

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

COMPLAINANT:

Susan Wheatley

IPRA REQUEST TO THE PUBLIC BODY:

Otero County, New Mexico
Written Request
Submitted to County on April 7, 2016
Response received on April 11, 2016

COMPLAINT:

The governmental agency provided documents which were extensively redacted under an assertion of attorney-client privilege.

DETAILED EXPLANATION OF ALLEGED IPRA VIOLATION:

In her response and explanation for redacting requested attorney billing statements, Lisa B. Jenkins, Otero County attorney, provided information regarding rules of evidence and statutes which establish the attorney-client privilege. I have no complaint about the existence of attorney-client privilege. However, I complain of her redaction of every "comment" and "service summary" on the legal billing. The mere fact that Ms. Jenkins redacted every such notation is enough to make her actions suspect.

It is well-recognized across many jurisdictions that information regarding a client's fees generally is not a confidential communication between an attorney and client. Attorney-client privilege arises only when an attorney discusses trial strategy, expresses legal opinions or conveys legal advice to his/her client.

Even though she says it is not, Ms. Jenkins' assertion that all portions of the redacted sections represent "the thought processes of the attorney in preparation of anticipated or ongoing litigation" is bald on its face. In Schein v. Northern Rio Arriba Elec. Coop., Inc., 122 N.M. 800, 932 P.2d 490, (1997), ". . . the weight of case law does not protect all types of ministerial information associated with legal communication." The Court further reasoned that allowing a governmental body to withhold information merely because the governmental body thought it so would allow a governmental body to protect any type of information by making a bald assertion of the fact. (Id.) In light of this reasoning, I assert that Otero County has failed in its burden of justifying the complete redaction of billing comments and service summaries.

By way of comparison, I am furnishing you with a copy of an unredacted legal billing received from

Otero County on a previous IPRA request. Please note that under the "description" heading, none of the references could even remotely be described as confidential communications, legal opinions, or legal advice. Why would any citizen believe that going forward from the date of this billing, the same attorneys would suddenly begin to include confidential information on their billings and use this route to communicate it to clients? It would be more prudent to believe that faced with recurring IPRA requests for the county's legal billings, the county would have advised its attorneys to restrict confidential communications, e.g. to letters specifically addressing legal processes and clearly marked "confidential" and "attorney-client privilege". Because of these inconsistencies by Otero County in redacting or not redacting, "some further showing of the data's confidentiality is necessary". Schein (Id.)

Therefore, I ask the Attorney General's Office to request and review the billing statements at issue to determine if they have been properly redacted. If not, I ask that you instruct Otero County to release properly redacted documents to me.

ADDITIONAL INFORMATION:

Attachments:

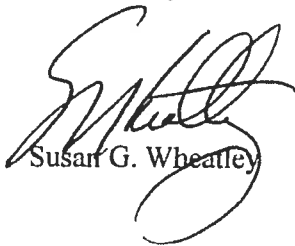
IPRA request to Otero County dated April 7, 2016

First Otero County Response dated April 11, 2016

Second Otero County Response dated April 11, 2016

Unredacted Billing Statement from Martin E. Threet & Associates

Respectfully submitted,



Susann G. Wheatley

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

TANIA MAESTAS
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July 20, 2016

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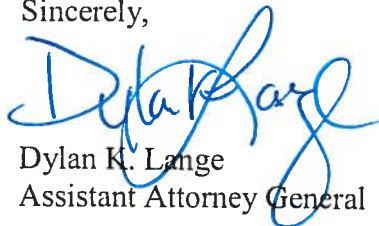
RE: Inspection of Public Records Act Complaint – Otero County

Dear Ms. Wheatley:

This letter addresses the complaint that you filed with the Office of the Attorney General (“OAG”) alleging that Otero County (“County”) violated the Inspection of Public Records Act (“IPRA”), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2013) in connection with your IPRA Requests No. 16-074, 16-087, 16-102 and 16-108.

With respect to your complaint, you allege that the County provided documents which were improperly redacted under the assertion of attorney-client privilege. We have reviewed the documents and information that you provided. The OAG has no statutory power to compel the production of records from Otero County and therefore, this office cannot provide the relief requested in your complaint. However, NMSA 1978, Sections 14-2-11 and -12, allow a requester to pursue the remedies available under the IPRA upon the denial of public records. Accordingly, we consider this matter closed. If you have any questions about your complaint or this Office’s response please let me know

Sincerely,



Dylan K. Lange
Assistant Attorney General