

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

December 26, 2017

Maria R. Sanchez, General Counsel
NM Department of Information Technology
715 Alta Vista St.
Santa Fe NM 87505

Re: IPRA complaint by Ms. Yoman

Dear Ms. Sanchez:

We have completed reviewing the response from the New Mexico Information Technology Department ("Do-IT") to a complaint received at the Office of Attorney General from Ms. Faith Yoman ("Complainant") pursuant to the Inspection of Public Records Act ("IPRA") NMSA 1978, §§ 14-2-1 to -12 (1947, as amended through 2013) and conclude that Do-IT violated the Inspection of Public Records Act, ("IPRA"), NMSA 1978, §§ 14-2-1 to -12 (1947, as amended through 2013) in its dealings with Complainant.

Our purpose in writing you is to bring the violation to your attention in an effort to prevent a recurrence of this type of error and to encourage correction in response to this letter. The purpose of IPRA, one of the state's "sunshine" laws, is to hold public bodies to the state's assurance that "all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees." *See* Section 14-2-5.

The Complainant alleges that you failed to release information in timely fashion regarding the calculation of a back-pay award made to her in 2014. In your response of September 23, 2016, you acknowledged that the DoIT failed to timely respond to complainant's request under timelines required by IPRA. *See* Section 14-2-8(D) (setting forth deadlines for response to a records request). You acknowledge that you "did not properly communicate . . . on a timely basis, although [Complainant] was already aware of the lack of responsive documents." (Citation omitted). IPRA requires that a recipient of a written records request respond within statutory timelines to let a complainant know whether and when the recipient will produce records, deny the request or request an extension of time to respond. *See* IPRA, *Id.*

Your response stated that:

- 1) DoIT was not the records custodian for the information requested;

- 2) DoIT had no responsive documents to send; and
- 3) Complainant was aware that DoIT had no responsive documents since both DoIT and the Department of Finance and Administration (DFA) responded in January 2015 to Complainant's same records request, stating that neither agency had the requested records and that neither agency was obliged to produce the information through creating a record. See the January 5 response stating that "production of the information would require the creation of a record—an act in direct contravention to the Inspection of Public Records Act."

The right to inspect applies to any nonexempt public record that exists at the time of the request. A records custodian or public body is not required to compile information from the public body's records or otherwise create a new public record in response to a request." *See* § 14-2-8 (B).

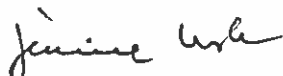
IPRA does not directly address your obligation to respond to repeat requests, but does not offer an exemption from responding to repeat requests. Therefore, DoIT had an obligation to respond to the 2016 request. Further, an agency is required to inform Complainant when it does not have a record, to forward the request to an agency more likely to have the information and let Complainant know you have sent "wrong custodian" letter to the other agency NMSA 1978, § 14-2-8(E).

It is important that DoIT take caution when responding to IPRA requests, as a records custodian has an obligation to promptly reply to records requests and forward to the appropriate custodian any requests for records that maintained by other agencies.

Consequences for failure to comply with New Mexico's "sunshine" laws can be serious, and legal action can be taken to enforce IPRA. *See* § 14-2-12. A judicial finding of a violation may result in a court order for damages, costs, and reasonable attorney fees paid by the public body. We trust that DoIT will train staff to review its procedures to ensure that similar issues are avoided in the future.

For more information about IPRA, please see the Inspection of Public Records Act Compliance Guide, available on our website at: www.nmag.gov. If you have questions about the specific matters addressed in this determination or the Inspection of Public Records Act in general, you may reach or contact the Open Government Division of the Office of the Attorney General at (505) 490-4060.

Sincerely,



Jennie Lusk
Assistant Attorney General

Cc: Faith Yoman

2016 AUG 30 AM 9:14

INSPECTION OF PUBLIC RECORDS ACT ("IPRA") COMPLAINT FORM
New Mexico Office of the Attorney General
Open Government Division

YOUR CONTACT INFORMATION:

First Name: Faith Last Name: Yoman

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): New Mexico Dept. of Information Technology

Format of IPRA Request: Written Oral

Date IPRA Request was Submitted to the Public Body: 7/11/2016

Date of all Responses Received from the Public Body: Ø

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.

I originally requested information from the Dept. of Finance (DFA) about how my back-pay check

received in December of 2014, due to the AFSCME union lawsuit on behalf of state employees. DFA responded very quickly, saying they did not have the requested information, and referred me to the Dept. of Information Technology (DoIT.) I requested my back-pay calculation sheet on July 11, 2016, from DoIT, but I have received no response whatsoever, despite sending them a second query & reminder at the end of July, 2016.

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.

(attached)

8/23/2016

Gmail - IPRA request

cell phone: (505) 603-3545

Faith Yoman <faithyoman15@gmail.com>

Fri, Jul 29, 2016 at 12:33 PM

To: NM DHSEM <estevan.lujan@state.nm.us>

Cc: julia.ruetten@state.nm.us, Tim Keller <tim.keller@osa.state.nm.us>, Justine Freeman <justine.freeman@osa.state.nm.us>, Sunalei Stewart <Sunalei.Stewart@osa.state.nm.us>, "Miles D. Conway" <Miles@afscmenewmexico.org>

Bcc: Sp8ceBarb <sp8cebarb@aol.com>, Eleanor Bernau <eleanorb412@q.com>

Mr. Lujan--

See the message below, which I sent to you on July 11, 2016. I have received no response, either by mail, e-mail, or telephone. I understand that IPRA requests are to be responded to within 15 days, and it has been more than 15 days already. Can you please let me know what is happening on your end, and why I have not received any response to my query?

Faith Yoman (retired NM employee)

----- ForwardInbox (84)ed message -----

From: **Faith Yoman** <faithyoman15@gmail.com>

Date: Mon, Jul 11, 2016 at 2:19 PM

Subject: IPRA request

To: estevan.lujan@state.nm.us

[Quoted text hidden]

(see next page)



Faith Yoman <faithyoman15@gmail.com>

IPRA request

4 messages

Faith Yoman <faithyoman15@gmail.com>
To: estevan.lujan@state.nm.us

Mon, Jul 11, 2016 at 2:19 PM

Hello Mr. Lujan-

I was referred to your agency by the NM Department of Finance and Administration; they do not have the records I requested.

Request to Inspect Public Records**July 11, 2016****To: Estevan Lujan, Records Custodian**
Dept. of Information Technology
State of New Mexico
PO Box 22550
Santa Fe NM 87502

I would like to inspect and have a copy of the following record:

Calculation sheet(s) for my AFSCME Union Lawsuit Back Pay check, issued to me on December 11, 2014. Gross wage was \$3,207.39; net pay distribution after deductions was \$2,462.95. Check number was 398281. My State of NM employee I.D. was 104506; I was employed by the NM State Library.

I understand that the State of New Mexico contracted with an outside company to calculate and distribute our back-pay checks. I would like to see how that contractor calculated the amount that was paid to me in December of 2014, and I would also like to see the amount due and paid for each year of employment for which back wages were due, from January, 2009, through June, 2014.

If your agency does not maintain this record, please let me know who does, and include the proper custodian's name and address.

I agree to pay any applicable fees for copying and/or transmitting the records. You may send the information to me as an e-mail attachment. If the charges exceed \$10, please call me to discuss. I understand that I may be asked to pay the fee in advance. If so, please provide a receipt indicating the charges for the document.

Thank you in advance for your prompt attention to this matter.

Sincerely,

Faith Yoman (retired State of New Mexico employee)
faithyoman15@gmail.com

physical address: 2866 Pueblo Jacona
Santa Fe NM 87507

mailing address: PO Box 22127
Santa Fe NM 87502