

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

October 7, 2019

VIA ELECTRONIC MAIL ONLY

Santa Fe County
Bruce Frederick, County Attorney
102 Grant Ave.
Santa Fe, NM 87504-0276
Email: rbfrederick@santafecountynm.gov

Re: Inspection of Public Records Act Complaint – Danielle Nicole Jimenez

Dear Mr. Frederick:

This letter addresses the complaint filed with the Office of the Attorney General by Ms. Danielle Nicole Jimenez alleging that Santa Fe County (hereinafter “the County”) violated the Inspection of Public Records Act (“IPRA”), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2018). As you know, Ms. Jimenez alleges that the Santa Fe County Sheriff’s Office (the “Sheriff’s Office”) failed to provide her with any responsive records and that it also failed to comply with IPRA’s specified deadlines in responding to her request. We are in receipt of your response on behalf of the County to our inquiry regarding this matter. Having reviewed the facts surrounding this case, we advise the Sheriff’s Office to provide Ms. Jimenez with a letter explaining the redactions it made when it ultimately provided her the responsive records.

This matter arose out of a public records request Ms. Jimenez emailed to the County on December 28, 2017. Seeking a wide array of records from the Sheriff’s Office, Ms. Jimenez emailed her request to the County’s records custodian. However, the Sheriff’s Office had its own records custodian, so the County’s records custodian forwarded the request to the Sheriff’s Office on December 29, 2017, with a copy to Ms. Jimenez. The custodian at the Sheriff’s Office apparently did not open this email until January 12, 2018, fourteen days later. Although the Sheriff’s Office did call Ms. Jimenez on several occasions thereafter, it did not provide her any written communications until February 7, 2018, when it requested more time to respond. The Sheriff’s Office contacted her again on February 12, 2018, notifying her that the requested records were available for inspection and copying. It also notified her of the applicable copying fees. After further correspondence between Ms. Jimenez and the Sheriff’s Office, she eventually limited her request for copies of records and picked up the records she wanted on April 6, 2018. In her

complaint to our Office, Ms. Jimenez raises two issues. First, she alleges that the County violated IPRA's specified deadlines by failing to provide her with timely correspondence. Secondly, she claimed that she was not provided all responsive records. We will address both of these issues.

With respect to the timelines involved, there appears to be no question that the Sheriff's Office violated IPRA by failing to provide Ms. Jimenez with timely correspondence. While the County maintained in its response to our inquiry that this failure was inadvertent, the fact remains that the Sheriff's Office did not respond to Ms. Jimenez in writing within three days as required by IPRA. *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."). Similarly, it appears that the Sheriff's Office also failed to respond in writing within fifteen calendar days of the request. This too was a violation of IPRA, which requires that all public bodies either provide the requested records, deny the request, or designate the request as broad and burdensome in writing within fifteen calendar days of the custodian's receipt of the request. *See* § 14-2-8(D), § 14-2-11(A), and § 14-2-10. While we recognize that the Sheriff's Office communicated with Ms. Jimenez over the telephone during this time, it was required to send her written correspondence and it did not do so.

All that being said, the County's response to our inquiry states that the Sheriff's Office ultimately provided Ms. Jimenez all of the requested records. The County stated specifically that no responsive records were withheld and Ms. Jimenez obtained copies of the records she sought on April 6, 2018 (after being made available on February 12, 2018). This means that, for our purposes at least, the Sheriff's Office effectively took remedial action and (belatedly) complied with IPRA. *See Derringer v. State*, 2003-NMCA-073, ¶ 13, 133 N.M. 721, 724, 68 P.3d 961, 964 (holding that damages for an agency's violation of IPRA are not allowed after the agency has taken subsequent action to come into compliance with the statute).

There remains, however, one lingering issue which was not originally identified by Ms. Jimenez's complaint. When the Sheriff's Office provided the responsive records to Ms. Jimenez, it redacted information in some of those records. Although we will not opine as to the legal justification behind those redactions without more information, the County's response to our inquiry stated that the Sheriff's Office, contrary to its standard policies and procedures, "inadvertently omitted" an explanation of these redactions in its written correspondence with Ms. Jimenez. IPRA requires a written explanation of any redaction, as this written explanation provides critical and invaluable information to requestors. *See* § 14-2-11(B); *see generally Republican Party of New Mexico v. New Mexico Taxation & Revenue Dep't*, 2012-NMSC-026, ¶ 50 (holding that redactions made through the justification of executive privilege were invalid). Given that it appears that the Sheriff's Office still has not provided a written explanation of these redactions to Ms. Jimenez, we strongly advise them to do so as soon as possible.

Although the manner in which the Sheriff's Office handled Ms. Jimenez's request in this case raises real concerns about its understanding of and compliance with IPRA, we are reassured by the County's statement in its response to our inquiry that the Sheriff's Office is "actively striving to improve its IPRA process." Given what happened in this case, that improvement is essential. IPRA

exists to provide the public with access to the “greatest possible information” about governmental affairs, and all public bodies must honor that obligation. Section 14-2-5. In accordance with this statutory mandate, the Sheriff’s Office should continue to improve and revise its public records policies.

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". The signature is stylized and cursive.

John Kreienkamp
Assistant Attorney General

cc: Danielle Nicole Jimenez

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Electronic Complaint Submission

Submission Detail

ECS Reference Number	NMOAG-ECS-20180206-a8c5
Final Submit Date	2/6/2018 9:25:52 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

Mrs. Danielle Nicole Jimenez

Person

Address

[REDACTED]

Contact information

[REDACTED]

Complaint against

Santa Fe County Sheriff's Office - Sheriff Robert Garcia

Organization

Address

35 Camino Justicia
Santa Fe, New Mexico 87508

Contact information

shfrecordsreq@santafecountynm.gov

(505) 986-2455

www.santafecountynm.gov/sheriff

We submitted an IPRA with the Santa Fe County Sheriff's Office more than fifteen working days ago. We have not received any of the requested documents.

Complaint Specifics

Format of IPRA request:	Written
Date IPRA request was submitted to the public body:	Thursday, December 28th, 2017 at 3:28 PM
Date of all responses received from the public body:	Friday, December 29th, 2017 at 9:24 AM from Ms. Robin Gurule
Records	No records were provided., 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.
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



Santa Fe SO IPRA.pdf

IPRA to Santa Fe County Sheriff's Office

Comments

The records request was for police reports, special orders, directives, emails, text messages from department phones, and any correspondence involving myself, my husband Roger Jimenez, David Webb Jr., Robin Webb and Jeffrey Valdez.

*** END OF COMPLAINT ***

