

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

July 19, 2017

Ralph Prizler
2165 Sugar Pine Way
Las Cruces, NM 88012

Re: Inspection of Public Records Act (IPRA) Complaint against the New Mexico Department of Transportation ("DOT")

Dear Mr. Prizler:

We have completed the review of your complaint against the New Mexico Department of Transportation ("DOT") under the Inspection of Public Records Act ("IPRA"), NMSA 1978, §§ 14-2-1 to -12 (1947, as amended through 2013). You alleged that the DOT violated IPRA by failing to respond to your request for records related to highway modifications on I-25 in southern New Mexico.

Based on our review of the relevant documents and analysis of IPRA we conclude that DOT committed no IPRA violations and, therefore, we now close this matter, noting that DOT has released all requested documentation as well as documentation in excess of that strictly required under the Act.

DOT wrote us December 14, 2015 in response to our inquiries dated October 22, 2015 regarding your complaint that DOT failed to provide you records you requested regarding the modification of curbs on I-25 at Exit 9 Thorp Road in southern New Mexico. DOT provided the records originally requested and considered its response complete. In our October letter, we asked DOT on your behalf whether there were any other public records explaining why the curbs were installed and later modified, and who authorized their construction. DOT responded that DOT did not identify a request from you for those potentially related records and thus, DOT "was never afforded an opportunity to respond."

We have been in contact with DOT since, on your behalf, seeking release of other documents the department may have discovered in satisfying your original request. In June, 2017, DOT produced a voluminous number of documents that could be responsive to your original request, including

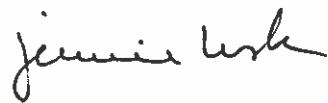
“pdf” files relating to the original request to cut back the median curb on that part of the highway, an image of the planning sheet for the original design of the median curb, and two images already provided to you in March and May, 2015 showing the curb both before and after it was modified. It also provided a means for you to access large contract documents that could help you determine who authorized the construction.

The department’s release of these records to you last month was an extra measure of diligence in response to your original request, despite the department’s understanding that it had no obligation to furnish you documents and contracts you did not expressly request. A request for public records must “identify the records sought with reasonable particularity.” NMSA 1978, Sec. 14-2-8 (C). An agency is required to release only records it considers responsive in good faith. See *ACLU v. Duran*, 2016 -NMCA- 063, 392 P.3d 181 (noting that “this opinion does not hold that a governmental entity is required to produce records that it, in good faith, believes to be unresponsive.”)

We agree that the department was not obligated to release these extra documents discovered in conjunction with its original search and, for that reason, note with approval that the department acted in the spirit of the larger purpose of IPRA, recognizing that “all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees.” NMSA 1978, Sec. 14-2-5.

When a public body has disclosed all the responsive records in its possession, it is in substantial compliance with IPRA. See *Derringer v. State*, 2003-NMCA-073, 133 N.M. 721 (2003) (closing a matter after a public body “ultimately produced or allowed for the inspection of all responsive records” it possessed). Accordingly, this Office considers this matter closed.

Sincerely,



Jennie Lusk
Assistant Attorney General

cc: Aaron Frankland, Assistant General Counsel
Department of Transportation
P.O. Box 1149
Santa Fe, NM 87504-1149

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

New Mexico Office of the Attorney General

Open Government Division

YOUR CONTACT INFORMATION:

First Name: Ralph Last Name: Prizler

Address: [Redacted]

City: [Redacted] State: _____ Zip Code: _____

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 DOT

Format of IPRA Request: Written Oral

Date IPRA Request was Submitted to the Public Body: _____

Date of all Responses Received from the Public Body: _____

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. 2 pictures
- 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 believe my certified letter of June 4 2015 to Mr. Hopto speaks for itself plus all the emails I want that in formation!

Ralph E. Rizzler 9-17-15