

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

New Mexico Office of the Attorney General

Open Government Division

**YOUR CONTACT INFORMATION:**

First Name: David A. Last Name: Wilson

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email: \_\_\_\_\_

**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 Public Education Department

Format of IPRA Request:  Written  Oral

Date IPRA Request was Submitted to the Public Body: January 8, 2016

Date of all Responses Received from the Public Body: January 20, 2016 and February 8, 2016.  
**There may have been 1-2 other (minor) responses. I am looking for those and will send along if I find them.**

**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.

**Initial IPRA request was dated January 8, 2016. I believe BEv Friedman at the PED responded in a timely manner. However, I cannot find that response. In that response, she stated the the PED would not provide the records to me since they were readily available**

on each school's annual report card. I accessed the test participation data of 11 schools that had been automatically demoted one letter grade due to a failure to attain a 95% participation rate on the 2015 PARCC test. As per Ms. Friedman's own instructions, I averaged the last three years of test participation rates for the schools. What I found is that only one of the demoted schools had a test participation rate of under 95%, at least according to the calculations Ms. Friedman recommended I perform. On January 14, 2016, I wrote Ms. Friedman again. I sent her my data. I also made a new IPRA request. This new request sought the formulae, algorithms, or statistical models the PED used to derive test participation rates for each school. On January 20, I received a response that stated that the records would be provided to me within 15 calendar days or sooner. On or about February 8, 2016, I wrote Ms. Friedman to inform her that, since more than 15 calendar days had passed without any of the requested records being provided to me, she and the PED were in violation of IPRA. On February 8, 2016, she responded to me. In that response she stated that she now believed my request to be burdensome and that, consequently, the PED needed more time to fulfill my request. In addition, she stated that the active legislative session made it such that my request was even more difficult to fulfill.

**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.

**I believe the PED is in serious violation of IPRA.**

**Furthermore, I suspect the PED is developing, post facto, a formula/algorithm/statistical model they hope will explain the discrepancies between their test participation calculations and mine.**

**Finally, I believe the PED is targeting certain schools where opt-out protests were the highest and the students, parents, and teachers the most vocal.**

**I have attached relevant communications (e-mails) to the e-mail in which this document was included. There are a few I have not been able to find. I will send those along if/when I find them.**

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR BALDERAS  
ATTORNEY GENERAL

TANIA MAESTAS  
Deputy of Civil Affairs

SHARON PINO  
Deputy of Criminal Affairs

CARLA MARTINEZ  
Chief of Staff for Operations

SONYA CARRASCO-TRUJILLO  
Chief of Staff for Policy and Public Affairs

July 12, 2016

Ms. Beverly A. Friedman, Records Custodian  
Mr. Daniel M. Hill, General Counsel  
New Mexico Public Education Department  
300 Don Gaspar  
Santa Fe, New Mexico 87501

Re: Inspection of Public Records Act Complaint – David A. Wilson

Dear Ms. Friedman and Mr. Hill:

Thank you for your April 5, 2016 response on behalf of the New Mexico Public Education Department (the "Department") regarding the complaint filed by Mr. David A. Wilson, alleging that the Department violated the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 to 12 ("IPRA"). More specifically, Mr. Wilson alleges that the Department failed to provide the records he requested, failed to allow inspection or send an acknowledgement letter within three (3) business days, and failed to allow inspection within fifteen (15) business days from the date the Department received the request.

Background

Upon reviewing Mr. Wilson's complaint and the Department's response, I understand that on Friday, January 8, 2016 (at 10:36PM) Mr. Wilson electronically requested "the SBA and/or PARCC participation rates for the following Albuquerque Public Schools for the 2012-2013 academic year, the 2013-2014 academic year, and the 2014-2015 academic year: . . ." ("1<sup>st</sup> Request"). Ms. Friedman electronically acknowledged receipt of Mr. Wilson's IPRA request on Tuesday, January 12, 2016, one business day after she received Mr. Wilson's request, and indicated that a response would be forthcoming within 15 days of the Department's receipt of the 1<sup>st</sup> Request. On Wednesday, January 13, 2016, Ms. Friedman electronically communicated to Mr. Wilson

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that the participation rates he requested “are published on the individual school report cards [on the Department’s website] in a table labeled “Participation.”” Ms. Friedman added, “[t]hat is the only format that we have right now.” (emphasis added). On Wednesday, January 13, 2016, Mr. Wilson responded to Ms. Friedman communication from earlier in the day and amended his January 8, 2016 request by adding three high schools to the list of schools for which he was seeking SBA/PARCC test participation rates (“2<sup>nd</sup> Request”). At that time, Mr. Wilson also took issue with the accuracy of the information contained on the Department’s web site relating to the participation rates for each school. On the same day, Ms. Friedman responded to Mr. Wilson’s concerns about the accuracy of the information available on the Department’s website. On Thursday, January 14, 2016, in addition to discussing his findings regarding participation rates, Mr. Wilson requested that the Department provide him “with the manner in which the three year averages for test participation rates were calculated; this is, what formulae or algorithms were used to average each school’s test participation rates over this three year period.” (“3<sup>rd</sup> Request”) On January 20, 2016, three business days after the 3<sup>rd</sup> Request, Ms. Friedman sent Mr. Wilson an acknowledgement letter indicating that the Department would respond to that request within 15 days from the date of receipt. Then, on February 8, 2016, Ms. Friedman informed Mr. Wilson that the Department deemed the 3<sup>rd</sup> Request to be burdensome and needed additional time to respond. Finally, on March 2, 2016, Ms. Friedman provided Mr. Wilson with an excerpt titled “VII. Participation in Assessments”, taken from the Department’s website.

#### Analysis

First, Section 14-2-8(D) of IPRA provides:

D. A custodian receiving a written request shall permit the inspection immediately or as soon as is practicable under the circumstances, but not later than fifteen days after receiving a written request. If the inspection is not permitted within three business days, the custodian shall explain in writing when the records will be available for inspection or when the public body will respond to the request. The three-day period shall not begin until the written request is delivered to the office of the custodian.

NMSA 1978, § 14-2-8 (2009). This provision requires the Department either to allow immediate inspection or within 3 days indicate when the requested records will be made available for inspection, but in no case later than 15 days after receiving the request for inspection. Hence, it appears that the Department timely acknowledged each of Mr. Wilson’s requests for certain records or information. In addition, it appears from the series of communications described above that Mr. Wilson and Ms. Friedman engaged in an on-going discussion about the adequacy of the information made available on the Department’s website.

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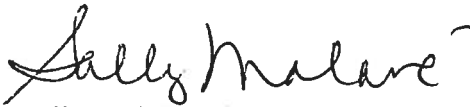
Second, Section 14-2-8(B) provides:

B. Nothing in the Inspection of Public Records Act shall be construed to require a public body to create a public record.

Id. The right to inspect created by IPRA applies to any public record that exists at the time of the request. See *New Mexico Inspection of Public Records Act Compliance Guide*, 8<sup>th</sup> ed. 2015, at 32. In other words, IPRA does not require a records custodian to compile information from the public body's record or otherwise create a new record in response to an IPRA request. Id. While information regarding the participation rate for each of the schools identified in Mr. Wilson's requests and the manner in which those rates are calculated is available on the Department's website, the Department has not yet compiled, nor does it have a duty to compile, that information in one readily available document.

Although we do not find an IPRA violation, by copy of this letter, we wish to thank Mr. Wilson for bringing this matter to our attention, and the Department for its cooperation. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



Sally Malavé  
Assistant Attorney General

Cc: Mr. David Wilson