

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

June 11, 2021

VIA ELECTRONIC MAIL ONLY

San Miguel County
Dave E. Romero, Jr., Esq.
P. O. Box 3030
Las Vegas, NM 87701-3030
Email: 421x1523@gmail.com

Re: Inspection of Public Records Act Complaint – Hayden Hodges

Dear Mr. Romero:

The Office of the Attorney General has received a complaint from Mr. Hayden Hodges alleging that San Miguel County (hereinafter the “County”) violated the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2019) (“IPRA”). In particular, Mr. Hodges alleges that the County has failed to post on its website a notice of the public’s right to inspect public records pursuant to IPRA. Having visited the County’s website ourselves and confirmed that Mr. Hodges is correct, we write to remind the County of its statutory obligation to post an IPRA inspection notice on its website.

The Inspection of Public Records Act guarantees the people of the State of New Mexico access to “the greatest possible information” about governmental affairs. NMSA 1978, § 14-2-5. *See also Am. Civil Liberties Union of New Mexico v. Duran*, 2016-NMCA-063, ¶ 25 (noting that the purpose of IPRA is “to promote the existence of (1) an informed electorate and (2) transparency in governmental affairs”). IPRA specifically provides that individuals may inspect and copy all “public records” with only limited and specifically enumerated exceptions. Section 14-2-1(A). We interpret IPRA’s various provisions in light of 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”).

As a means of facilitating “IPRA’s guiding purpose of promoting government transparency,” *Republican Party of New Mexico v. New Mexico Taxation & Revenue Department*, 2012-NMSC-026, ¶ 38, the statute requires all public bodies to inform the public of its right to inspect records. IPRA mandates that each public body must post a notice both in a conspicuous location in its administrative office and on its website describing the public’s right to inspect records. *See* § 14-2-7(E) (requiring each public body to post an inspection notice “in a conspicuous location at the administrative office and on the publicly accessible web site, if any”). This notice must contain, pursuant to the express language of the statute, the following information:

- (1) the right of a person to inspect a public body's records;
- (2) procedures for requesting inspection of public records, including the contact information for the custodian of public records;
- (3) procedures for requesting copies of public records;
- (4) reasonable fees for copying public records; and
- (5) the responsibility of a public body to make available public records for inspection.

Id. We explain in our IPRA Guide that the intent behind this statutory provision is that this notice must be “prominent and readily observable by interested members of the public.” IPRA Guide, p. 30.

Upon receipt of Mr. Hodges’ complaint, we visited the County’s website.¹ Just as he has alleged, we too were not able to find an inspection notice. No page on the County’s website appears to contain the information required by Section 14-2-7(E). The County’s website does have a “Document Center” that contains a form to request public records,² but this form does not contain any of the information required by Section 14-2-7(E) and in any case clearly does not function as an inspection notice. Although we may have simply been unable to locate the notice, the purpose behind this requirement in IPRA is for the notice to be “readily observable by interested members of the public.” IPRA Guide, p. 30.

To comply with IPRA and Section 14-2-7(E), and in light of Mr. Hodges’ complaint, the County needs to update its website. It should post an inspection notice in a prominent location on its website as well as, if it has not done so already, in a conspicuous location at its administrative office. We would remind the County that, although Section 14-2-7(E) may appear to be only a technical requirement of IPRA, it in fact serves a crucial role in ensuring that the public has meaningful access to “the greatest possible information” about governmental affairs. Section 14-2-5.

¹ *See* <https://co.sanmiguel.nm.us>.

² *See* <https://cms6.revize.com/revize/sanmiguelcounty/request.public.records.112817.pdf>.

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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,

A handwritten signature in blue ink, appearing to read "John Kreienkamp".

John Kreienkamp
Assistant Attorney General

Enclosure

cc: Hayden Hodges