

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

July 20, 2021

VIA ELECTRONIC MAIL ONLY

Mora County
Ernestina R. Cruz, Esq.
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Re: Inspection of Public Records Act Complaint – Joanne Jones

Dear Ms. Cruz:

Thank you for your response to our inquiry regarding the complaint filed with the Office of the Attorney General by Ms. Joanne Jones alleging that Mora County (hereinafter the “County”) violated the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2019) (“IPRA”). As you know, Ms. Jones alleges that the County violated IPRA in responding to her public records request dated April 8, 2021. Having carefully reviewed the documentation available to us, we conclude that the County violated IPRA by failing to send adequate and timely communications to Ms. Jones in response to her request. Because it appears the County also may not have conducted a sufficiently thorough search for records responsive to Ms. Jones’ request, we recommend that it reopen her request and ensure that it has properly accounted for all responsive records.

Background

Ms. Jones emailed a public records request to the County on April 8, 2021. Utilizing the County’s “Request for Public Records” form, Ms. Jones asked for copies of “all records” regarding a particular individual and his shooting range (which we assume is located in Mora County). She added that she was seeking “[a]ll correspondence, E-mails, letters text [sic] and videos” as well as “whether Mora County granted him a business license.” Later that morning of April 8, 2021, the County’s records custodian responded by email as follows: “I have received your email. I will forward to all the proper departments, County Manager and County Attorney.”

Although Ms. Jones had stated in her request to the County that “I understand you have up to 15 calendar days to comply,” she did not receive another response from the County prior to the

expiration of this deadline. When that day arrived on April 23, 2021, she filed the present complaint with our Office, stating that she had received “[n]o response whatsoever” from the County. However, on April 28, 2021, approximately twenty days after the County had received her request, its records custodian emailed Ms. Jones stating: “I am sorry for the late response; I have been out of the office. Attached please find the information for your request. If you have any questions, please feel free to contact me.” The custodian’s email attached approximately 18 pages of responsive records. The County did not redact these records, and nothing in the custodian’s email indicated that the County had withheld any additional records.

Notwithstanding the fact that the County did eventually respond substantively to Ms. Jones’ request, the allegations in her complaint to our Office remain unresolved. Most importantly, Ms. Jones continues to argue that the County withheld records, as she strenuously maintains that the County provided her only a partial response to her request. In addition, she also argues that the County violated IPRA by failing to provide timely and sufficiently detailed correspondence in response to her request. We will address both of these allegations in turn.

Analysis

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. Pursuant to this public policy, the Inspection of Public Records Act provides that the public has the right to inspect all public records held by or on behalf of government agencies except as provided by law. *See generally* § 14-2-1. In construing IPRA and its various provisions, New Mexico’s appellate courts consistently interpret the statute in light of its purpose of facilitating transparency and accountability in government. *See New Mexico Found. for Open Gov’t v. Corizon Health*, 2020-NMCA-014, ¶ 15 (explaining that “IPRA must be construed in light of its purpose”). *See also* Attorney General’s Inspection of Public Records Act Compliance Guide, p. 1 (8th ed. 2015) (“IPRA Guide”) (observing that “courts interpreting the Act have established a clear presumption in favor of access”).

IPRA requires public bodies to respond to all public records requests both thoroughly and timely. Upon receiving a request, the public body’s records custodian must either provide the requested records immediately or, if the records are not available, send the requestor a written acknowledgment of the request within three (3) business days. Section 14-2-8(D). Any three-day letter must also contain an explanation of “when the records will be available for inspection or when the public body will respond to the request.” *Id.* Even more importantly, the public body must respond substantively to the requestor within fifteen (15) calendar days, either by providing the requested records, see Section 14-2-8(D), designating the request excessively burdensome or broad and requesting additional time to respond, see Section 14-2-10, or denying the request and providing the reason for this denial. *See* § 14-2-11(B). Ultimately, the public body’s response must be thorough as to all responsive records in its possession, either allowing for inspection of all requested records or explaining why it is denying inspection of those records. *See Britton v. Office of the Attorney General*, 2019-NMCA-002, ¶ 33 (holding that “when a public body provides an incomplete or inadequate response to a request to inspect public records, that body is not in compliance with IPRA”).

Applying these principles to Ms. Jones' records request, there is some indication that the County's response may not have accounted for all responsive records in its possession (or held on its behalf). Although the County did provide Ms. Jones approximately 18 pages of responsive records, she argues that she has first-hand knowledge that additional records exist and the County failed to provide or account for them.¹ For instance, Ms. Jones alleges that the Mora County Sheriff's Office has a contract with the shooting range and that she did not receive a copy of this contract. She further alleges that she and others had sent "letters objecting to the shooting range," and that the County had sent her one letter in reply in 2016, and that none of these letters had been included in the County's response to her request. These records were clearly within the scope of her request, if indeed they existed at the time. Although we cannot say with certainty whether the County actually possessed these additional responsive records, Ms. Jones appears to have some firsthand knowledge on this issue and that raises some question as to the thoroughness of the County's response. As a result, our opinion is the County should conduct a second search for responsive records to ensure that it has satisfied its obligations to Ms. Jones. *See also Filippi v. Wallin*, No. A-1-CA-37195, mem. op. at ¶ 14-15 (N.M. Ct. App. Dec. 16, 2020) (non-precedential) (finding that there was evidence in the record to support the allegation that responsive records existed and were withheld by the public body, thus requiring further inquiry and in camera review on the part of the District Court).

Aside from the thoroughness of the County's response, Ms. Jones is correct that its written correspondence was inadequate insofar as the County failed to provide her with a proper three-day letter or a timely substantive response. Preliminarily, the email sent by the County's records custodian on April 8, 2021 did not state when the County would respond again or when it would make the requested records available to Ms. Jones, and this is critical information required of any three-day letter. *See* § 14-2-8(D) (requiring a three-day letter to state "when the records will be available for inspection or when the public body will respond to the request"). Later, the County did not abide by IPRA's fifteen-calendar day deadline: it sent its substantive response five days late, on April 28, 2021, and it had not declared Ms. Jones' request excessively burdensome or broad beforehand. *See* § 14-2-11(A) ("Unless a written request has been determined to be excessively burdensome or broad, a written request for inspection of public records that has not been permitted within fifteen days of receipt by the office of the custodian may be deemed denied."). Although we appreciate that, as the County explained in response to our inquiry, the records custodian may have had a "personal family matter" that delayed its substantive response, IPRA's deadlines are clear and another County employee should have been responsible for satisfying them in the custodian's absence. In any case, Ms. Jones is correct that the County's written communications were noncompliant with IPRA.

Conclusion

Because the County did not entirely satisfy its statutory obligations in responding to Ms. Jones' request, we recommend that it take action to review both her request specifically and its IPRA policies more generally. With respect to Ms. Jones, since it appears that the County may not have fully accounted for all responsive records, the County should reopen her request and conduct

¹ For its part, the County stated in response to our inquiry that it "did not redact or withhold any responsive records" without elaborating further.

another search for potentially responsive records. In the event that it locates additional records responsive to her request, it should provide those records to her or send her a “written explanation of denial” as soon as possible. Section 14-2-11(B).

More generally, the County should review its internal IPRA policies to ensure that the lapses in communications evident in this complaint do not recur. The County’s internal policies must ensure that, upon receiving any IPRA request, it provides the requestor either the requested records immediately or a written letter within three business days stating “when the records will be available for inspection or when the public body will respond to the request.” Section 14-2-8(D). Equally importantly, the County’s internal policies must ensure that it sends a substantive response – permitting or denying inspection or requesting additional time to respond – to all records requestors within fifteen calendar days. We would emphasize that such policies are essential both to avoid unnecessary future litigation with records requestors and to satisfy the County’s obligation to provide the public “the greatest possible information” about governmental affairs. Section 14-2-5.

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,



John Kreienkamp
Assistant Attorney General

Enclosure

cc: Joanne Jones