

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
ATTORNEY GENERAL

September 5, 2017

Terri Horn  
7 Altura Road  
Santa Fe, NM 87508

**Re: Inspection of Public Records Act Complaint – New Mexico Public Education Department**

Dear Ms. Horn:

We have reviewed your complaint alleging that the New Mexico Public Education Department (“PED”) violated the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 to -12 (as amended through 2013) (“IPRA”), by failing to provide all public records responsive to your request to inspect public records. As discussed below, based on the information available to us at this time, it appears that PED has now complied with IPRA by providing you with all responsive records.

According to the complaint, on December 5, 2016, you submitted a request to PED for a copy of your personnel file. PED responded to your request on December 12, 2016. When you reviewed the file, you determined that PED had not included specific responsive records that you knew existed. When you asked PED about the omitted records, PED explained that it did not keep the records in your employee file<sup>1</sup> and that some of the requested records were excepted from disclosure under IPRA.<sup>2</sup> See emails from Miranda Garcia to Terri Horn (Dec. 12, 2016, 1:55 p.m. & 2:16 p.m.) On December 16, 2016, you submitted a second public records request to PED, which provided additional detail regarding the specific personnel records you sought. In an email

<sup>1</sup> PED probably should have treated your request as a request for personnel records rather than limiting it to records PED kept in your specific “employee file.” As the New Mexico Court of Appeals has noted, a record’s status as a “personnel record” does not depend on whether it is placed in a “personnel file.” See *Cox v. New Mexico Dep’t of Pub. Safety*, 2010-NMCA-096, ¶ 21, 148 N.M. 934 (stating that “the location of a record in a personnel file is not dispositive of whether the exception [for “matters of opinion in personnel files”] applies; rather, the critical factor is the nature of the document itself”), *cert. quashed*, 150 N.M. 765 (2011).

<sup>2</sup> Although “letters or memorandums which are matters of opinion in personnel files...” are excepted from the right to inspect public records, NMSA 1978, § 14-2-1(A)(3), the exception does not apply to an employee who requests access to his or her own personnel records. See 1.7.1.12(A) NMAC (“[e]mployees shall have access to their own file”).

September 5, 2017  
Terri Horn  
Page 2

response dated January 10, 2017, PED provided you with “copies of the personnel file documents in the custody or control of [PED] that appear responsive to your request....” Letter from Beverly Friedman, Custodian of Records to Terri Horn (Jan. 10, 2017) (via email).

The legislative purpose of IPRA is “freely allowed, *prompt* compliance” with the right to inspect public records. *Derringer v. State Livestock Board*, 2003-NMCA-073, ¶ 11, 133 N.M. 721 (emphasis added), *cert. denied*, 133 N.M. 727 (2003). IPRA requires a records custodian who receives a written request for public records to “permit the inspection immediately or as soon as is practicable under the circumstances, but not later than fifteen days after receiving [the] written request.” NMSA 1978, § 14-2-8(D).

PED’s response to your December 16, 2016 records request, which was emailed on January 10, 2017, did not meet Section 14-2-8(D)’s deadlines for allowing access to public records. If, as PED stated in its response, PED received the request on December 20, PED should have made responsive records available to you no later than January 4, 2015. Nevertheless, although untimely, it appears that PED has now complied with its obligation under IPRA to provide you with all public records responding to your request. *See Derringer*, 2003-NMCA-073, ¶ 15 (a public body is not liable for damages under IPRA in an action brought after the public body has provided responsive records). As such, we consider this matter resolved.

Thank you for bringing the issues discussed above to our attention and allowing us the opportunity to address them. If you have any questions regarding this determination or IPRA in general, please let me know.

Sincerely,



Dylan K. Lange  
Assistant Attorney General

cc: Dawn E. Mastalir, Acting General Counsel, PED  
Beverly Friedman, Custodian of Records, PED

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

New Mexico Office of the Attorney General

Open Government Division

**YOUR CONTACT INFORMATION:**

First Name: TERRI Last Name: HORN

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): Public Education Department

Format of IPRA Request:  Written  Oral

Date IPRA Request was Submitted to the Public Body: 12/5/2016

Date of all Responses Received from the Public Body: 12/20/2016

**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.

---

---

---





terri horn <terri.nmsu@gmail.com>

---

## NMPED Letter of Receipt for IPRA #16-326

---

Friedman, Beverly A., PED <Bev.Friedman@state.nm.us>

Wed, Dec 7, 2016 at 2:17 PM

To: "terri.nmsu@gmail.com" [REDACTED]

This response was sent via email to: [REDACTED]

Terri Horn [REDACTED]

IPRA #16-326

Dear Ms. Horn:

Your request to inspect public records was received by me as the Records Custodian of the New Mexico Public Education Department (PED) on December 5, 2016. Your request to inspect public records sought in pertinent part:

I would like to request a copy of my employee file and all documents within. The electronic copy can be sent to this email address. DOB 3-11-84 SSN #...7641

Pursuant to the Inspection of Public Records Act, a response will be forthcoming within 15 days of our receipt of the request or sooner.

Sincerely,

*Beverly Friedman*

Beverly Friedman

Custodian of Records

**Beverly Friedman**

**PED Liaison to the PEC**

**Custodian of Record**

**New Mexico Public Education Department**

**300 Don Gaspar**

**Santa Fe, NM 87501**

**505-827-6661 office**

**505-795-0180 cell**

**Bev.Friedman@state.nm.us**

---

 **16-326 Horn Letter of Receipt 12-7-16.pdf**  
88K



terri horn <terri.nmsu@gmail.com>

---

## IPRA Request

---

terri horn [REDACTED]

Fri, Dec 16, 2016 at 11:25 AM

To: Bev.Friedman@state.nm.us

Hello Beverly,

I would like to place another IPRA request. I would like to receive any new documents added to my personnel file since December 1, 2016, which is maintained by the Human Resources bureau. *In addition*, I would also like to request ALL files within my soft file which was maintained by my direct supervisor Mr. Cris Ortiz and also Mr. Dean Hopper. Finally, I would like to request all emails and attachments within that were sent to and from myself and Mr. Cris Ortiz between 7/1/2016- 7/16/2016 and 11/7/2016-11/15/2016. The electronic copies can be sent to this email address. My birth date is [REDACTED] and SSN is [REDACTED]. Thank you.

[REDACTED]

**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.

After being released from my probationary position with the Coordinated School Health and Wellness Bureau with the Public Education Department, I was not provided with my interim evaluations or my self-evaluations. These were conducted in July 2016 and November 2016 and I was emailed the documents by my direct supervisor, Mr. Cris Ortiz, but I did not have a chance to retrieve these before leaving the office on December 1, 2016 (last day of employment). After the evaluations, I was informed by my supervisor that these would be placed in my personnel file so I did not think to bring ~~est~~ a copies home with me. After being released from ~~my~~ position, I tried to request copies of my personnel file on December 5<sup>th</sup> 2016. I received my personnel file on December 12<sup>th</sup>, 2016, but the file did not contain the copies of my interim or self-evaluations. I tried to inquire as to how to retrieve these but I was informed that the policy of the agency is to include only the final "anniversary" evaluation in my file. I was informed that my interim and self-evaluations would be in the possession of Mr. Cris Ortiz and that the Human Resources bureau could not force him to send these to me. The HR bureau has cited "NMAC 1.7.1.12(C) NMAC, performance appraisals are exempt from IPRA production". However, I feel that I have the right to these documents because they are MY performance appraisals (not someone else's) that I am trying to obtain. I have been informed by both staff from the State Personnel Office and also the attorney with the Open Government Division of the Office of the Attorney General that I do have the right to obtain these personnel files, but no office has indicated that they have the regulatory authority to force the agency to provide these to me. Additionally, I would like copies of these evaluations because they reflect the rating of "Meets Expectations" and I want to be able to show these to future potential employers because the PED used the justification "Employee not meeting expectations" for releasing me. Furthermore, I see no legal or administrative issue in providing these to me when they already HAVE BEEN provided to me via email after the evaluations were conducted. These are not documents that I have never seen before or that otherwise would not be in my possession. They were signed and dated by me. I understand the PED's HR policy and I do know that as a probationary employee, I have no legal recourse, nor do I intend to take legal action against the agency. However, I do want the documents that are, by law and by NMAC, required to be provided to me following an evaluation. Finally, I have reached out to Mr. Ortiz via an email separate of an IPRA request that would not place the agency in a position of violating the above cited NMAC code; however, my requests have been ignored. I feel that the motive of both the agency and my former supervisor at this time is malicious towards me and extends beyond simply following codes. I would like BOTH my first and second interim evaluations and also my self-evaluations to be provided to me.

**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.

After being released from my probationary position with the Coordinated School Health and Wellness Bureau with the Public Education Department, I was not provided with my interim evaluations or my self-evaluations. These were conducted in July 2016 and November 2016 and I was emailed the documents by my direct supervisor, Mr. Cris Ortiz, but I did not have a chance to retrieve these before leaving the office on December 1, 2016 (last day of employment). After the evaluations, I was informed by my supervisor that these would be placed in my personnel file so I did not think to bring extra copies home with me. After being released from my position, I tried to request copies of my personnel file on December 5<sup>th</sup> 2016. I received my personnel file on December 12<sup>th</sup>, 2016, but the file did not contain the copies of my interim or self-evaluations. I tried to inquire as to how to retrieve these but I was informed that the policy of the agency is to include only the final “anniversary” evaluation in my file. I was informed that my interim and self-evaluations would be in the possession of Mr. Cris Ortiz and that the Human Resources bureau could not force him to send these to me. The HR bureau has cited “NMAC 1.7.1.12(C) NMAC, performance appraisals are exempt from IPRA production”. However, I feel that I have the right to these documents because they are MY performance appraisals (not someone else’s) that I am trying to obtain. I have been informed by both staff from the State Personnel Office and also the attorney with the Open Government Division of the Office of the Attorney General that I do have the right to obtain these personnel files, but no office has indicated that they have the regulatory authority to force the agency to provide these to me. Additionally, I would like copies of these evaluations because they reflect the rating of “Meets Expectations” and I want to be able to show these to future potential employers because the PED used the justification “Employee not meeting expectations” for releasing me. Furthermore, I see no legal or administrative issue in providing these to me when they already HAVE BEEN provided to me via email after the evaluations were conducted. These are not documents that I have never seen before or that otherwise would not be in my possession. They were signed and dated by me. I understand the PED’s HR policy and I do know that as a probationary employee, I have no legal recourse, nor do I intend to take legal action against the agency. However, I do want the documents that are, by law and by NMAC, required to be provided to me following an evaluation. Finally, I have reached out to Mr. Ortiz via an email separate of an IPRA request that would not place the agency in a position of violating the above cited NMAC code; however, my requests have been ignored. I feel that the motive of both the agency and my former supervisor at this time is malicious towards me and extends beyond simply following codes. I would like BOTH my first and second interim evaluations and also my self-evaluations to be provided to me.