

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

May 31, 2019

VIA ELECTRONIC MAIL ONLY

Mariposa Padilla Sivage, Esq.
Sutin Thayer & Browne APC
P.O. Box 1945
Albuquerque, NM 87103-1945
Email: mps@sutinfirm.com

Re: Inspection of Public Records Act Complaint – Charlotte Mitchell

Dear Ms. Padilla Sivage:

Thank you for your response on behalf of the College to our inquiry regarding the complaint submitted to the Office of the Attorney General by Ms. Charlotte Mitchell alleging that the Santa Fe Community College (hereinafter the “College”) violated the Inspection of Public Records Act (“IPRA”), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2018). As you are aware, Ms. Mitchell’s complaint alleges that the College failed to provide her with at least some records that were responsive to her records request dated January 4, 2019.¹ Having thoroughly reviewed the complaint and your response, it appears that the College did not provide Ms. Mitchell with a sufficient explanation of the redactions it made to a number of responsive records. We also have concerns about the College’s interpretation of Ms. Mitchell’s original request and the possibility that it omitted responsive records as a result. Accordingly, we advise the College to reevaluate Ms. Mitchell’s request and take remedial action.

Background

The Inspection of Public Records Act is designed to provide the public with access to “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.”). To that

¹ The College’s response stated that it received several other records requests from Ms. Mitchell beyond the one at issue in her complaint. However, this determination addresses only the request identified in her complaint.

end, IPRA states that the public has the right to inspect and copy all “public records” with only limited and specifically enumerated exceptions. Section 14-2-1(A). All exceptions to disclosure are construed narrowly and courts employ a strong “presumption in favor of the right to inspect” when interpreting IPRA’s various provisions. Attorney General’s Inspection of Public Records Act Compliance Guide, p. 7 (8th ed. 2015) (“IPRA Guide”).

In this case, Ms. Mitchell submitted a request for public records to the College on January 4, 2019. She sought “all email communication” about herself, limiting the scope of this request to the “email account” of a number of specific employees at the College within certain specified timeframes. The College’s records custodian responded on January 7, 2019, stating that the College needed until January 22, 2019, to respond.² On that date, January 22, 2019, Mr. Lovato emailed Ms. Mitchell again and provided her with “[t]he public records responsive to [her] request.” He also stated, “Please note that some of the documents have been redacted as provided for under the New Mexico Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 to 14-2-12.” The email provided no further explanation of the redactions, nor did the email identify the person (or persons) responsible for those redactions. It did, however, describe the records sought by Ms. Mitchell.

The College’s Interpretation of Ms. Mitchell’s Request

The sole issue raised by Ms. Mitchell’s complaint is that the College failed to provide some of the records responsive to her request. The College denied this allegation and maintained in response to our inquiry that it had given Ms. Mitchell all responsive records. However, she had substantiated this allegation in her complaint by attaching a partial copy of an email sent to one of the College employees named in her original request. This email was not provided to Ms. Mitchell by the College in response to her request and she alleges that it provides evidence that the College’s response to her request was incomplete.

In explaining the email provided to us by Ms. Mitchell, the College appeared to distinguish between emails contained in an employee’s College email account and those in another email account. Although the College did not make this argument explicitly, its argument appears to be that Ms. Mitchell’s request was limited only to emails in an employee’s College account. It stated, for example, that it was unclear whether the allegedly-responsive email provided by Ms. Mitchell “was sent to the SFCC address... or another email address.” Thus, the records custodian appears to have searched only for records within College email accounts.

² We have some concern about this initial January 7, 2019, email from the College’s records custodian. That letter stated that the College would respond by January 22, 2019, approximately eighteen (18) days from the date that Ms. Mitchell’s request was received by the college (January 4, 2019). This was beyond the fifteen (15) calendar days within which the College was required to respond. *See* § 14-2-8(D) (requiring public bodies to “permit the inspection immediately or as soon as is practicable under the circumstances, but not later than fifteen days after receiving a written request”). The only exception to this fifteen-day time limit is a records request designated by the public body to be “excessively burdensome or broad.” Section 14-2-10. However, the College’s January 7, 2019, letter did not inform Ms. Mitchell that it considered her request to be excessively burdensome or broad. While Ms. Mitchell did not raise this issue in her complaint, in the future the College should be more cognizant of this IPRA provision.

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Notwithstanding the College's apparent interpretation of her request, we do not interpret Ms. Mitchell's request as limited to only College email accounts. She specifically requested emails contained within the "email account" of a number of specific College employees. Her request did not state that it was limited only to College email accounts, and we would note that emails in an employee's private email account could still be public records if they were related to public business. Section 14-2-6(G). Ms. Mitchell's request was also quite broad on its face given that she stated she sought "*all* email communication" (emphasis added). IPRA requires only that a requestor must identify the records sought with "reasonable particularity," and Ms. Mitchell's request clearly satisfied this requirement. Section 14-2-8(C); *see also San Juan Agr. Water Users Ass'n v. KNME-TV*, No. A-1-CA-35839, mem. op. at 21 (N.M. Ct. App. Apr. 16, 2019) (noting that, "A public record is 'responsive' to an inspection request when the request identifies the public record with reasonable particularity."). Therefore, to the extent that the College interpreted her request as limited to only College email accounts, our opinion is that this was unreasonable.

As to whether the College withheld responsive records due to its mistaken interpretation of Ms. Mitchell's request, the record is mixed. While the College indicated in its response to our inquiry that she subsequently filed a second IPRA request for "personal emails used for SFCC business" and no responsive records were located, Ms. Mitchell did provide our office with (part of) an email that at least appears to be responsive. Because of this email, we must advise the College to reevaluate its response to Ms. Mitchell's request. If it did not conduct a thorough search of its employee's non-College email accounts, the College should do so as soon as possible to ensure that it has provided all responsive records to Ms. Mitchell.

Explanation of Redactions

Outside of whether the College provided all responsive records to Ms. Mitchell, it also made redactions to the records it did provide. The College's response to our inquiry stated as much, noting that "SFCC redacted personal identifier information." However, the College never explained the basis of those redactions to Ms. Mitchell. Its January 22, 2019, email to her stated only that "some of the documents have been redacted as provided for under the New Mexico Inspection of Public Records Act." This citation to the entirety of IPRA was insufficient: "[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." IPRA Guide, p. 40. While IPRA does indeed allow public bodies to redact protected personal identifier information, the College was required to explain this to Ms. Mitchell and it did not do so.

Additionally, we would note that the College's January 22, 2019, email did not identify the individual responsible for the decision to redact information. This too is required to be conveyed to a requestor whenever a public body withholds or redacts a record. *See* § 14-2-11(B) (providing that the public body "shall provide the requester with a written explanation of the denial" including "the names and titles or positions of each person responsible for the denial").

As the College did not send Ms. Mitchell a proper explanation of its redactions, we recommend that it send her a revised denial letter conforming to Section 14-2-11(B). While this may strike the

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College as only a small provision of IPRA, our Court of Appeals has noted in the past that “[d]enials are valuable information-gathering tools.” *Am. Civil Liberties Union of New Mexico v. Duran*, 2016-NMCA-063, ¶ 38. It is accordingly critical for all public bodies to send full and complete denial letters to requestors, and we would encourage the College to be more mindful of this obligation moving forward.

Conclusion

Having concluded that the College did not properly explain its redactions to Ms. Mitchell, and that it may not have conducted a thorough search for all responsive records, we recommend that it take remedial action. *See Derringer v. State*, 2003-NMCA-073, ¶ 13. This should include, at a minimum, sending a denial letter stating both the basis of and individuals responsible for its redactions. Additionally, if in fact the College excluded its employees’ non-College email accounts from its records search, it should search them for other responsive records.

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: Charlotte Mitchell

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

Electronic Complaint Submission

Submission Detail

ECS Reference Number	NMOAG-ECS-20190301-e63b
Final Submit Date	3/1/2019 8:52:22 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

Charlotte Mitchell

Person

Address

[REDACTED]

Contact information

[REDACTED]
[REDACTED]

Complaint against

Santa Fe Community College - Todd Lovato, Public Records Custodian

Public Body (Government Entity)

Address

6401 Richards Ave
Santa Fe, New Mexico 87508

Contact information

todd.lovato@sfcc.edu
(505) 428-1217
<https://www.sfcc.edu>

Complaint Specifics

Format of IPRA request: Written

Date IPRA request was submitted to the public body: 01/04/2019

Date of all responses received from the public body: 01/07/2019; 01/22/2019; 01/23/2019; 01/28/2019; 01/29/201; 02/12/2019; 02/26/2019

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

Transaction

Documents



Example.pdf

Events

Comments

The public body accepted my initial IPRA request which was placed on 01/04/2019. I requested emails in faculty email accounts regarding an individual. I provided specific faculty names and date ranges. In the initial response, I did not receive all of the requested emails. I then requested the missing emails and placed an addition to my initial request. I have received a few more emails but have yet to receive all of the emails responsive to my initial IPRA request. The public body has not provided much of a response as to why I did not receive all of the emails. I do have emails in my possession responsive to my request which were not provided to me by SFCC. I will attach a portion of one example. I assume that some faculty are withholding emails responsive to my IPRA request and I do not understand why.

*** END OF COMPLAINT ***



Barbara Piper, M.Ed.

Adjunct Faculty / Teacher Education
Santa Fe Community College

From: Patricia Martinez <pm101@abqse.org>

Sent: Thursday, April 5, 2018 12:39 PM

To: Barbara Piper

Cc: Kristi Del Curto

Subject: Update

Good Morning,

Just want to update you on Ms. Mitchell'

