

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
ATTORNEY GENERAL

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March 12, 2019

Jose Villegas, Sr.  
10 Camino Torcido Loop  
Santa Fe, NM 87508  
Email: [Caselda2010@hotmail.com](mailto:Caselda2010@hotmail.com)

**Re: Inspection of Public Records Complaint: NM Regulation and Licensing Department**

Dear Mr. Villegas:

The Office of the Attorney General, Open Government Division ("OGD"), has received your complaint alleging violations of the Inspection of Public Records Act ("IPRA"), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2017) by the New Mexico Regulation and Licensing Department ("RLD"). The OGD's jurisdiction is limited to a review of the IPRA. Your complaint states the public body did not provide or allow for the inspection of all documents requested stemming from your request. Specifically, you allege that RLD did not provide text messages from key employees regarding state business on state-issued cell phones. We have reviewed your complaint, RLD's response, and all the provided supporting documentation. Based on this review, we are unable to conclude that RLD violated IPRA in connection with your IPRA request. RLD stated in their response that they do not have text messages responsive to your request, and thus have nothing to provide.

BACKGROUND AND ANALYSIS

According to your complaint, you requested text messages from state-issued cell phones generated by RLD employee Enrique Knell and sent to "the Governor's office" and Trevor Crombie from August 1, 2016 through October 30, 2016. RLD timely responded to your request informing you they did not have original or copies of such text messages and that the cell provider, Verizon, could provide no more than thirty days of texts and could do so only through court order. You are correct that text messages between state agencies on state phones are public records. IPRA defines "public records" as:

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all documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, regardless of physical form or characteristics, that are used, created, received, maintained or held by or on behalf of any public body and relate to public business, whether or not the records are required by law to be created or maintained.

NMSA 1978, Section 14-2-6(G). Although New Mexico courts have not yet addressed this issue, other courts have concluded that speculation that responsive records exist, should exist, or could easily be created—without more—is not sufficient evidence to question a public body’s representation that it does not possess the requested public records. *See e.g., Safecard Serv., Inc. v. SEC*, 926 F.2d 1197, 1201 (D.C. Cir. 1991) (“[m]ere speculation that as yet uncovered documents may exist does not undermine the finding that the agency conducted a reasonable search for them.”); *Kozol v. Washington State Dep’t of Corrections*, 366 P.3d 933 (Wash. Ct. App. 2016) (public records law only required access to records that existed, “not nonexistent records that one believes should exist.”). RLD states no responsive text messages exist that are available to RLD. *See*, RLD Response attached. We must take at face value that no text messages you requested exist in RLD’s possession. We therefore conclude RLD did not violate IPRA. IPRA does not grant our office the power to compel records from public bodies in disputes over the withheld records. However, IPRA gives jurisdiction to state district courts to hear disputes arising under IPRA and to issue the appropriate remedy. Should a district court determine that a public body has illegally denied access to requested records, it may issue a writ or order requiring the public body to allow inspection of the withheld records. We therefore, are unable to conclude that RLD violated IPRA.

Although we did not determine that RLD violated IPRA as alleged in your complaint, we appreciate your bringing this matter to our attention. If you have any questions about this determination or IPRA in general, please let us know.

Sincerely,



Dylan K. Lange  
Assistant Attorney General

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

**YOUR CONTACT INFORMATION:**

First Name: JOSE Q. Last Name: Villegas SR.  
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 Regulation and Licensing Department & Governor's office - Santa Fe, NEW MEXICO

Format of IPRA Request:  Written  Oral

Date IPRA Request was Submitted to the Public Body: 2-3-2017

Date of all Responses Received from the Public Body: 2-7-2017

**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**

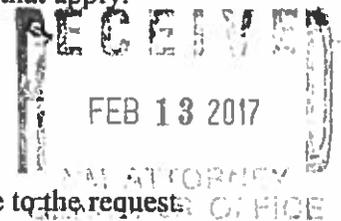
No records were provided.

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.

In accordance with the IPRA 14-2-6. Definition (G), "public records" means all documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, regardless of physical form or characteristics, that are used, created, received, maintained or held by or on behalf of any public body and relate to public business, whether or not the records are required by law to be created or maintained. On 2-3-2017, I requested all state-issued cell phone text messages that were generated by Enrique Knell to the Governor's office; dates: 8/1/2016 to 10/30/16 and all text messages between ENRIQUE Knell and Trevor Crombie; dates: 8/1/16 to 10/30/16. On 2/7/17, I was notified by the RLD that "please be advised that Verizon will release only thirty-days' worth of text messages being that they only retain said numbers; and they require you to request such texts directly from them with a Court-ordered subpoena. It is my opinion that the text messages between to state officials were related to public business of the New Mexico Counseling & Therapy Practice Board and maintained or held on behalf of a public body to be a public record."

**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.

In conclusion, I was denied a reasonable opportunity to inspect those public records (all state-issued cell phone text messages) relating to the NM RLD Board and Commissions Director ENRIQUE IZMELL and the Governor's office Bd + Commission Director Trevor Crombie's official Business relating to the New Mexico Counseling & Therapy Practice Bd official duties per state statutes. I have a legitimate concern that the public records (cell phone text messages) in question were not safeguarded and deliberately erased by these two public officials.

Jose A. Joffe Sr.

**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.

**Subject: Initial Response to IPRA Request of 02/03/17**  
**Importance: High**

Dear Mr. Villegas:

The New Mexico Regulation and Licensing Department is in receipt of your Inspection of Public Records Act request.

The Department needs additional time to review your request. Therefore, the Department will respond to your request on or before February 17, 2017.

The Department will notify you when the records you have requested are ready for inspection. The Department charges \$0.25 per page and payment must be received before records will be released.

If you should have any questions, please feel free to email me at [rld.ipra@state.nm.us](mailto:rld.ipra@state.nm.us) or call me at (505) 476-4503.

Thank you,  
LaurieAnn Trujillo  
Law Clerk/Paralegal/Chief Records Custodian

**From:** IPRA, RLD, RLD  
**Sent:** Tuesday, February 7, 2017 2:03 PM  
**To:** caselda2010@hotmail.com  
**Subject:** FEE REQUEST: IPRA Request of 02/03/17  
**Importance:** High

Dear Mr. Villegas:

The New Mexico Regulation and Licensing Department is in receipt of your Inspection of Public Records Act request and has compiled the records responsive to your request.

The Department charges \$0.25 per page. There are a total number of 568 pages; therefore, a payment of \$142.00 will need to be received before the records will be released via email, U.S. Mail or facsimile. The Department does not accept cash or credit card payments. The Department does accept checks and money orders payable to the **New Mexico Regulation and Licensing Department**. Please mail your payment to the address noted below. If you prefer, you may review these records at our Santa Fe office in person. Please schedule a time with me to visit our office to review these records.

**With respect to your requests for:**

- 1. All state-issued cell phone text messages generated by Enrique Knell to the Governor's Office; dates: 08/01/16 to 10/30/16 and**
- 2. All text messages between Enrique Knell and Trevor Crombie; dates: 08/01/16 to 10/30/16.**

**Please be advised that Verizon will release only thirty-days' worth of text messages being that they only retain said number; and they require you to request such texts directly from them with a court-ordered subpoena.**

If you should have any questions, or if you would like to schedule an appointment, please feel free to email me at [rld.ipra@state.nm.us](mailto:rld.ipra@state.nm.us) or call me at [\(505\) 476-4503](tel:5054764503).

Thank you,  
LaurieAnn Trujillo  
Law Clerk/Paralegal/Chief Records Custodian  
New Mexico Regulation and Licensing Department  
**Office of the Superintendent and General Counsel**  
P.O. Box 25101  
Santa Fe, NM 87504

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**From:** IPRA, RLD, RLD  
**Sent:** Monday, February 6, 2017 8:49 AM  
**To:** '[caselda2010@hotmail.com](mailto:caselda2010@hotmail.com)' <[caselda2010@hotmail.com](mailto:caselda2010@hotmail.com)>