between LCHS, Luna County or City of Deming for veterinary care 2015 to present and if this was provided to Ruff Ruff Animal Sanctuary animals.

Any contract for services between LCHS, Luna County, or City of Deming for pharmaceutical services to the Humane Society 2015 to present.

Any emergency protocols provided for regarding Ruff Ruff Animal Sanctuary to LCHS, Luna County or City of Deming 2015 to present.

List of Donors over \$500 to Luna County Humane Society 2015 to present.

Funding received to Luna County Humane Society 2015 to present via grants local, state, federal and private 2015 to present.

License to operate Luna County Humane Society and any organizations they belong to (i.e., Humane Society United States) 2015 to present.

Monthly adoption fees collected by Luna County Humane Society 2015 to present.

Food companies donating food and/or supplies to Luna County Humane Society 2015 to present and if any went to Ruff Ruff Animal Sanctuary.

Any other sponsored/company donations to Luna County Humane Society 2015 to present and if any went to Ruff Ruff Animal Sanctuary

For purposes of this request, "documents" includes all information captured on paper or in electronic format. For those records that exist in electronic format, I would be happy to receive them as a pdf email attachment or on a CD.

As these records can become expensive, I request they be provided on CD or thumb drive if available.

Because it is difficult to decipher who holds these records, I am requesting all of these records from from LCHS, City of Deming and Luna County. Please notate if your office does not have that particular record.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the Act. I reserve the right to appeal any decision to withhold any information or to deny a waiver of fees. I look forward to a written response within 3 days of this letter.

Thank you in advance.

Sincerely

Michelle Whitehurst
421 W. Hemlock
Deming, NM 88030
575-932-8846
shellyrojeda@gmail.com

11/12/2018

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