

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

July 9, 2019

VIA ELECTRONIC MAIL ONLY

Tina Tawater
5065 Mira Vista Drive NE
Rio Rancho, NM 87144
Email: tawater@q.com

RE: Inspection of Public Records Act Complaint – Sandoval County

Dear Ms. Tawater:

This letter addresses the complaint you filed with the Office of the Attorney General alleging that Sandoval County (“the County”) violated the Inspection of Public Records Act (“IPRA”), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2019), in connection with your public records request submitted on September 16, 2018. According to your complaint, the County violated IPRA by providing some but not all records responsive to your request. We have reviewed the County’s response to our inquiry regarding your complaint, in which it largely denies your allegations. Based on the facts available to us at the present time, and because we are unable to inspect the requested records, we cannot conclude that the County violated IPRA by partially denying your request.

The facts relevant to your complaint are summarized as follows. On September 16, 2018, you submitted a public records request to the County for a number of documents related to emails to or from Robin Hammer’s County email with specific key words. The County responded to your request five days later, on September 21, 2018, through its Public Information Officer, thereby acknowledging your request and providing several responsive records, which you were able to review online. The County’s response stated that it was denying a portion of your request on the basis of several exceptions in law and also indicated the individual responsible for this partial denial.

Your complaint to our Office alleges that the County effectively withheld responsive records without adequate legal justification. In response to our inquiry, the County reiterated what it had stated in its response to your request: that the responsive documents were withheld pursuant to the Attorney-Client Privilege (found in Rule 11-503 NMRA) and IPRA’s exception for matters of

opinion in personnel files, NMSA 1978, Sections 14-2-1(A)(3). The only issue for our review is whether these exceptions apply to the records you requested.

The purpose of IPRA is to promote transparency in the conduct of governmental affairs. *See* § 14-2-5 (declaring that the public policy of the state is “that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees”). *See also Am. Civil Liberties Union of New Mexico v. Duran*, 2016-NMCA-063, ¶ 25 (noting that IPRA’s purpose is “to promote the existence of (1) an informed electorate and (2) transparency in governmental affairs”) and *Republican Party of New Mexico v. New Mexico Taxation & Revenue Dep’t*, 2012-NMSC-026, ¶ 38 (observing “IPRA’s guiding purpose of promoting government transparency”). In order to promote transparency, IPRA is broadly written to give individuals the right to inspect all “public records” with only limited and specifically enumerated exceptions. *See* § 14-2-1(A).

IPRA contains a number of exceptions that allow agencies to redact information or deny records altogether. *See* § 14-2-1(A). *See also Republican Party of New Mexico*, 2012-NMSC-026, ¶ 16 (noting that “courts now should restrict their analysis to whether disclosure under IPRA may be withheld because of a specific exception contained within IPRA, or statutory or regulatory exceptions, or privileges adopted by this Court or grounded in the constitution”). These enumerated exceptions are narrow, and courts interpret them “with the strong presumption that the public has a right to inspect” the requested documents. *Cox v. New Mexico Dep’t of Pub. Safety*, 2010-NMCA-096, ¶ 16. *See also* Attorney General’s Inspection of Public Records Act Compliance Guide, p. 7 (8th ed. 2015) (“IPRA Guide”) (referring to “the presumption in favor of the right to inspect”).

Section 14-2-11 outlines the procedure that agencies must follow in order to deny a records request or redact information from a requested document. IPRA requires agencies to provide the requester with a “written explanation” of any denial or redaction, Section 14-2-11(B), which we have interpreted as a requirement of a substantial justification for the agency’s action. *See* IPRA Guide, p. 12. This written explanation must contain, at a minimum, a reference to the specific IPRA exception upon which the denial is based. *See* IPRA Guide, p. 40 (observing that, “[t]he reason provided in the denial notice must be authorized by the Act, another law, court rule, or the U.S. or state constitution”). Additionally, in their explanation of the denial or redaction, the agency must provide a description of the requested documents and disclose “the names and titles or positions of each person responsible for the denial.” Section 14-2-11(B). This written explanation must “be delivered or mailed to the person requesting the records within fifteen days after the request for inspection was received,”¹ Section 14-2-11(B)(3), meaning that the burden is not on the requester to demand an explanation for the denial or redaction.

Because our Office does not have the same fact-finding capacity as a District Court, we have not reviewed the records withheld by the County in this case. We can say, however, that the exceptions

¹ The fifteen-day requirement outlined in Section 14-2-11 does not apply to requests that have been deemed “excessively burdensome or broad.” Section 14-2-11(A). However, even in such cases, if the agency ultimately decides to deny the request or redact information in the requested documents, a written explanation is required pursuant to the other specifications of Section 14-2-11.

Ms. Tina Tawater

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offered by the County (attorney-client privilege and IPRA's personnel file exception) in some cases may authorize withholding a requested record. We can similarly say that we construe both of these exceptions narrowly in accordance with IPRA's goal of providing the public with access to "the greatest possible information" about governmental affairs, and that the determination of whether or not a particular record is exempt is necessarily case-specific. Section 14-2-5. However, given that we have not reviewed the records withheld by the County, we cannot say definitively that its claimed justifications either did or did not have legal merit. As such, we must consider this matter closed.

For more information about IPRA, please refer to the Office of the New Mexico Attorney General's *Inspection of Public Records Act Compliance Guide*, available on our website at www.nmag.gov. The Office of the Attorney General appreciates you bringing possible violations to this office and will welcome any further complaints you may submit. If you have any concerns in the future, please do not hesitate to contact us.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Kreienkamp". The signature is stylized and cursive.

John Kreienkamp
Assistant Attorney General

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

Electronic Complaint Submission

Submission Detail

ECS Reference Number	NMOAG-ECS-20180921-8706
Final Submit Date	9/21/2018 8:16:46 PM

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

Tina Tawater

Person

Address

[REDACTED]

Contact information

[REDACTED]
[REDACTED]

Complaint against

Sandoval County - Robin Hammer

Public Body (Government Entity)

Address

1500 Idalia Drive Building D
Bernalillo, New Mexico 87004

Contact information

1500 Idalia Drive Building D

County Government

Complaint Specifics

Format of IPRA request: Written

Date IPRA request was submitted to the public body: 09/16/2018

Date of all responses received from the public body: Date of this IPRA was received 09/21/2018

Records The agency provided some but not all of the records responsive to the request.

Transaction

Documents



Response for County Attorney.pdf

All emails were requested with Keywords in the attached document and denied

Comments

I requested all emails from the County Attorney's email with keys words regarding myself, commissioner comments that are public knowledge and have been sent to multiple people within the County and that I have copies of some and was denied with the reason of client attorney privilege. This would not apply as these emails were sent to multiple people within the County

*** END OF COMPLAINT ***

Message History (3)

✉ On 9/21/2018 4:35:38 PM, Sandoval County Public Records Center wrote:

RE: Public Records Request Reference P002589-091518 received September 15, 2018

Dear Tina Tawater,

Sandoval County received a public records request from you on September 15, 2018 and it was given the reference number P002589-091518 for tracking purposes.

Your request mentioned:

"All emails to or from Robin Hammer's County email with key words:

*Tina Tawater
Resignation
Fired
Probation
Tyrant
Nazi
Dictator
Perfumed Princes"*

We are writing to inform you that Sandoval County has researched your request and has located responsive records. You may log into the Online Public Records Center to retrieve/review/download the responsive records.

Please note, that per Sandoval County Assistant County Attorney David C. Mann, we are denying a portion of your request as the information is exempted per the New Mexico Inspection of Public Records Act. Those exemptions are detailed below:

- **(1) Email Message:** Exempted per the New Mexico Inspection of Public Records Act, Section 14-2-1(A)(8) and the Supreme Court Rules of Evidence Rule 11-503 Lawyer-Client Privilege because this record is a protected lawyer-client communication.
- **(13) Email Messages:** Exempted per the New Mexico Inspection of Public Records Act, Section 14-2-1(A)(3) because these records are matters of opinion in personnel files.

Again, please log into the Online Public Records Center to retrieve/review/download the responsive records that we have made available for your inspection.

Sandoval County now considers this request fulfilled and closed.

Best Regards,

Melissa Perez
Public Information Officer
Sandoval County, NM

To monitor the progress or update this request please login to [Public Records Center](#).



✉ On 9/15/2018 9:47:45 PM, Sandoval County Public Records Center wrote:

Dear Tina Tawater,

Thank you for your interest in public records from Sandoval County. Your request was received in this office on September 15, 2018 and given the reference number P002589-091518 for tracking purposes.

Records Requested: "All emails to or from Robin Hammer's County email with key words:

Tina Tawater
Resignation
Fired
Probation
Tyrant
Nazi
Dictator
Perfumed Princes"

Your request will be forwarded to the relevant County department(s) to locate the information you seek and to determine the volume and any costs associated with satisfying your request. You will be contacted within 15 days(10/2/2018) about the availability of any responsive records, and/or provided

with copies of the requested responsive records.

Please note there may be a fee to recover the cost of reproducing the records should you request copies of them. You may find our copy charges policy on our website at: <http://www.sandovalcountynm.gov/wp-content/uploads/2018/04/2018-Recorded-Copy-Charges-Resolution.pdf> You will be notified of any fees in advance. If there are fees associated with your request, they must be paid before the records will be released. If electronic records are available, and they are released utilizing this online public records portal, there is no charge for those electronic copies.

You may monitor the progress of your request at the link below and you'll receive an email when your request has been completed. Again, thank you for using the Sandoval County Online Public Records Center.

Best Regards,

Melissa Perez

Public Information Officer

Sandoval County, NM

To monitor the progress or update this request please login to [Public Records Center](#).



✉ On 9/15/2018 9:47:45 PM, Tina Tawater wrote:

Request was created by customer