

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

February 3, 2020

VIA ELECTRONIC MAIL ONLY

Rio Arriba County
Adán E. Trujillo, Esq.
1122 Industrial Park Rd.
Española, NM 87532-3453
Email: atrujillo@rio-arriba.org

Re: Inspection of Public Records Act Complaint – Amanda Nicole Martinez

Dear Mr. Trujillo:

Thank you for your response to our inquiry regarding the complaint submitted to the Office of the Attorney General by Ms. Amanda Nicole Martinez alleging that Rio Arriba County violated the Inspection of Public Records Act (“IPRA”), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2019). As you know, Ms. Martinez alleges that the County failed to timely respond to her request for public records. Having thoroughly reviewed your response on behalf of the County, in which you acknowledged the violations identified by Ms. Martinez, we remain concerned that the County appears to have inadequate policies in place to appropriately respond to public records requests. We strongly advise the County to educate all of its employees and volunteers as to their obligations under IPRA.

Background

As set forth in the Inspection of Public Records Act, the public policy of the State of New Mexico is to afford its citizens “the greatest possible information” about governmental affairs. NMSA 1978, § 14-2-5. *See also San Juan Agr. Water Users Ass'n v. KNME-TV*, 2011-NMSC-011, ¶ 16 (noting that, “IPRA is intended to ensure that the public servants of New Mexico remain accountable to the people they serve.”). IPRA states specifically that providing this information to the public “is an *essential* function of a representative government and an *integral* part of the routine duties of public officers and employees.” Section 14-2-5 (emphasis added). To that end, the statute guarantees the public the right to inspect and copy all “public records” with only limited and specifically enumerated

exceptions. Section 14-2-1(A). All of IPRA's provisions must be interpreted in light of this public policy and the "presumption in favor of the right to inspect." Attorney General's Inspection of Public Records Act Compliance Guide, p. 7 (8th ed. 2015) ("IPRA Guide").

Ms. Martinez's complaint to our Office arises out of a request for public records she submitted to the County via email on April 26, 2019. Her request sought attendance records for all County volunteer fire department trainings in 2017 and 2018. The County Clerk, having received Ms. Martinez's request on the same day it was sent, responded via email also on the same day by stating in relevant part that the request was being forwarded to the proper records custodian. (Apparently, the County's fire department utilizes its own records custodian and operates somewhat independently from the County's other departments under IPRA.) In the days that followed, it appears that Ms. Martinez spoke on the phone with several County staff members in reference to her request and thereafter sent a subsequent email to the County dated May 1, 2019, limiting her request's scope to five specific fire departments. However, aside from the County's initial April 26, 2019, response forwarding her to another custodian within the County, she received no further written correspondence until May 31, 2019, at which time the County Attorney emailed her stating that he recognized the County was in violation of IPRA and intended to encourage the fire departments to provide her the requested records. (The County Attorney and Ms. Martinez then exchanged a series of emails not relevant to this determination, debating whether she was being "aggressive" in her pursuit of the requested documents.)

Both parties agree that on July 19, 2019, the County contacted Ms. Martinez to inform her that the requested records were available for inspection. At that time the County apparently permitted Ms. Martinez to inspect all of the requested records, without making any redactions or withholding any responsive records. As a result, the only issue raised by Ms. Martinez in her complaint to our Office is the timeliness of the County's responses.

IPRA's Deadlines

The County does not contest the fact that it was noncompliant with IPRA's specified deadlines in responding to Ms. Martinez's request. To its credit, the County was forthcoming about its noncompliance even prior to Ms. Martinez submitting her complaint to our Office, acknowledging to her several times that it had not responded within the timeframes set forth by the statute. However, for the purposes of better informing the County as to IPRA's specific requirements and in the interest of fully evaluating the merits of Ms. Martinez's complaint, we review this issue in detail.

Ms. Martinez first argues that the County violated Section 14-2-8(D) by failing to send her a proper three-day letter. As the County recognizes, this first contention is undeniably correct. IPRA specifically requires a public body, upon receipt of an IPRA request, to respond with an acknowledgement letter within three business days. *See* § 14-2-8(D) (providing that, "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."). This initial response either must provide the requested

records or state “when the records will be available or when the agency will respond.” IPRA Guide, p. 33. In this case, the County did not fulfill this obligation because the proper records custodian (for the fire department) never responded in writing. (The County’s email to Ms. Martinez dated April 26, 2019, also would not qualify as a proper three-day acknowledgement letter because it failed to state when the requested records would be available or when the County would respond next.)

Even more importantly, the County at no point designated Ms. Martinez’s request to be excessively burdensome or broad and yet failed to permit her to inspect the requested records for approximately 84 days. This represented a complete failure to abide by IPRA’s specified deadlines. The statute specifically provides that, if unable to provide the requested records within three business days, the public body must generally provide all requested records or provide a proper explanation of denial within *fifteen* calendar days. Section 14-2-8(D); *see also* § 14-2-11. This fifteen-day period begins upon the public body’s designated records custodian’s receipt of the records request.. *Id.* The only exception to this fifteen-day deadline is for records requests designated in writing as “excessively burdensome or broad” by the public body, for which IPRA grants the public body an additional, reasonable amount of time to respond (to be determined individually, dependent on the circumstances). Section 14-2-10. In any event, the public body must provide the requested records, deny the request, or designate the request as broad and burdensome in writing within fifteen calendar days. Section 14-2-11(A). Here, after initially responding to Ms. Martinez on April 26, 2019, the County did not further communicate with her in writing until approximately one month later, and at no point did it specifically notify her that her request was excessively burdensome or broad. As a result, the County’s failure to permit inspection until July 19, 2019, was an unacceptable and improper violation of IPRA.

We are aware that the County’s difficulties in properly responding to Ms. Martinez’s request likely stem from the fact that its fire department is staffed either entirely or almost entirely by volunteers and that it was apparently difficult for the County to convince its volunteer staff of the need to comply with IPRA. We also understand that these difficulties were compounded by the fact that Ms. Martinez’s request was excessively burdensome or broad, involving a multitude of responsive records. However, had the County maintained adequate procedures to respond to IPRA requests, neither of these problems would have resulted in the timing violations identified by Ms. Martinez.

First, as to the County’s volunteer staff, it is incumbent on the County to ensure that it provides requestors with the communications required by IPRA (such as a three-day acknowledgement letter, a timely broad and burdensome letter, etc.) irrespective of whether its staff are volunteers or employees. This might involve the County transitioning to a more centralized program of responding to IPRA requests rather than on a department-by-department basis, but in any event timely responses are required under IPRA and the County’s procedures must ensure that they are sent.

Additionally, if future requests received by the County are excessively burdensome or broad, then it must communicate that fact to requestors in writing in order to obtain an additional (reasonable) amount of time to respond. *See* § 14-2-10 (providing that, upon written notification to the requestor that a request is excessively burdensome or broad, “an additional reasonable period of time shall be allowed to comply with the request”). In other words, the County’s procedures need only ensure adequate communication with requestors to avail it of IPRA’s flexibility for burdensome requests. Had the County in this case sent Ms. Martinez a written communication informing her that her request was excessively burdensome or broad, its inability to permit inspections for 84 days would not have likely represented a violation of the statute.

Conclusion

We have determined, as have both of the parties to this complaint, that the County did not abide by IPRA’s specified deadlines in responding to Ms. Martinez’s request. It did not send a proper three-day acknowledgment letter, nor did it explain or communicate to Ms. Martinez in writing the reason for the County’s 84-day delay in permitting inspection. While we appreciate the County’s difficulties as they have been disclosed to us, the utilization of a volunteer staff does not absolve a public body of its obligations under IPRA.

Our recommendation is that the County take steps to educate both its employees and its volunteer staff on public records and IPRA. This may consist of both training the County’s officers, employees, and staff on IPRA’s requirements as well as developing improved public records policies and procedures. These policies and procedures must ensure that the County responds completely *and timely* to all future requests.

Our Office also conducts periodic trainings for the public across the State on both the Inspection of Public Records Act and the Open Meetings Act, and we invite the County’s officers, employees, and volunteers to attend. Please visit our website for more information on the exact date, time and location, <https://www.nmag.gov/events.aspx>, and make plans to attend. Additionally, for your reference, a copy of the IPRA Guide is available on the website of the Office of the Attorney General at www.nmag.gov. If you have any questions regarding this determination or IPRA in general, please let me know.

Sincerely,



John Kreienkamp
Assistant Attorney General

Enclosure

cc: Amanda Nicole Martinez

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

Electronic Complaint Submission

Submission Detail

ECS Reference Number	NMOAG-ECS-20190724-ef60
Final Submit Date	7/24/2019 11:22:15 AM

Disclosure of your complaint: This complaint is a public record, thus available under provisions of the NM Inspection of Public Records Act.

Disclosure to other entities: This complaint, its content, and other information may be disclosed to other law enforcement and regulatory agencies.

I understand this complaint and any submitted documents are public record and may be shared with other law enforcement and regulatory agencies.

DECLARATION: By submitting this form, I attest that the information in this complaint is true and accurate to the best of my knowledge. I further understand that by submitting this form I may be called to testify as a witness in this matter.

I understand declaration statement.

The New Mexico Office of the Attorney General cannot give legal advice regarding this complaint and will not act as your personal attorney. If you have questions regarding your rights please contact a private attorney.

Submission of this complaint is not confirmation that an investigation will be initiated.

Complaint Detail

Complaint Type Inspection of Public Records (IPRA) Complaint

Retained Attorney

Parties

Complainant

Staff Writer Amanda Nicole Martinez

Person

Address

[REDACTED]
[REDACTED]
[REDACTED]

Contact information

[REDACTED]
[REDACTED] |

Complaint against

Rio Arriba County - Attorney Adán Trujillo and Fire Marshal Carlos Esquibel

Public Body (Government Entity)

Address

1122 Industrial Park Road
Española, New Mexico 87532

Contact information

atrujillo@rio-arriba.org
(505) 753-2126
www.rio-arriba.org

Carlos Esquibel's email is cresquibel@rio-arriba.org

Complaint Specifics

Format of IPRA request: Written

Date IPRA request was submitted to the public body: 4-26-19

Date of all responses received from the public body: 4-26-19 (an emailed receipt from the Rio Arriba County Clerk's Office stating they received my IPRA and the names of the records custodians) 4-26-19 (in an after business hours phone call from Deputy Fire Marshal Alfredo Montoya) 5-29-19 (an in-person conversation with Mr. Trujillo) 5-30-19 (an email exchange between Mr. Trujillo and I regarding the previous days conversation) 7-19-19 (an email from Mr. Trujillo telling me the documents I requested are ready)

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.

Transaction

Documents



IPRA receipt 4-26-19.pdf

Original request and receipt from RAC

Comments

This is a receipt from the Rio Arriba County Clerk's Office stating they received my request and it was forwarded to the records custodians. The receipt contains a copy of my original request for records.



Modified VFD request email.pdf

Amended IPRA request

Comments

As my concern was to get the records back quickly, I amended my IPRA request to only ask for records from a certain number of volunteer fire departments instead of all fire departments. This is a copy of the amendment.



Email VFDs between Martinez and Trujillo.pdf

Email between reporter and attorney

Comments

I wrote this email to Mr. Esquibel and included Mr. Trujillo the day I after I had a conversation with Mr. Trujillo about my request at the Rio Arriba County offices in Española. Mr. Trujillo was not able to give me a date by when the records would be available, other than "ASAP." The records were already 29 days past due when I sent the email on May 30.



7-19-19 email Adan Trujillo.png

Email to schedule inspection

Comments

This email from Mr. Trujillo on 7-19-19 comes 84 days after I submitted my original IPRA request and 79 days after I submitted my amended request.



Phone call from Alfredo Montoya.png

Phone records

Comments

I received a phone call from Alfredo Montoya the day I submitted the original IPRA. He asked me why I was submitting the request and what I was trying to write about. This is a screenshot of the time and date that phone call was placed. He did not provide me with any information as to if my request was being denied or when the documents would be made available.

*** END OF COMPLAINT ***



Amanda Martinez <anicole.martinez@gmail.com>

Volunteer Fire Fighters

5 messages

Amanda Martinez <anicole.martinez@gmail.com>

Thu, May 30, 2019 at 6:17 PM

To: cresquibel@rio-arriba.org

Cc: Adan Trujillo <atrujillo@rio-arriba.org>

Hello Carlos,

Yesterday, I spoke with Adán Trujillo regarding my IPRA for volunteer fire department records. He said that you contacted the departments, but no one has responded with the records.

While I am sympathetic to your situation and do not want any volunteers to quit, it is worrisome to me that a group of people working for the County, as a volunteer or otherwise, are not complying with IPRA. It is also worrisome that they are not complying with you as the County fire marshal.

I would be happy to talk to anyone from any of the volunteer fire departments, but I cannot assure them that I will not write or investigate them or their department. To be clear, there is nothing under IPRA that requires me to do this in order to receive the documents.

I also have to note that I already amended the IPRA and shrunk it down considerably. The amended IPRA was submitted on April 26 and should have been fulfilled by May 1. It is now 29 days past due.

I do have a couple of questions:

Can you please clarify for me the chain of command in the County for these departments. Are you the highest official for the VFDs in the County? Do captains answer directly to you or someone else, such as the state fire marshal's office?

If anyone from the departments wants to speak to me, they can call me at work at 505-753-2126 or on my cellphone at 520-258-8082.

Thank you and I hope you are doing well.

Amanda Martinez

--

Amanda Martinez
Staff Writer
Rio Grande Sun
505-753-2126 (office)
520-258-8082 (cell)
anicole.martinez@gmail.com

Adan Trujillo <ATrujillo@rio-arriba.org>

Thu, May 30, 2019 at 6:28 PM

To: Amanda Martinez <anicole.martinez@gmail.com>

Cc: "Carlos R. Esquibel" <CREsquibel@rio-arriba.org>, "Desiree H. Wade" <DHWade@rio-arriba.org>

This isn't exactly the most helpful email, Amanda. No one is disputing the IPRA, this isn't a legal question. It's about whether you would factor in freaking volunteers out in your quest to investigate the County. Your conversation seemed civil enough that you would make that consideration. Your email takes a more aggressive approach, so we'll proceed by threatening the chiefs to produce their documents. If they quit, they quit. Good evening.

Sent from my iPhone

[Quoted text hidden]

Amanda Martinez <anicole.martinez@gmail.com>

Fri, May 31, 2019 at 10:58 AM

To: Adan Trujillo <ATrujillo@rio-arriba.org>

Good Morning Mr. Trujillo,

I think what you are reading as "aggressive" is me being straight forward about my concerns, especially after I have met you and Mr. Esquibel half way over this IPRA.

I amended it to make Mr. Esquibel's job easier. I agreed to speak to the chiefs. As I wrote, none of this is required of me to obtain those documents. I did these things in the spirit of cooperation and because I was trying to recognize the fire marshall is in a difficult spot.

If you want to interpret this email as aggressive and use that as an excuse to threaten the chiefs for the documents, do that. That's your choice and on you. My email brings up legitimate concerns about the chain of command within the fire departments and the handling of IPRA's.

Please give me a date by when the documents will be available.

Thank you and have a great day.

Amanda Martinez

[Quoted text hidden]

Adan Trujillo <ATrujillo@rio-arriba.org>

Fri, May 31, 2019 at 11:13 AM

To: Amanda Martinez <anicole.martinez@gmail.com>

Cc: "Desiree H. Wade" <DHWade@rio-arriba.org>, "Carlos R. Esquibel" <CREsquibel@rio-arriba.org>

Amanda:

I can't give you a date by when the records will be available because I haven't contacted the chiefs yet, and I can't predict when or if they will comply. I plan on telling them that they are in violation of your IPRA request and that they need to provide their records ASAP. I will also give them your contact information and tell them that you have stated that you can't assure them that you won't investigate them or their department. I'm just going to pass on your concerns in the same straightforward manner that you're conveying them to me.

Adán E. Trujillo

Rio Arriba County Attorney

1122 Industrial Park Road

Amanda Martinez <anicole.martinez@gmail.com>

IPRA modification

1 message

Amanda Martinez <anicole.martinez@gmail.com>

Wed, May 1, 2019 at 10:45 AM

To: Adan Trujillo <atrujillo@rio-arriba.org>, cresquibel@rio-arriba.org

Hello,

This email is to modify an IPRA 19-110. I emailed the request to the County on April 26.

Instead of my original request for training attendance records for all volunteer fire departments in 2017 and 2018, I would am amending the request to include a limited number of fire departments.

When we spoke on the phone, I said I would split the list in half. To make things easier, I will break the IPRA into three seperate requests. Please get me the documents at the earliest possible time.

These are the departments I am requesting attendance records from:

1. Dulce
2. Agua Sana
3. Truchas
4. Velarde
5. Chamita

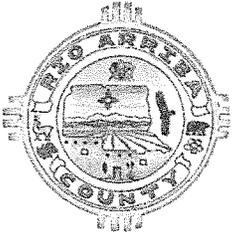
If you have any questions, please let me know.

Thank you.

Amanda Martinez

--

Amanda Martinez
Staff Writer
Rio Grande Sun
505-753-2126 (office)
520-258-8082 (cell)
anicole.martinez@gmail.com



**Rio Arriba County
Clerk's Office**

Linda J Padilla
County Clerk

Sarah Garcia
Chief Deputy Clerk

April 26, 2019

Amanda Martinez

Email: anicole.martinez@gmail.com

RE: Receipt of Request to Inspect Public Records received April 26, 2019.

Dear: **Amanda Martinez:**

My office is in receipt of your formal request dated April 26, 2019 requesting information under the New Mexico Inspection of Public Records Act.

Your request has been issued #19-110 and has been forwarded to: Carlos Esquibel, Alfredo Montoya, and Delilah Jaramillo.

Records Custodian contact info:

Phone: 505-747-6367

Email: cesquibel@rio-arriba.org; amontoya@rio-arriba.org; djaramillo@rio-arriba.org

The custodian of the records which you have requested will contact you regarding your request. Please communicate directly with the records custodian and reference the #19-110 above to identify your request, copy attached.

If you need further information, contact us at your convenience 505-753-1780.

Sincerely,

Linda J Padilla

Rio Arriba County Clerk

Cc: File

Attachment

dq

Deborah L. Quintana

From: Amanda Martinez <anicole.martinez@gmail.com>
Sent: Friday, April 26, 2019 3:28 PM
To: Public Requests
Subject: Rio Grande SUN IPRA- salaries

April 26, 2019

To: Rio Arriba County Clerk Linda Padilla

From: Amanda Martinez

Staff Writer

Rio Grande SUN

PO Box 790

Española, NM

87532

This is a formal request under the New Mexico Inspection of Public Records Act. I wish to inspect the following, in their native electronic format if possible:

1. Any and all attendance records, including but not limited to sign-in sheets, for all Rio Arriba County volunteer fire department trainings held in 2017 and 2018.

I prefer to receive further communication on this matter electronically.

I prefer to receive records in their native electronic format, and would be happy to provide a computer disk (CD) or USB drive for copying.

If records can be e-mailed, please forward them to Amanda Martinez.

Please contact me with any questions or to schedule an appointment when the documents are available for inspection or copying. My telephone numbers are 505-753-2126 (office) and 520-258-8082 (cell), and my fax number is 505-753-2140.

Sincerely, Amanda Martinez

--
Amanda Martinez
Staff Writer
Rio Grande Sun
505-753-2126 (office)
520-258-8082 (cell)

anicole.martinez@gmail.com

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Date Fri, 19 Jul 2019 16:22:47 +0000
From Adan Trujillo <ATrujillo@rio-arriba.org>
To Amanda Martinez <anicole.martinez@gmail.com>
Cc "Desiree H. Wade" <DHWade@rio-arriba.org>
Subject Fire Marshal

[Show All Headers](#)

Hi Amanda:

Fire Marshal Carlos Esquibel informed me that you've been asking him for his side of the story on an issue that you won't specifically reveal. Because the County is still in pending litigation with Eddie Velarde, if your questions have anything at all to do with Mr. Velarde, any non-court complaints he's filed or the Velarde Volunteer Fire Department, I've informed Mr. Esquibel that he shouldn't comment, and that the County prefers that a court of competent jurisdiction resolve any issues.

Mr. Velarde's default position appears to be a combination of bad faith and narcissism, and he creates situations that he then complains about in an attempt to manipulate things in his favor.

In the event that your questions aren't related to any of this, I'll let Mr. Esquibel make the call about whether he wants to comment.

I also have a stack of records here for your inspection, please coordinate that with Desiree. Thank you!

Adán E. Trujillo
Rio Arriba County Attorney
1122 Industrial Park Road
Española, NM 87532
Telephone: (505) 753-2992
Facsimile: (505) 753-9397
Email: atrujillo@rio-arriba.org

Search contacts & call logs



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APR 26

[Redacted call log entry]

[Redacted call log entry] 9:44 PM

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