

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
ATTORNEY GENERAL

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June 20, 2019

Dr. Veronica García, Superintendent  
Santa Fe Public Schools  
610 Alta Vista  
Santa Fe, NM 87505  
Email: [vcgarcia@sfps.k12.nm.us](mailto:vcgarcia@sfps.k12.nm.us)

**Re: Inspection of Public Records Act Complaint – Melissa Mascarenas**

Dear Dr. García:

This letter addresses the complaint filed with the Office of the Attorney General by Ms. Melissa Mascarenas alleging that Santa Fe Public Schools (hereinafter “the District”) violated the Inspection of Public Records Act (“IPRA”), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2018), in connection with her IPRA request dated August 8, 2018. According to Ms. Mascarenas’ complaint, the District failed to provide any documents responsive to her request and further failed to provide a proper three-day letter as required by IPRA. We are also in receipt of the District’s response to our inquiry regarding this matter. *See* Letter by Jeff Gephart, Records Custodian (October 11, 2018) (“Response”). We do not find evidence to support Ms. Mascarenas’ allegations. However, having reviewed the facts and documentation provided to us, we strongly advise the District to both reevaluate the redactions it made to certain responsive records and to send Ms. Mascarenas a revised denial letter.

Background

Ms. Mascarenas submitted an IPRA request to the District on August 8, 2018. *See* Complaint by Melissa Mascarenas (August 14, 2018) (“Complaint”). Specifically, she requested electronic copies of emails related to a Fiesta Council issue then-pending before both the Santa Fe School Board and its Diversity Committee. *Id.* One day later, on August 9, 2018, the District acknowledged Ms. Mascarenas’s records request in a letter in which it stated that it required until September 6, 2018, to respond due to the large number of records involved. *See* Letter and Email by Sabra Romero, Assistant Records Custodian (August 9, 2018) (attached to Response as Attachment 2) (“August 9 Letter”). On the expected date, September 6, 2018, the District wrote to Ms. Mascarenas again to inform her that the records were ready for her inspection. *See* Letter and Email by Sabra Romero, Assistant Records Custodian (September 6, 2018) (attached to Response as Attachment 3) (“September 6 Letter”).

Although the District noted in its response to our inquiry that it did not issue a denial letter because it did not withhold any records, the District made a number of redactions to the sixty-six (66) records it provided to Ms. Mascarenas. *See Response*. Ms. Mascarenas later provided our Office with copies of those redacted records. For our purposes, it is clear from our review of these records that the District redacted certain personal email addresses belonging to members of the Diversity Committee. The District, both in its final letter to Ms. Mascarenas and in its response to our inquiry, justified those redactions by relying upon the Federal Educational Rights and Privacy Act, 20 U.S.C. Section 1232g. *See September 6 Letter; see also Response*.

Ms. Mascarenas filed her complaint with our Office on August 14, 2018. *See Complaint*. Between then and the date upon which it responded to our inquiry, the District responded to her request and effectively nullified her two allegations that it failed to provide a three-day acknowledgment letter and that it failed to provide any records at all. *See Complaint; see also Response*. Those two allegations are no longer relevant to our analysis. However, based on the documentation provided to us and the continued interest in this case on the part of Ms. Mascarenas, two new issues have arisen: whether the District had the legal authority under the Federal Educational Rights and Privacy Act to redact personal email addresses of Diversity Committee members, and whether the District's letter sent on September 6, 2018, properly conformed to IPRA's requirements for denial letters.

### The Inspection of Public Records Act

The Inspection of Public Records Act provides that the people are entitled to “the greatest possible information” about their elected representatives and government more broadly. NMSA 1978, § 14-2-5. *See also Republican Party of New Mexico v. New Mexico Taxation & Revenue Dep't*, 2012-NMSC-026, ¶ 38, 283 P.3d 853, 867 (observing “IPRA's guiding purpose of promoting government transparency”). Accordingly, the statute is broadly written and interpreted in favor of transparency. Courts employ a “presumption in favor of the right to inspect.” Attorney General's Inspection of Public Records Act Compliance Guide, p. 7 (8<sup>th</sup> ed. 2015) (“IPRA Guide”).

IPRA specifically addresses the circumstances under which a public body may withhold a record or redact information. The statute speaks not only to the substance of whether a public body may withhold or redact a record, but also to the procedure by which it may do so. *See* § 14-2-1(A) (setting forth eight narrow exceptions to disclosure) and § 14-2-11 (outlining the “[p]rocedure for denied requests”). In other words, the withholding or redaction must be allowed by one of IPRA's exceptions, and the public body must provide a proper denial letter consistent with the statute.

Turning first to the substantive justification for withholding or redacting a record, IPRA contains eight specific exceptions. Section 14-2-1(A). One of these operates as a catch-all exception, authorizing the denial of a request “as otherwise provided by law.” Section 14-2-1(A)(8). As the New Mexico Supreme Court has noted, this particular exception effectively incorporates all other provisions of law which exempt particular records from disclosure. *See Republican Party of N.M. v. N.M. Taxation & Revenue Dep't*, 2012-NMSC-026, ¶ 13, 283 P.3d 853 (noting that the exception extends to “statutory and regulatory bars to disclosure” as well as constitutional and

evidentiary privileges). The Court has clarified that “a public body may withhold a public record only if it is based on (1) a specific exception contained within the Act, (2) a statutory or regulatory exception, (3) a rule adopted by the New Mexico Supreme Court, or (4) a privilege protecting a record from disclosure that is grounded in the U.S. or state constitution.” IPRA Guide, p. 21. *See also Republican Party of N.M.*, 2012-NMSC-026, ¶ 16 (holding that “courts now should restrict their analysis to whether disclosure under IPRA may be withheld because of a specific exception”).

With respect to the procedures involved, in order to deny a records request or redact information from a requested document, public bodies must provide the requester with a “written explanation” of the denial or redaction. Section 14-2-11(B). This means that the requester must be given a specific reason as to why the public body is not providing the information or record. *See IPRA Guide*, p. 40 (explaining 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 *both* a description of the requested documents *and* a list of “the names and titles or positions of each person responsible for the denial.” Section 14-2-11(B).

#### Justification for the District’s Redactions

In providing records responsive to Ms. Mascarenas’ request, the District made a number of redactions. *See Response; see also* September 6 Letter. As noted earlier, Ms. Mascarenas provided us with copies of these redacted records. It is quite apparent that at least some (if not all) of these redactions were of the personal email addresses of members of the School Board’s Diversity Committee. The only justification offered by the District for these redactions was the Federal Educational Rights and Privacy Act, 20 U.S.C. Section 1232g. *See Response; see also* September 6 Letter. As a result, the question we must answer is whether this specific federal statute authorizes the redactions of personal email addresses belonging to members of the committee.

20 U.S.C. Section 1232g provides that federal education funds may be made available to any educational institution that has a policy or practice of releasing “educational records” except as provided therein. 20 U.S.C. § 1232g(b)(1). That statute also contains a definition for educational records:

For the purposes of this section, the term “education records” means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which--

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

20 U.S.C. § 1232g(a)(4)(A). Critically, not all information or records held by educational institutions are subject to this exception: they must “contain information directly related to a student.” *Id.* If that criterion is not satisfied and the relevant record or information is not directly related to a student, then this provision does not operate to prohibit disclosure. *See Baker v.*

*Mitchell-Waters*, 826 N.E.2d 894, 899, 2005-Ohio-1572, ¶ 29 (Ohio Ct. App. 2005) (holding that “documents, relating to allegations of abuse or neglect of students by teachers, are not protected from discovery by FERPA, because the requested documents do not contain information directly relating to students”); *see also Easton Area Sch. Dist. v. Miller*, 191 A.3d 75, 77 (Pa. Commw. Ct. 2018) (holding that a video depicting “a school teacher roughly disciplining a student on the school bus” was not an “education record” for the purposes of 20 U.S.C. § 1232g because it did not contain information directly related to a student), *appeal granted in part*, No. 530 MAL 2018 (Pa. 2019).

Based on the information available to us, the District should, at a minimum, reevaluate the legal basis for the redactions it made in this case. 20 U.S.C. Section 1232g does not allow an educational institution to withhold any record or redact any information it desires; rather, it shields particular information and records that relate to individual students. While it may be that some of these redacted email addresses were directly related to a particular student, this is a dubious proposition at best. If in fact these redactions were of individual committee member email addresses that did not relate directly to a particular student, we strongly advise the District to either provide Ms. Mascarenas the unredacted records or to provide her a denial letter citing a different and legally-valid exception to disclosure.

#### The District’s Denial Letter

In response to our inquiry regarding this complaint, the District emphasized that it did not withhold any records and therefore that, “There was no denial letter.” Response, p. 2. Labels aside, the District was still required to provide Ms. Mascarenas with a proper explanation for the redactions it made. Section 14-2-11(B). The District’s September 6, 2018, letter to Ms. Mascarenas partially served as that explanation, stating both the records sought and the legal justification (incorrect as it may have been) for its redactions. *See* September 6 Letter. However, this letter did not identify the individuals responsible for the denial as required by IPRA. *Id.*; *see also* § 14-2-11(B)(2) (requiring denial letters to “set forth the names and titles or positions of each person responsible for the denial”). As a result, it was not an IPRA-compliant explanation of redaction.

Based on the conclusions we have reached in this case, we strongly advise the District to take remedial action with respect to its handling of Ms. Mascarenas’ records request. *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). Ideally, the District should provide the unredacted records to Ms. Mascarenas, if in fact the redactions were of email addresses for Diversity Committee members. Alternatively, the District must provide Ms. Mascarenas with a revised denial letter conforming to the specifications of Section 14-2-11. This type of remedial action is necessary both to comply with IPRA’s mandate to provide the public with access to “the greatest possible information” about governmental affairs and to avoid the steep financial penalties that noncompliance can incur. Section 14-2-5; *see also* § 14-2-12 (providing for “damages, costs and reasonable attorneys’ fees to any person whose written request has been denied and is successful in a court action to enforce the provisions of the Inspection of Public Records Act”).

Dr. Veronica García, Superintendent

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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](http://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", is written over a light blue rectangular background.

John Kreienkamp  
Assistant Attorney General

Enclosure

CC: Ms. Melissa Mascarenas  
[missymas@msn.com](mailto:missymas@msn.com)

Mr. Jeff Gephart  
[jgephart@sfps.k12.nm.us](mailto:jgephart@sfps.k12.nm.us)

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HECTOR H. BALDERAS  
ATTORNEY GENERAL

## Electronic Complaint Submission

### Submission Detail

<b>ECS Reference Number</b>	NMOAG-ECS-20180814-7458
<b>Final Submit Date</b>	8/14/2018 2:21:03 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

**Melissa Y. Mascarenas**

Person

#### Address

[REDACTED]

#### Contact information

[REDACTED]  
[REDACTED]

### Complaint against

**Santa Fe Public School Board and Superintendent**

Public Body (Government Entity)

#### Address

410 Alta Vista Street  
Santa Fe, New Mexico 87505

#### Contact information

(505) 467-2000  
www.sfps.info

## Complaint Specifics

<b>Format of IPRA request:</b>	Written
<b>Date IPRA request was submitted to the public body:</b>	August 8, 2018
<b>Date of all responses received from the public body:</b>	I have not received a single response from them.
<b>Records</b>	No records were provided.
<b>Deadlines (For purposes of deadlines imposed by the IPRA, the date the request is received is not counted)</b>	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.

## Transaction

## Documents



IPRA.pdf

IPRA request

**Comments**

\*\*\* END OF COMPLAINT \*\*\*

Reply | Delete Junk |

## Request for Public Records



Melissa Mascareñas <missymas@msn.com>

Wed 8/8, 9:52 AM

recordscustodian@sfps.k12.nm.us

Reply |

Mr. Gephart,

I would like to request electronic copies of all email that was provided to Dr. Veronica Garcia, each member of the current Santa Fe School Board and the Diversity Committee, from January 2018 until the present date pertaining to the Fiesta Council participating in the Santa Fe Public Schools.

My email is missymas@msn.com.

Thank you for your assistance in this matter.

Sincerely,  
Melissa Y. Mascareñas, President  
Santa Fe Fiesta, Inc.