

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
ATTORNEY GENERAL

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May 8, 2019

**VIA ELECTRONIC MAIL ONLY**

Leon K. Shook  
9125 Copper NE, Apt. 315  
Albuquerque, New Mexico 87123  
Email: [leonshook@hotmail.com](mailto:leonshook@hotmail.com)

**RE: Inspection of Public Records Act Complaint – New Mexico Department of Corrections**

Dear Mr. Shook:

On or about January 7, 2019, the Office of the Attorney General, Open Government Division (“OGD”), received your complaint against the New Mexico Department of Corrections (“Department”) alleging violations Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 to -12 (1993, as amended through 2019) (“IPRA”). More specifically, you allege that the Department failed to provide all responsive records to an IPRA request and failed to provide a written explanation for denying production of exempt records and redacting confidential information from the records. The IPRA request essentially involve documents related to an administrative investigation by the Department of misconduct alleged against you. Our review, however, is limited to the alleged violations of IPRA.

We understand that on October 15, 2018, you requested an extensive number of records related to an administrative investigation, Case Number 16-0499. On November 4, 2018, you then limited the scope of records sought in your earlier request. On December 7, 2018, the Department informed you that certain documents related to the Office of Professional Standards (“OPS”) investigation, Case Number 16-0499, would not be provided. In its denial letter, the Department stated:

[t]he OPS report you reference (16-0499) will not be provided, nor will any referrals regarding that investigation or emails where disciplinary matters or infractions pertaining to the investigation were discussed. This

information is not public information, and is protected from inspection and copying by Section 14-2-1(A)(8) specifically the attorney client privilege and work product privilege. It is also protected by Section 14-2-1(A)(3) (matters of opinion in personnel files); and Cox v. New Mexico Department of Public Safety, 148 N.M. 934, 242 P.3d 501 (Ct. App. 2010) (matters of opinion protected from disclosure include internal evaluations, performance assessments, and disciplinary reports or documentation). It is also protected by Section 14-2-1(A)(8), specifically 17.1.12 NMAC (Confidential employment records include records and documentation containing matters of opinion, and documents concerning infractions.

After review of your complaint, the Department's response and supporting documentation, our office cannot conclude that the Department improperly denied your IPRA request. Without reviewing the documents withheld by the Department, the OGD cannot definitively determine if the withheld documents fall under the IPRA exception. When a public entity withholds public records, a court may conduct an in camera review of the withheld records. *See, e.g., Bd. of Comm'rs v. Las Cruces Sun-News*, 2003-NMCA-102, ¶¶ 11-13, 134 N.M. 283, 76 P.3d 36. However, the OGD does not have the authority to conduct such a review.

Accordingly, we consider this matter closed. Thank you for affording our office this opportunity to be of assistance.

Sincerely,



Lori Chavez  
Assistant Attorney General

cc: Jim Brewster, General Counsel for the New Mexico Department of Corrections

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## Electronic Complaint Submission

### Submission Detail

<b>ECS Reference Number</b>	NMOAG-ECS-20190107-c6cb
<b>Final Submit Date</b>	1/7/2019 12:28:56 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

**Probation/Parole Officer Leon K. Shook**

Person

#### Address

[REDACTED]

#### Contact information

[REDACTED]

### Complaint against

**New Mexico Department of Corrections - Mr. Jim Brewster**

Public Body (Government Entity)

#### Address

4337 NM 14  
P.O. Box 27116  
Santa Fe, New Mexico 87508

#### Contact information

[Jim.Brewster@state.nm.us](mailto:Jim.Brewster@state.nm.us)  
(505) 827-8662  
<https://cd.nm.gov/>

## Complaint Specifics

<b>Format of IPRA request:</b>	Written
<b>Date IPRA request was submitted to the public body:</b>	10/15/2018
<b>Date of all responses received from the public body:</b>	10/30/18, 11/5/18, 10/22/18, 10/26/18, 12/7/18
<b>Records</b>	No records were provided., The agency provided some but not all of the records responsive to the request.
<b>Denied requests to inspect public records</b>	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.

## Transaction

## Documents



IPRA REQUEST 18-414.eml

IPRA REQUEST 18-414

### Comments

File format opens with Outlook.



IPRA REQUEST 18-415 (PART 1).eml

IPRA REQUEST 18-415 (PART 1)

### Comments

File opens with Outlook.

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

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## Patricia Salazar

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**From:** Earl, Catherine, NMCD <Catherine.Earl@state.nm.us>  
**Sent:** Friday, December 7, 2018 11:42 AM  
**To:** Leon Shook  
**Cc:** Brewster, Jim, NMCD; Garcia, Leslie A, NMCD  
**Subject:** [EXT] RE: MODIFIED, SHORTENED - IPRA Information Request 18-415  
**Attachments:** Bednarski complaint letter 001.jpg; Bednarski complaint letter 002.jpg; FW\_ Formal request of materials in OPS Case #16-0499.pdf; FW\_ Leon Shook Statement.pdf; Memo Style10.pdf; Memo Style15.pdf; Memo Style20.pdf; Memo Style21.pdf; Memo Style7.pdf; Memo Style8\_Redacted.pdf; Memo Style9.pdf; Scanned from a Xerox Multifunction Device.pdf

\*\*\*PART 1 OF 2\*\*

Mr. Shook:

NMCD is providing emails and other documents containing public information responsive to your narrowed request below. These emails, your written statement, and your taped investigatory interviews are provided above. I am providing the taped interviews in a separate email.

There are certain documents you will not be receiving. The OPS report you reference (16-0499) will not be provided, nor will any referrals regarding that investigation or emails where disciplinary matters or infractions pertaining to the investigation were discussed. This information is not public information, and is protected from inspection and copying by Section 14-2-1 (A) (8), specifically the attorney client privilege and work product privilege. It is also protected by Section 14-2-1 (A) (3) (matters of opinion in personnel files); and Cox v. New Mexico Department of Public Safety, 148 N.M. 934, 242 P.3d 501 (Ct. App. 2010) (matters of opinion protected from disclosure include internal evaluations, performance assessments, and disciplinary reports or documentation). It is also protected by Section 14-2-1 (A) (8), specifically 1 7.1.12 NMAC (Confidential employment records include records and documentation containing matters of opinion, and documents concerning infractions).

The Department has now fully responded to your request and is closing this matter.

Catherine Earl  
IPRA Paralegal  
catherine.earl@state.nm.us  
NMCD-OGC  
505-827-8719

The information contained in this electronic communication is protected by the Electronic Privacy Act, 18 U.S.C. 2510 et seq., the attorney-client privilege and/or work product doctrine. It is intended for the use of the individual and/or entity named above and the privileges are not waived by virtue of having been sent electronically. If the person actually receiving this communication is not the intended recipient or employee or agent responsible for delivering it to the intended recipient, any use, distribution, or copying this communication sent or received in error is strictly prohibited.

**From:** Leon Shook <[leonshook@hotmail.com](mailto:leonshook@hotmail.com)>  
**Date:** November 4, 2018 at 11:47:44 AM MST  
**To:** "Brewster, Jim, NMCD" <[Jim.Brewster@state.nm.us](mailto:Jim.Brewster@state.nm.us)>  
**Subject:** [EXT] RE: MODIFIED, SHORTENED - IPRA Information Request 18-415

Mr. Brewster,

This is a modified and significantly shortened Inspection of Public Records Act (IPRA) information request.

I am requesting all emails and written documents to or from the following parties with keywords below:

All communications between the Threet Law Firm and NMCD, which should be brief due to this being a situational matter.

Acting Director Daniel Barela	07/01/2018 to present
Former Director Rose Bobchak	08/1/2016 to 08/01/2018
OPS Manger Carl Vigil	08/1/2016 to present
OPS Investigator Robert Parra	08/1/2016 to present
Probation/Parole Supervisor Joe Garcia	11/01/2017 to present

Key Words:

Potcher  
Leon, Shook  
Investigation  
Case number 16-0499

All referral documents which initiated investigation number 16-0499 to include written notes, emails or any documents on file.

Thank you for your continuing cooperation in this important matter.

Enjoy your weekend,

LS

Sent from [Mail](#) for Windows 10

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**From:** Brewster, Jim, NMCD <[Jim.Brewster@state.nm.us](mailto:Jim.Brewster@state.nm.us)>  
**Sent:** Friday, October 26, 2018 2:14:12 PM  
**To:** Leon Shook  
**Cc:** Earl, Catherine, NMCD  
**Subject:** Re: [EXT] RE: IPRA Information Request 18-415

Assuming that you are not going to narrow it, I would estimate that it would take at least three



months. That estimate might change depending on how involved it gets when we get into it. You are asking for a lot of work by a large number of folks.

Sent from my iPhone

On Oct 26, 2018, at 1:25 PM, Leon Shook <[leonshook@hotmail.com](mailto:leonshook@hotmail.com)> wrote:

Mr. Brewster,

Can you please provide a timeline for when this IPRA Request can be fulfilled?

Thanks in advance for your help with this matter,

Mr. Leon Shook

Sent from [Mail](#) for Windows 10

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**From:** Brewster, Jim, NMCD <[Jim.Brewster@state.nm.us](mailto:Jim.Brewster@state.nm.us)>

**Sent:** Monday, October 22, 2018 1:51:08 PM

**To:** [leonshook@hotmail.com](mailto:leonshook@hotmail.com)

**Cc:** Earl, Catherine, NMCD

**Subject:** RE: IPRA Information Request 18-415

Mr. Shook:

This is in response to your IPRA request below.

I understand that SPO has already provided your personnel file to you (item 2 below).

In item 3, you seek a copy of OPS 16-0499. That report is protected from disclosure by the attorney client privilege and work product privileges. It is not a public record, although if you want a copy of your own written or recorded statements, I will send them to you. However, please read the remainder of this response before you make that decision.

In item 1 below, you ask for emails and documents from various employees which include any words from a list of 11 key words, for the period of over two years (from August 1, 2016 to October 15, 2018) for most employees. First of all, the Department will not have email accounts for a few of the individuals or entities for which you are seeking information. Melinda Potcher is not an NMCD employee and has no email account. Ronald Broich no longer works for the NMCD and his email account no longer exists. Michael Bednarski works for CYFD (not NMCD anymore) and the NMCD has no access to or custody of his email account at this point. Vicky Lounello and Rose Bobchak have retired and the NMCD no longer has email accounts for either of them. Finally, there is no email account for the Office of General Counsel.

Even after considering that there are no email accounts for the individuals and office noted above, what you are asking for remains a monumental task. Searching each employee's email account for any email which mentions a key word will take a considerable amount of time. Further, because email can only be searched one key word at a time and key words cannot be stringed together into one search, the task

becomes more difficult and time consuming. Once all responsive emails are gathered, my office would have to review each and every email to see if it can be released. The review by my office would also take a substantial amount of time. Many emails would likely be subject to the attorney client privilege or would constitute a confidential personnel matter or issue, and many would have nothing to do with you or OPS 16-0499 because of the very broad nature of the selected key words. Please be advised that I also spoke with Acting Director Daniel Barela about OPS report 16-0499. He informed me that because the allegations against you are two years old, you will face no disciplinary action out of those allegations.

With all of this in mind, I ask that you rescind your request, or at least to significantly narrow it. If there is something in particular you are really looking for, we can look to see if there any responsive public records. However, your request as currently written is very broad, very onerous and burdensome, very time consuming, and will likely produce documents (emails and written documents) which have nothing to do with you and which may otherwise be privileged or nonpublic in any event.

Please let us know as soon as you can whether you will narrow or rescind this request.

Thank you.

Sincerely,

Jim Brewster  
General Counsel  
New Mexico Corrections Department  
P.O. Box 27116  
Santa Fe, NM 87502-0116  
(505) 827-8662  
(505) 827-8685 facsimile

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**From:** Leon Shook <[leonshook@hotmail.com](mailto:leonshook@hotmail.com)>  
**Sent:** Monday, October 15, 2018 7:50 PM  
**To:** Earl, Catherine, NMCD <[Catherine.Earl@state.nm.us](mailto:Catherine.Earl@state.nm.us)>  
**Subject:** [EXT] IPRA Information Request

Good Evening Ms. Earl,

This is an Inspection of Public Records Act (IPRA) information request. I am requesting all emails and written documents to or from the following parties with keywords below.

Melinda Potcher	08/1/2016 to present
Melissa Threet	08/1/2016 to present
Michael Bednarski	08/1/2016 to present
Ronald Broich	08/1/2016 to present
Victoria (Vicky) Lounello	08/1/2016 to present
Daniel Barela	08/1/2016 to present
Rose Bobchak	08/1/2016 to present
Carl Vigil	08/1/2016 to present
Robert Parra	08/1/2016 to present

Ronald Martin	08/1/2016 to present
Joe Garcia	10/1/2016 to present
Jim Brewster	08/1/2016 to present
Office of General Counsel	08/1/2016 to present
Cheryl Hobbs	03/1/2018 to present

Key Words:

Melinda, Potcher  
Leon, Shook  
Investigation  
Discipline  
Conduct  
Retaliation  
Evaluation  
Undue Familiarity  
Breach of Confidentiality  
Chain of Command  
Case number 16-0499

I am also requesting a copy of my personnel file maintained at the Gara Building in Albuquerque NM also known as a "soft" file that the department keeps on all employees. This file is currently in the custody of my current supervisor, Joe Garcia.

I am also requesting a copy of all documents regarding investigation number 16-0499 to include written notes, emails, interviews, recordings or any documents on file.

Thank you for your help with this important matter,

Leon Shook  
9125 Copper NE  
Apt #315  
Albuquerque, NM 87123

(505) 304-3866

Sent from [Mail](#) for Windows 10