

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



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August 23, 2016

Dusty Stone
2075 Quay Road 69
San Jon, NM 88434

Re: **Inspection of Public Records Act Complaint – Quay County Sheriff’s Office**

Dear Mr. Stone:

We have reviewed your complaint alleging that the Quay County Sheriff’s Office (“Sheriff’s Office”) violated the Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 to -12 (2013) (“IPRA”), when it failed to provide certain reports that responded to your request to inspect public records. We have also reviewed the Quay County Clerk’s Office’s response on behalf of the Sheriff’s Office to our inquiry regarding the complaint. *See* letter to Dylan Lange from Ellen L. White, Chief County Clerk, Quay County (Apr. 20, 2016) (“Response”). Based on our review of the complaint, the Response and applicable law, we are unable to conclude that the Sheriff’s Office violated IPRA as alleged in the complaint.

According to the complaint and accompanying exhibits, you submitted a request to inspect public records to the Sheriff’s Office on April 4, 2016. The request asks for “reports of Deputy Gates of Jan. 2011 regarding NMSA 67-7-1, NMSA 67-7-2, NMSA 67-7-10 and NMSA 30-8-13 that he submitted to the FBI.” You apparently have not seen the requested reports, but the complaint explains that you believe the reports exist because you reported criminal violations of the statutes listed in the inspection request to the Sheriff’s Office in January 2011, and because Joe Schallert, the former Quay County Sheriff, testified that Deputy Gates had drafted a report concerning the alleged criminal violations that had been forwarded to the FBI for investigation. *See* Answers to Plaintiff’s First Set of Interrogatories, attached as Exhibit #3 to the complaint. The complaint also states that the Sheriff’s secretary related that she remembered the reports in question and where they were located. *See* Exhibit #2, attached to the complaint.

On April 6, 2016, the Sheriff’s Office provided you with public records in response to your request. On April 25, 2016, you received an additional record sent by the Sheriff’s Office. That record was a Uniform Incident Report dated January 6, 2011, which describes a discussion

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among the reporting officer, Deputy Ben Gates, Deputy Shane Strand, and you regarding a criminal complaint you wanted to file against District Attorney Ron Reeves and District Judge Albert Mitchell. You enclosed a copy of the Uniform Incident Report with a supplement to the complaint titled "Affidavit of Additional Information and Evidence," which this Office received on May 18, 2016. According to the complaint and supplement, none of the records the Sheriff's Office has provided to date are responsive to your April 4 request for public records.

According to the Sheriff's Office's Response, Quay County Sheriff Russell Shafer believed that you had been provided with all public records that responded to your request on April 6, 2016, but represented that the Sheriff's Office would check again and provide you with any additional records that might be responsive. Subsequently, the Sheriff's Office sent you the copy of the Uniform Incident Report described above.

Under IPRA, a "person wishing to inspect public records may submit a ... written request to the [records] custodian." NMSA 1978, § 14-2-8(A). "Public records" for purposes of IPRA are documents and other materials "that are used, created, received, maintained or held by or on behalf of any public body and relate to public business...." *Id.* § 14-2-6(G). An inspection request "shall provide the name, address and telephone number of the person seeking access to the records and shall identify the records sought with reasonable particularity." *Id.* § 14-2-8(C). The records custodian receiving an inspection request must "permit the inspection immediately or as soon as practicable under the circumstances, but not later than fifteen days after receiving a written request." *Id.* § 14-2-8(D).

In this case, you submitted a written request to the Quay County Sheriff's Office to inspect the public records identified in the request, specifically "reports of Deputy Gates of Jan. 2011 regarding NMSA 67-7-1, NMSA 67-7-2, NMSA 67-7-10 and NMSA 30-8-13 that he submitted to the FBI." The Sheriff's Office provided public records in response to your request, but not the particular reports you sought. As you make clear in your complaint and corresponding exhibits, you strongly believe that the Sheriff's Office has the reports described in your inspection request but is refusing to make them available to you.

IPRA requires a public body to permit inspection of public records described in an inspection request. As discussed above, a "public record" is a record related to public business that the public body uses, creates, receives, maintains or holds. NMSA 1978, § 14-2-6(G). Accordingly, IPRA obligates a public body to provide responsive public records that exist and are held by the public body at the time the inspection request is made. A public body is not required to create a public record in response to an inspection request. *See id.* § 14-2-8(B). *See also* Attorney General's Inspection of Public Records Act Compliance Guide, p. 32 (8th ed. 2015).

Your April 4 inspection request asked for specific reports that you believe Deputy Gates prepared and submitted to the FBI. As discussed above, IPRA obligated the Sheriff's Office to provide records in its possession that responded to your request. The Sheriff's Response indicates that, with the additional records you received on April 25, 2016, it has now provided you with all records it possesses that respond to your request. Although you believe the records provided were not the reports you described in your request, they appear to relate to the same or similar

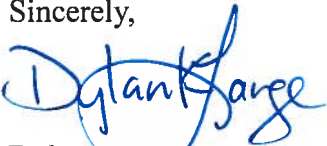
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matters as the requested reports. It may be that the specific reports never existed or, if they did, are no longer held or maintained by the Sheriff's Office.

In any event, based on the information available to us at this time, we are unable to conclude that the Sheriff's Office has improperly denied your inspection request as alleged in the complaint. We understand that you believe otherwise, but we have reached the limit of our authority under IPRA to resolve the complaint. While outside the scope of our authority, IPRA authorizes enforcement by the district courts for disputes, like this one, arising from a disagreement between a public body and a requester over the existence of a public record. *See* NMSA 1978, § 14-2-12. A person whose request to inspect public records has been denied and is successful in a court action to enforce IPRA is entitled to damages, costs and reasonable attorneys' fees.

Although we did not find that IPRA was violated in this instance, we appreciate your bringing the issues discussed above to our attention and allowing us the opportunity to address them. For your reference, a copy of the most recent edition of the Attorney General's Inspection of Public Records Act Compliance Guide is enclosed.

Sincerely,



Dylan K. Lange
Assistant Attorney General

Enclos.

cc: Ellen L. White, Chief County Clerk, Quay County
Quay County Sheriff Russell Shafer

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

New Mexico Office of the Attorney General
Open Government Division

2016 APR 15 AM 7:48
LR

YOUR CONTACT INFORMATION:

First Name: Justin Last Name: Stone

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): Quay County Sheriff's office

Format of IPRA Request: Written Oral

Date IPRA Request was Submitted to the Public Body: April 4, 2016

Date of all Responses Received from the Public Body: April 6, 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.

