

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



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September 8, 2016

Laura Lucero y Ruiz de Gutierrez
2111 Broadway Blvd.
Albuquerque NM 87102

Re: Inspection of Public Records Act (IPRA) Complaint against The Children's Safehouse/All Faiths Receiving Home, 2nd Judicial District Attorney and the Bernalillo County Sheriff's Office

Dear Ms. Lucero y Ruiz de Gutierrez:

We have completed the review of your complaint against the Children's Safehouse/All Faiths Receiving Home, the 2nd Judicial District Attorney's Office and the Bernalillo County Sheriff's Office under the Inspection of Public Records Act ("IPRA"), NMSA 1978, §§ 14-2-1 to -12 (1947, as amended through 2013).

In the complaint, you allege that the Children's Safehouse/All Faiths ("All Faiths") violated IPRA by failing to respond to your request for records of an interview; that the 2nd Judicial District Attorney violated IPRA by failing to forward requested records to the proper custodian and to allow inspection of documents within established timeframes; and that the Bernalillo County Sheriff's Office (BCSO) violated IPRA by failing to respond with three days to your requests of August 19, 20, and December 16, 2015 and failing to allow inspection within 15 days. We have reviewed the responses from these agencies and now conclude that none of these agencies violated IPRA.

All Faiths

As to the records of the interview from All Faiths, IPRA does not apply to that agency, as the agency is not a "public body" for purposes of IPRA. See § 14-2-6 (defining "public body" to include executive, legislative and judicial branches of state and local governments as well as all advisory boards, commissions, committees, agencies or entities created by the constitution or any

branch of government that receives public funding). All Faiths is a private, not-for-profit organization, not created by the constitution or any branch of government. Further, as you were advised by the organization, you would need a subpoena to access the information you requested because of multiple legal protections for information on medical conditions and/or services provided by All Faiths. See 45 CFR §§160.504 and 164 (protecting the security and privacy of individually identifiable health information, including mental health information, under the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191 (“HIPAA”)); All Faiths’ contract for the Crime Victims Reparation Commission Victims of Crime Act Victim Assistance (VOCA) formula grant, Item No. 40 (requiring All Faiths, *if* compelled by court order to release personally identifying information to attempt to notify the victim and take steps necessary to protect privacy and safety of persons affected)(emphasis added); Item No. 10 of All Faiths’ contract with the Children Youth and Families Department (CYFD) (requiring that all confidential information be kept confidential); and No. 11 (stating that all materials developed by All Faiths under its contract with the state becomes the property of the state). All Faiths was not required to respond to your request and did not violate IPRA by declining to send you records of the interview.

2nd Judicial District Attorney’s Office

Your complaint alleged that the 2nd Judicial District Attorney provided no records, failed to forward requested records to the proper custodian, and failed to allow inspection of documents you requested within established timeframes. On December 30, 2015, you enclosed a copy of your November 2, 2015 request of the Albuquerque Police Department for records; the 2nd Judicial District’s records custodian responded timely that it had no responsive records. The agency forwarded your request to the district court, an entity it believed could possess responsive records and so informed you, satisfying its obligations under the “wrong custodian” provision of IPRA. See § 14-2-8 (E). Because 2nd Judicial District had no responsive records, it was not obliged to do more. Therefore, it complied with IPRA.

Bernalillo County Sheriff’s Office (BCSO)

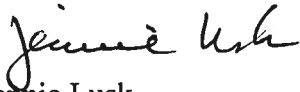
You complained that BCSO failed to respond with three days to your records requests of August 19, 20 and December 16, 2015, and did not allow inspection within 15 days as required under IPRA. BCSO’s response to the inquiry based on your complaint stated that the agency did not receive the August requests, and that your December request did not request documents from BCSO. Instead, your December correspondence informed BCSO that you had requested records from other agencies, and requested “clarification” on a memorandum of understanding (MOU) between BCSO and Albuquerque Public Schools. Because you did not request records from BCSO, BCSO was not required to respond to you. BCSO did not violate IPRA in these circumstances.

Conclusion

As discussed above, we conclude that All Faiths, the 2nd Judicial DA's Office and Bernalillo County Sheriff's Office responded appropriately to you and, therefore, acted in compliance with IPRA.

Accordingly, this Office considers this matter closed.

Sincerely,



Jennie Lusk
Assistant Attorney General

cc: The Children's Safehouse/ All Faiths Receiving Home
Phil Sisneros, Public Information Officer/ 2nd Judicial District Attorney's Office
Michael I. Garcia, Esq. Bernalillo County Sheriff's Office

INSPECTION OF PUBLIC RECORDS ACT ("IPRA") COMPLAINT FORM
New Mexico Office of the Attorney General ("OAG")
Open Government Division

Date complaint submitted to OAG: 4/9/16

YOUR CONTACT INFORMATION (Required):

First Name: Laura Last Name: Bruning Calka-Lucero y Ruiz Gutierrez
Address: [REDACTED]
City: [REDACTED] State: [REDACTED] Zip Code: [REDACTED]
Phone Number: [REDACTED]
Email: [REDACTED]

IPRA REQUEST TO THE PUBLIC BODY (Required):

Name of the Public Body that is the subject of this complaint (including city/town, county or region, if applicable): All Faiths Review - 1709 MOON ST. NE, Albuquerque, NM - 8710229

Format of IPRA Request: Written Oral

Date IPRA Request was Submitted to the Public Body: 12/23/15

Date of all Responses Received from the Public Body: 1/7/16

ALLEGED VIOLATIONS OF IPRA BY THE PUBLIC BODY (Required): 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.

Records were not provided; Response stated to obtain a court order to get the record that was requested.

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.

INSPECTION OF PUBLIC RECORDS ACT ("IPRA") COMPLAINT FORM
New Mexico Office of the Attorney General ("OAG")
Open Government Division

Date complaint submitted to OAG: 4/8/16

YOUR CONTACT INFORMATION (Required):

First Name: Laura Last Name: Bueniva Laka-Lucero y Ruiz de Gutierrez
Address: [REDACTED]
City: [REDACTED] State: [REDACTED] Zip Code: [REDACTED]
Phone Number: [REDACTED]
Email: [REDACTED]

IPRA REQUEST TO THE PUBLIC BODY (Required):

Name of the Public Body that is the subject of this complaint (including city/town, county or region, if applicable): Office of the District Attorney - Kayla Anderson Kari Brandenburg's office.

Format of IPRA Request: Written Oral

Date IPRA Request was Submitted to the Public Body: 12/30/15;

Date of all Responses Received from the Public Body: 12/3/15

ALLEGED VIOLATIONS OF IPRA BY THE PUBLIC BODY (Required): 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.

no further responses were provided.

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.

INSPECTION OF PUBLIC RECORDS ACT ("IPRA") COMPLAINT FORM
New Mexico Office of the Attorney General ("OAG")
Open Government Division

Date complaint submitted to OAG: 4/8/16

YOUR CONTACT INFORMATION (Required):

First Name: Laura Last Name: Brucey Caka Lucero y Ruiz Gutierrez
Address: [REDACTED]
City: [REDACTED] State: [REDACTED] Zip Code: [REDACTED]
Phone Number: [REDACTED]
Email: [REDACTED]

IPRA REQUEST TO THE PUBLIC BODY (Required):

Name of the Public Body that is the subject of this complaint (including city/town, county or region, if applicable): Bernalillo County Sheriff's Department
400 Stone NW, Albuquerque, NM 87102

Format of IPRA Request: Written Oral

Date IPRA Request was Submitted to the Public Body: 8/19/15; 8/20/15; faxed 12/16/15

Date of all Responses Received from the Public Body: NONE

ALLEGED VIOLATIONS OF IPRA BY THE PUBLIC BODY (Required): 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.

no response received

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.