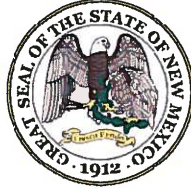


STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
ATTORNEY GENERAL

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October 16, 2017

Santa Fe Public Schools  
Amy Jager  
610 Alta Vista  
Santa Fe, NM 87505

Dear Ms. Jager:

Thank you for your responses on behalf of the Santa Fe Public Schools ("SFPS") to the Office of the Attorney General Open Government Division's ("OGD") request for information regarding Charles Kraft's complaint, which alleges that SFPS violated the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2013) ("IPRA"). We have reviewed the complaint, your response dated June 30, 2016 and the correspondence provided to us. We have also reviewed the IPRA. As discussed below, we have concluded our investigation and determine as follows:

**Allegations in the Complaint**

Mr. Kraft requested (i) a copy of a records request submitted by a Mr. Plotsky, (ii) all records provided in response to Mr. Plotsky's request, and (iii) all communication created by SFPS in response to Mr. Plotsky's request, such as e-mails, text messages and memoranda. SFPS prepared material in response, notified Mr. Kraft that the cost for the material would be \$500.00, and added that text messages would not be included as they were not in SFPS' custody. Mr. Kraft makes two allegations in his complaint. He alleges that (i) SFPS is charging an unreasonable fee for the documents that he requested and (ii) SFPS withheld access to text messages in violation of the IPRA.

**Concerns Regarding an Unreasonable Amount for the Documents**

Section 14-2-9(C)(3) states that a custodian "may charge the actual costs associated with downloading copies of public records to a computer disk or storage device, including the actual cost of the computer disk or storage device." Additionally, § 14-2-9(C)(4) states that a custodian "may charge the actual costs associated with transmitting copies of public records by mail, electronic mail or facsimile." Lastly, a public body may charge for any personnel time that was necessary to make or transmit copies. N.M. Att'y Gen. Inspection of Public Records Compliance Guide at 36 (8<sup>th</sup> ed. 2015) (available on our website, [www.nmag.gov](http://www.nmag.gov)).

SFPS' May 25, 2016 letter to the prior requester, Mr. Plotsky, states that the material he requested was prepared and ready, and indicates that all of it was available in electronic format. To the extent that Mr. Kraft's June 4, 2016 request was for the same material, SFPS may only charge for the actual *additional* cost of downloading copies, the storage device to which they are downloaded, transmission of copies, and personnel time for Mr. Kraft's request – as stated the passages of the Compliance Guide cited in SFPS' letter. In other words, in responding to Mr. Kraft's request, any cost *already* incurred by SFPS in preparing Mr. Plotsky's material and thus unnecessary to repeat should not have been charged to Mr. Kraft.

The material responsive to Mr. Kraft's request that was *in addition to* Mr. Plotsky's is a simpler matter. To the extent that material existed in electronic format, the standard noted above – i.e., the actual cost incurred by SFPS for downloading of copies, the storage device to which they are downloaded, transmission of copies, and any personnel time involved – should have been applied. To the extent the material did not exist in electronic format, and thus had to be provided in hard copy, the maximum allowable charge was one dollar per page.

Our office does not normally look behind a public body's calculation of its actual cost. However, in regard to the portion of Mr. Kraft's request duplicating the material previously prepared for Mr. Plotsky, we agree that a charge of \$500 seems excessive. Accordingly, we strongly encourage SFPS to revisit its calculation to make sure the amount charged truly reflects SFPS' total actual cost and, if not, adjust it accordingly, and provide Mr. Kraft an itemization of the charge that shows how it was derived, preferably distinguishing between charges for material already provided to Mr. Plotsky and charges for the additional material.

### **Improperly Withholding of Text Messages**

SFPS stated in its June 14, 2016 letter to Mr. Kraft that it could not provide text messages because SFPS "is not the custodian of texts," and added that Mr. Kraft "would have to request them from Verizon." SFPS appears to be saying that, because texts are held on behalf of SFPS by Verizon, SFPS is not required to provide them. We believe this misunderstands the requirement of the IPRA. The threshold question under the IPRA is whether material at issue is a public record. A public record is defined as "all documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, regardless of physical form or characteristics, that are *used, created, received, maintained or held by or on behalf of* any public body and relate to public business, whether or not the records are required by law to be created or maintained." NMSA 1978, § 14-2-6(G) (emphasis added). As can be seen, this definition is expansive and includes all materials that are held by a public body and relate to public business.

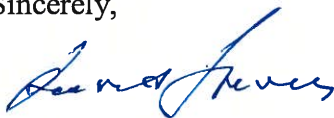
Given this expansive definition, it is the position of the OAG that text messages fall under the definition of "public records." Unless a legitimate exception is cited, a public body must allow inspection of public records by an individual who requests them. Section 14-2-1(A). SFPS has not cited any exception that would allow it to withhold the text messages. There is a presumption that the text messages were used, created or received by SFPS; likewise, we assume they are (or were) "held . . . on behalf of" SFPS by Verizon. Thus, they are captured by the IPRA. N.M. Att'y Gen. Inspection of Public Records Compliance Guide at 25. Therefore, SFPS must make a reasonable, good faith effort to recover a record of the text messages from Verizon, review the record, and determine if any portion is responsive to the request.

Although there is no New Mexico case law on this issue, other states have taken the position that text messages that were created within the scope of employment and were work related would be considered a public record. Nissen v. Pierce County, 183 Wash. 2d 863, 883, 357 P.3d 45, 56 (2015). Moreover, the Court held that it was the public agency that had the duty to make sure that relevant text messages were turned over to the requester. *Id.* at 886.

### **Conclusion**

SFPS should bear in mind that the IPRA provides consequences for failure to comply with its requirements. *See* § 14-2-12(D). To avoid such consequences, in accord with our above advice, we encourage SFPS to review the amount charged to Mr. Kraft and reevaluate whether you have any responsive text messages. If you have any questions about the specific matters addressed in this letter, or about the IPRA in general, please do not hesitate to contact me.

Sincerely,



David Stevens  
Assistant Attorney General

CC: Charles Kraft

INSPECTION OF PUBLIC RECORDS ACT ("IPRA") COMPLAINT FORM

New Mexico Office of the Attorney General

Open Government Division

YOUR CONTACT INFORMATION:

First Name: Charles Last Name: Kraft

Address: [REDACTED]

City: [REDACTED] State: [REDACTED] Zip Code: [REDACTED]

Phone Number: [REDACTED]

Email: [REDACTED]

IPRA REQUEST TO THE PUBLIC BODY:

Name of the Public Body that is the subject of this complaint (including city/town, county or region, if applicable): Santa Fe Public Schools

Format of IPRA Request:  Written  Oral

Date IPRA Request was Submitted to the Public Body: June 4, 2016

Date of all Responses Received from the Public Body: June 8 and June 14.

ALLEGED VIOLATIONS OF IPRA BY THE PUBLIC BODY: Please select from the following list the violations you allege the public body committed. Check all that apply.

RECORDS:

- No records were provided.
- The agency provided some but not all of the records responsive to the request.
- Records were provided, but they were not responsive to the request.
- The public body does not have custody or responsibility for the records, and the records custodian did not forward the request to the proper custodian.
- 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.

DENIED REQUESTS TO INSPECT PUBLIC RECORDS

- Although some records were provided, the custodian did not include a written explanation for denying the production of exempt records or for redacting confidential information from records.
- No records were provided and the records custodian did not deliver or mail a written explanation to the requester within fifteen (15) calendar days after receiving the request that included a description of the records sought, the names and titles of each person responsible for denying the request, and a description of the reasons for the denial.

NOTICE

- Public body did not post in a conspicuous location at its administrative office or on the public body's website a notice setting forth: the rights of any person to inspect the public body's public records, the public body's responsibility to make public records available for inspection, the procedures for requesting inspection of public records, the procedures for requesting copies of public records, and/or reasonable fees for copying public records

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.

FEES

- The public body charged fees in excess of \$1.00 per printed page for documents 11"X17" or smaller, or charged fees that exceeded the actual costs to copy the records.
- The public body did not provide a receipt upon request.

**DETAILED EXPLANATION OF ALLEGED IPRA VIOLATIONS** (Required): Please provide a description of the actions taken by the public body that violated the IPRA, including specific dates and why you believe the IPRA has been violated.

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*please see attached documents.*

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**ADDITIONAL INFORMATION:** Please provide a copy of your original inspection request (if written), and any documentation or evidence you have regarding the alleged IPRA violation.



Charles Kraft &lt;charles.b.kraft@gmail.com&gt;

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**Formal IPRA complaint**

1 message

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**Charles Kraft** <charles.b.kraft@gmail.com>

Tue, Jun 14, 2016 at 9:43 PM

To: Lavern Roller &lt;lroller@nmag.gov&gt;, "Maestas, Tania" &lt;tmaestas@nmag.gov&gt;

Cc: director@nmfog.org

Ms. Roller,

Please accept this formal IPRA complaint against the Santa Fe Public School District and its records custodian, Marilyn Galano.

**MY CONTACT INFORMATION:**

Charles Kraft  
5919 Prenda de Oro NW  
Albuquerque, NM 87120  
505-350-3453  
charles.b.kraft@gmail.com

**IPRA REQUEST TO THE PUBLIC BODY**

Public Body: Santa Fe Public Schools ("SFPS")  
Format of Request: Written (attached)  
Date submitted: June 4, 2016  
Dates of responses from SFPS: June 8, June 14, 2016

**ALLEGED VIOLATIONS OF THE IPRA**

- The agency is demanding that I pay \$500 for electronic copies of responsive records
- Because I am unable to travel to Santa Fe to review the documents, I requested all records sent electronically. I am willing to pay the cost of a flash drive or DVD. Because SFPS is demanding that I pay \$500 for the flash drive of documents, I'm viewing their response as a functional denial of my IPRA request.
- SFPS is conducting public business via cell phone text messaging but has denied my request because Verizon maintains the text messages. This is a shady, backdoor way around IPRA and should not be tolerated. SFPS should be required to provide me those records or photograph or screen shot the responsive text messages from the phones and provide me copies.

**DETAILED EXPLANATION OF IPRA VIOLATION:**

- On June 4, I submitted an IPRA request (attached) in which I requested electronic copies of certain records. Particularly, I requested (1) an IPRA request that David Plotsky or his law firm had submitted, (2) all communications generated in response to Mr. Plotsky's request, and (3) copies of all responsive records to Mr. Plotsky's request. As you'll see in the attached documents, SFPS had prepared Mr. Plotsky's request prior to my IPRA request and also charged Mr. Plotsky \$500. When my request was received, SFPS responded within three days and notified me that most of my request was ready but that it would also cost me \$500 to receive my electronic records. It is inconceivable to me how SFPS can charge \$500 for electronic records, especially given the fact that Mr. Plotsky's request had already been prepared. In other words, all SFPS had to do was put a new flash drive into their computer and drag-and-drop the responsive records from Mr. Plotsky's request into the new flash drive to fulfill my request. How SFPS justifies a cost of \$500 for that minor, no more than 2 minute action, is incredible.
- I requested a break down or explanation of how my request costs \$500 and did not receive justification.
- Before responding to my June 4 request, SFPS contacted David Plotsky and asked his permission to turn

over public records to me, citing their "concern" that I could be breaching an assumed attorney client privilege by doing so. Not only was SFPS acting contrary to the law in asking Mr. Plotsky's permission for responding to my request, but in doing so, SFPS was considering the reasoning behind my request, which is specifically prohibited by the IPRA.

- Although irrelevant and completely improper on the part of SFPS, I do not represent Mr. Plotsky and Mr. Plotsky does not represent me.

Please do not hesitate to contact me for follow up questions. I look forward to your investigation.

—

**Charles B. Kraft, Esq.**

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**4 attachments**



**June 4, My IPRA request to SFPS.pdf**

97K



**June 14, Kraft Plotsky response letter.pdf**

67K



**May 25, SFPS letter to Plotsky.pdf**

388K



**June 14, IPRA 2015160069 response letter.pdf**

19K





Charles Kraft &lt;charles.b.kraft@gmail.com&gt;

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**IPRA request**

1 message

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**Charles Kraft** <charles.b.kraft@gmail.com>  
To: llehman@sfps.k12.nm.us

Sat, Jun 4, 2016 at 10:58 AM

Ms. Lehman,

Please accept this email as a formal IPRA request in which I am seeking records to be provided in an electronic format, if possible. Upon information and belief, David Plotsky and/or the law firm of Plotsky & Dougherty, P.C., submitted an IPRA request to the Santa Fe Public School District via its custodian of records, which I believe is you, sometime during 2016.

I am seeking Mr. Plotsky's IPRA request, from sometime this year, that was sent you, as well as all records that are/were responsive to his request. I am also seeking any emails, memos, text messages, or other records that were created in response to Mr. Plotsky's request. Please advise if no records were created in that regard. Again, I am seeking documents in an electronic format.

Please provide these electronic records within three days or advise why additional time is needed. NMSA 1978, Section 14-2-8(D).

Many thanks,

Charles

—

**Charles B. Kraft**  
5919 Prenda de Oro NW  
Albuquerque, NM 87120  
505-350-3453

## Laverne Roller

---

**From:** Charles Kraft  
**Sent:** Tuesday, June 14, 2016 9:43 PM  
**To:** Lavern Roller; Maestas, Tania  
**Cc:** director@nmfog.org  
**Subject:** Formal IPRA complaint  
**Attachments:** June 4, My IPRA request to SFPS.pdf; June 14, Kraft Plotsky response letter.pdf; May 25, SFPS letter to Plotsky.pdf; June 14, IPRA 2015160069 response letter.pdf

Ms. Roller,

Please accept this formal IPRA complaint against the Santa Fe Public School District and its records custodian, Marilyn Galano.

### MY CONTACT INFORMATION:

Charles Kraft  
5919 Prenda de Oro NW  
Albuquerque, NM 87120  
505-350-3453  
[charles.b.kraft@gmail.com](mailto:charles.b.kraft@gmail.com)

### IPRA REQUEST TO THE PUBLIC BODY

Public Body: Santa Fe Public Schools ("SFPS")  
Format of Request: Written (attached)  
Date submitted: June 4, 2016  
Dates of responses from SFPS: June 8, June 14, 2016

### ALLEGED VIOLATIONS OF THE IPRA

- The agency is demanding that I pay \$500 for electronic copies of responsive records
- Because I am unable to travel to Santa Fe to review the documents, I requested all records sent electronically. I am willing to pay the cost of a flash drive or DVD. Because SFPS is demanding that I pay \$500 for the flash drive of documents, I'm viewing their response as a functional denial of my IPRA request.
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### DETAILED EXPLANATION OF IPRA VIOLATION:

- On June 4, I submitted an IPRA request (attached) in which I requested electronic copies of certain records. Particularly, I requested (1) an IPRA request that David Plotsky or his law firm had submitted, (2) all communications generated in response to Mr. Plotsky's request, and (3) copies of all responsive records to Mr. Plotsky's request. As you'll see in the attached documents, SFPS had prepared Mr. Plotsky's request prior to my IPRA request and also

charged Mr. Plotsky \$500. When my request was received, SFPS responded within three days and notified me that most of my request was ready but that it would also cost me \$500 to receive my electronic records. It is inconceivable to me how SFPS can charge \$500 for electronic records, especially given the fact that Mr. Plotsky's request had already been prepared. In other words, all SFPS had to do was put a new flash drive into their computer and drag-and-drop the responsive records from Mr. Plotsky's request into the new flash drive to fulfill my request. How SFPS justifies a cost of \$500 for that minor, no more than 2 minute action, is incredible.

- I requested a break down or explanation of how my request costs \$500 and did not receive justification.
- Before responding to my June 4 request, SFPS contacted David Plotsky and asked his permission to turn over public records to me, citing their "concern" that I could be breaching an assumed attorney client privilege by doing so. Not only was SFPS acting contrary to the law in asking Mr. Plotsky's permission for responding to my request, but in doing so, SFPS was considering the reasoning behind my request, which is specifically prohibited by the IPRA.
- Although irrelevant and completely improper on the part of SFPS, I do not represent Mr. Plotsky and Mr. Plotsky does not represent me.

Please do not hesitate to contact me for follow up questions. I look forward to your investigation.

--

**Charles B. Kraft, Esq.**



Charles Kraft &lt;charles.b.kraft@gmail.com&gt;

---

**IPRA request**

1 message

---

**Charles Kraft** <charles.b.kraft@gmail.com>  
To: lehman@sfps.k12.nm.us

Sat, Jun 4, 2016 at 10:58 AM

Ms. Lehman,

Please accept this email as a formal IPRA request in which I am seeking records to be provided in an electronic format, if possible. Upon information and belief, David Plotsky and/or the law firm of Plotsky & Dougherty, P.C., submitted an IPRA request to the Santa Fe Public School District via its custodian of records, which I believe is you, sometime during 2016.

I am seeking Mr. Plotsky's IPRA request, from sometime this year, that was sent you, as well as all records that are/were responsive to his request. I am also seeking any emails, memos, text messages, or other records that were created in response to Mr. Plotsky's request. Please advise if no records were created in that regard. Again, I am seeking documents in an electronic format.

Please provide these electronic records within three days or advise why additional time is needed. NMSA 1978, Section 14-2-8(D).

Many thanks,

Charles

—  
**Charles B. Kraft**  
5919 Prenda de Oro NW  
Albuquerque, NM 87120  
505-350-3453



June 14, 2016 (replaces previous letter dated June 10, 2016)

Charles B. Kraft  
5919 Prenda de Oro  
Albuquerque, NM 87120

Re: IPRA 2015160069

Delivered via email: [charles.b.kraft@gmail.com](mailto:charles.b.kraft@gmail.com)

Dear Mr. Kraft:

I have confirmed that there is no attorney-client relationship between you and Mr. Plotsky. This letter is in response to your request to review records requested originally by Mr. David Plotsky. As additional materials have been added to the original Plotsky request, we require additional time to gather the following materials requested:

- "emails, memos, text messages, or other records that were created in response to Mr. Plotsky's request."

Please be advised that SFPS cannot provide text messages since the District is not the custodian of texts. You would have to request them from Verizon.

We are requesting a 15 day extension, which is June 24, 2016, to provide the additionally requested materials.

I understand that you are seeking the documents in an electronic format, and would like to reiterate that the records are available at no cost for your inspection at SFPS at a time to be arranged mutually. If you prefer that SFPS provide you with an electronic copy of the documents, there is a fee of \$500.00.

The fee is consistent with the actual costs for making and transmitting copies, including any personnel time involved, and the actual costs of downloading copies of public records. Further, the fee must be paid in advance. (Section 14-2-9(C)(3)-(4) NMSA 1978.)

Please advise us of your choice and we are happy to accommodate.

Sincerely  
Marilyn Galano  
Records Custodian, SFPS



June 14, 2016

Charles B. Kraft  
5919 Prenda de Oro  
Albuquerque, NM 87120

David L. Plotsky  
122 Girard Boulevard, SE  
Albuquerque, NM 87106

Delivered via email: [charles.b.kraft@gmail.com](mailto:charles.b.kraft@gmail.com)  
[plotlaw@verizon.net](mailto:plotlaw@verizon.net)

Re: IPRA #2015160061

Dear Mr. Kraft,

Ms. Lehman forwarded your email to me as I am now the records custodian. As I understand it, you are requesting all documents and records that are responsive to Mr. Plotsky's IPRA request and that you would like them in an electronic format.

As the original request came from Mr. Plotsky, we first would like to confirm that we are not violating attorney client communication rules. Mr. Plotsky has not formally informed us that he is not representing you on the IPRA matter. Therefore, we are including Mr. Plotsky on this communication.

Your request is very vague; however, if you are referencing the communications from Mr. Plotsky on IPRA 2015160061, the records are available at no cost for your inspection at SFPS at a time to be arranged mutually. If you prefer that SFPS mail you an electronic copy of the docs, you must pay the fee of \$500.00.

Consistent with the statute (Section 14-2-9(C)(3)-(4) NMSA 1978), the Attorney General's Compliance Guide 2015 (page 36) states:

1. "A custodian may charge the actual costs of downloading copies of public records to a computer disk or other storage device, including the actual cost of the storage device."
2. "A custodian may charge the actual costs of transmitting copies of public records by mail, e-mail, or facsimile."
3. "This may include the actual costs to the public body for making and transmitting copies, including any personnel time involved."
4. "The Act does not allow a custodian to charge for the cost of determining whether a particular public records is or is not subject to disclosure."

The AG notes that "reasonable" costs can be charged for making and transmitting copies. This includes both electronic and paper copies. The AG guidance also contemplates charging for the administrative

time in preparing the files. This doesn't extend to the "decision" about what to redact, or what is a public record. As reflected above, the only clear restriction is on charging for the cost of determining whether a particular public records is or is not subject to disclosure.

In an opinion, the AG confirms that SFPS "could impose a charge to cover the cost of copying and retrieving these [public records]." Justice William R. Federici, 1979 N.M. Op. Atty. Gen. 33 (1979). The AG opinion cites case law that recognizes the burden and reasons that to balance the burden, "the custodian of records may place reasonable restrictions on the availability of records." State ex rel. Newsome v. Alarid, 90 N.M. 790, 568 P.2d 1236 (1977); Ortiz v. Jaramillo, 82 N.M. 445, 483 P.2d 500 (1971).

Please advise us of your choice and we are happy to accommodate.

Sincerely,  
s/Marilyn Galano  
Records Custodian, SFPS

cc Via email: Ami Jaeger, General Counsel  
Theresa Baca, Chief of Staff



May 25, 2016

David L. Plotsky  
122 Girard Boulevard, SE  
Albuquerque, NM. 87106

Sent via email: david@plotskydougherty.com

Re: SFPS IPRA 2015160061  
Fees Question

Dear Mr. Plotsky;

In your letter dated May 20, 2016 you asked for clarification about the actual costs to fulfill an IPRA request, when the response is provided electronically on a flash drive. You suggest that the cost should be limited to the retail cost of the flash drive. I just wanted to restate, that the documents for your IPRA request are ready for your inspection. You may come to SFPS administrative building and review the records on site, at no charge.

If you prefer SFPS to mail a flash drive containing the electronic documents, SFPS has requested a fee of \$500 as a reasonable cost for making and transmitting the documents. In preparing your IPRA response, there were more than 1000 pages, at \$1.00 per page. You revised your IPRA request, asking for an electronic copy, after our staff prepared the paper copy. Thus, the fee would have been \$1000.

Consistent with the statute (Section 14-2-9(C)(3)-(4) NMSA 1978), the Attorney General's Compliance Guide 2015 (page 36) states:

1. "A custodian may charge the actual costs of downloading copies of public records to a computer disk or other storage device, including the actual cost of the storage device."
2. "A custodian may charge the actual costs of transmitting copies of public records by mail, e-mail, or facsimile."
3. "This may include the actual costs to the public body for making and transmitting copies, including any personnel time involved."
4. "The Act does not allow a custodian to charge for the cost of determining whether a particular public records is or is not subject to disclosure."

The AG notes that "reasonable" costs can be charged for **making and transmitting** copies. This includes both electronic and paper copies. The AG guidance also contemplates charging for the administrative time in preparing the files. This doesn't extend to the "decision" about what to redact, or what is a public record. As reflected above, the only clear restriction is on charging for the cost of determining whether a particular public records is or is not subject to disclosure.

In an opinion, the AG confirms that SFPS "could impose a charge to cover the cost of copying and retrieving these [public records]." *Justice William R. Federici*, 1979 N.M. Op. Atty. Gen. 33 (1979). The AG opinion cites case law that recognizes the burden and reasons that to balance the burden, "the custodian of records may place reasonable restrictions on the availability of

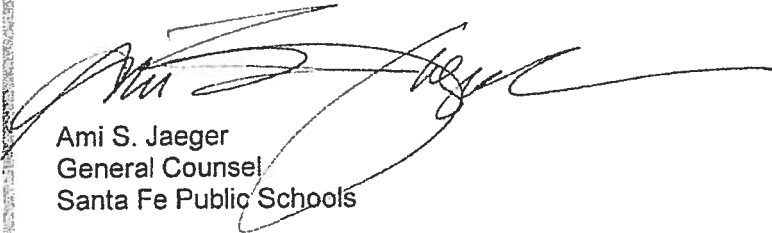


records." *State ex rel. Newsome v. Alarid*, 90 N.M. 790, 568 P.2d 1236 (1977); *Ortiz v. Jaramillo*, 82 N.M. 445, 483 P.2d 500 (1971).

In *Justice William R. Federici*, the Attorney General does caution, however, that "such a charge would have to be reasonable and not so great as to deter public inquiry." It seems that as long as the cost to prepare the electronic copy does not exceed the cost to a requestor of a paper copy, it would satisfy the standard of "reasonable and not so great as to deter public inquiry."

You may inspect the records here at no cost, but if you prefer an electronic version be sent to you, the reasonable costs for making and transmitting the documents stands at \$500.00.

Sincerely,



Ami S. Jaeger  
General Counsel  
Santa Fe Public Schools

## Laverne Roller

---

**From:** Charles Kraft  
**Sent:** Monday, June 20, 2016 11:52 AM  
**To:** Lavern Roller; Maestas, Tania  
**Subject:** Re: Formal IPRA complaint  
**Attachments:** June 20, SFPS letter to C. Kraft.pdf; June 20, email with SFPS.pdf

Ms. Roller,

Please include the attached documents to my IPRA complaint. These are new documents from today. Thank you.

On Fri, Jun 17, 2016 at 5:12 PM, Charles Kraft <[charles.b.kraft@gmail.com](mailto:charles.b.kraft@gmail.com)> wrote:  
Ms. Roller,

Based upon our conversation on Wednesday, June 15, please see the attached. Thank you.

On Tue, Jun 14, 2016 at 9:43 PM, Charles Kraft <[charles.b.kraft@gmail.com](mailto:charles.b.kraft@gmail.com)> wrote:  
Ms. Roller,

Please accept this formal IPRA complaint against the Santa Fe Public School District and its records custodian, Marilyn Galano.

### MY CONTACT INFORMATION:

Charles Kraft  
5919 Prenda de Oro NW  
Albuquerque, NM 87120  
505-350-3453  
[charles.b.kraft@gmail.com](mailto:charles.b.kraft@gmail.com)

### IPRA REQUEST TO THE PUBLIC BODY

Public Body: Santa Fe Public Schools ("SFPS")  
Format of Request: Written (attached)  
Date submitted: June 4, 2016  
Dates of responses from SFPS: June 8, June 14, 2016

### ALLEGED VIOLATIONS OF THE IPRA

- The agency is demanding that I pay \$500 for electronic copies of responsive records
- Because I am unable to travel to Santa Fe to review the documents, I requested all records sent electronically. I am willing to pay the cost of a flash drive or DVD. Because SFPS is demanding that I pay \$500 for the flash drive of documents, I'm viewing their response as a functional denial of my IPRA request.
- SFPS is conducting public business via cell phone text messaging but has denied my request because Verizon maintains the text messages. This is a shady, backdoor way around IPRA and

should not be tolerated. SFPS should be required to provide me those records or photograph or screen shot the responsive text messages from the phones and provide me copies.

**DETAILED EXPLANATION OF IPRA VIOLATION:**

- On June 4, I submitted an IPRA request (attached) in which I requested electronic copies of certain records. Particularly, I requested (1) an IPRA request that David Plotsky or his law firm had submitted, (2) all communications generated in response to Mr. Plotsky's request, and (3) copies of all responsive records to Mr. Plotsky's request. As you'll see in the attached documents, SFPS had prepared Mr. Plotsky's request prior to my IPRA request and also charged Mr. Plotsky \$500. When my request was received, SFPS responded within three days and notified me that most of my request was ready but that it would also cost me \$500 to receive my electronic records. It is inconceivable to me how SFPS can charge \$500 for electronic records, especially given the fact that Mr. Plotsky's request had already been prepared. In other words, all SFPS had to do was put a new flash drive into their computer and drag-and-drop the responsive records from Mr. Plotsky's request into the new flash drive to fulfill my request. How SFPS justifies a cost of \$500 for that minor, no more than 2 minute action, is incredible.
- I requested a break down or explanation of how my request costs \$500 and did not receive justification.
- Before responding to my June 4 request, SFPS contacted David Plotsky and asked his permission to turn over public records to me, citing their "concern" that I could be breaching an assumed attorney client privilege by doing so. Not only was SFPS acting contrary to the law in asking Mr. Plotsky's permission for responding to my request, but in doing so, SFPS was considering the reasoning behind my request, which is specifically prohibited by the IPRA.
- Although irrelevant and completely improper on the part of SFPS, I do not represent Mr. Plotsky and Mr. Plotsky does not represent me.

Please do not hesitate to contact me for follow up questions. I look forward to your investigation.

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**Charles B. Kraft, Esq.**

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**Charles B. Kraft, Esq.**

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**Charles B. Kraft, Esq.**



June 17, 2016

Charles B. Kraft  
5919 Prenda de Oro  
Albuquerque, NM 87120

Sent via email: [charles.b.kraft@gmail.com](mailto:charles.b.kraft@gmail.com)

Re: IPRA 2015160069

Dear Mr. Kraft:

Please be advised that your IPRA request for:

1. "A copy of Mr. Plotsky's IPRA request to the SFPS from this year;
2. All internal and external communication made in response to Mr. Plotsky's IPRA request;  
and
3. All records responsive to Mr. Plotsky's IPRA request"

is ready for your inspection. The contract and financial documents were redacted to remove account numbers pursuant to 1978 NMSA sections 14-2-1(B), 14-2-6(E). Student names were also redacted pursuant to 1978 NMSA sec. 14-2-1(A)(8).

There are over 1500 pages that are responsive to the request, in addition to approximately 12,000 KB of electronic documents. To date, SFPS has not received any fees on your or Mr. Plotsky's IPRA requests.

As stated previously, the fee for these documents, if you want them mailed to you is \$500, plus the cost of postage for mailing. **If you want to inspect the documents at SFPS, Office of General Counsel, there is no fee.** If you choose to make copies of any documents, there is a fee of \$1.00 per page. The basis for the fee is the actual cost for making and transmitting the electronic files, which was 3 hours at \$100 per hour, and 10 hours at \$20 per hour. (See 1978 NMSA sec.14-2-9(C)(3)-(4).) This does not include redaction time, charging for which is prohibited under 1978 NMSA sec. 14-2-9(C)(6). Because of SFPS redaction process, some of the electronic files had to be converted into paper files, and SFPS is not charging you for these paper copies. Not all of the requested information was available electronically. (See 1978 NMSA

sec.14-2-9(B).) Under the law the District could charge you for the paper copies, which would be about \$1500.00 in addition to the \$500 fee to make or transmit the files.

Please advise me if you would like to schedule a time to inspect the documents at SFPS, or if you prefer they be mailed to you. The fee of \$500 will need to be paid in advance. (1978 NMSA sec. 14-2-9 (C)(5).)

Sincerely,

Marilyn Galano  
Records Custodian  
SFPS

cc: Ami S. Jaeger, General Counsel



Charles Kraft &lt;charles.b.kraft@gmail.com&gt;

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**Itr charles kraft 6 17 16**

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**Charles Kraft** <charles.b.kraft@gmail.com>  
To: Marilyn Galano <mgalano@sfps.k12.nm.us>  
Cc: ajaeger@sfps.k12.nm.us

Mon, Jun 20, 2016 at 11:48 AM

Ms. Galano,

Thank you for your letter. From your letter, you've made it clear that you're charging me the costs associated with gathering documents for Mr. Plotsky's request, rather than mine. Its not relevant to my request whether Mr. Plotsky has paid for his request or not--I'm not sure why you think I need that information.

Coping whatever electronic records you gathered for Mr. Plotsky's request and then putting those records on a flash drive for me did not take you a total of 13 hours. It appears that your claiming it took that time to gather records for Mr. Plotsky's request. I do not have the time to travel to Santa Fe, which is why I requested the documents provided to me in an electronic format. I'm happy to pay for the cost of a flash drive, in advance. However, I'm considering your statement that I owe \$500 for my records a functional denial of my request. As such, I've filed a formal request with the NM Attorney General and have contacted the Foundation for Open Government.

[Quoted text hidden]

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**Charles B. Kraft, Esq.**