

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
ATTORNEY GENERAL

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May 31, 2019

**VIA ELECTRONIC MAIL ONLY**

Taos County  
Samuel C. DeFillippo, Esq.  
500 Marquette Ave NW Ste 700  
Albuquerque, NM 87102-5346  
Email: [chris@roblesrael.com](mailto:chris@roblesrael.com)

**Re: Inspection of Public Records Act Complaint – Ivan Cales**

Dear Mr. DeFillippo:

Thank you for your response to our inquiry regarding the complaint submitted to the Office of the Attorney General by Mr. Ivan Cales alleging that Taos 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, Mr. Cales alleges that the County refused to provide him with any records responsive to his requests for public records dated February 18, 2019. Having reviewed both the complaint and your response to our inquiry, we conclude that while the County ultimately provided Mr. Cales with the records he sought, the County needs to be more cognizant of IPRA’s deadlines in handling future requests.

In New Mexico, the members of the public are entitled to “the greatest possible information” about governmental affairs by virtue of the Inspection of Public Records Act. NMSA 1978, § 14-2-5. IPRA specifically provides that “[e]very person has a right to inspect public records of this state” with only a few enumerated exceptions. Section 14-2-1(A). The statute is interpreted in light of its purpose, meaning that “IPRA creates a presumption in favor of access.” *San Juan Agr. Water Users Ass’n v. KNME-TV*, 2011-NMSC-011, ¶ 15; *see also* Attorney General’s Inspection of Public Records Act Compliance Guide, p. 7 (8<sup>th</sup> ed. 2015) (“IPRA Guide”) (noting that courts employ a strong “presumption in favor of the right to inspect” when interpreting IPRA’s various provisions and all exceptions to disclosure are construed narrowly).

Mr. Cales submitted two records requests to the County on February 18, 2019, which we understand were received by the County on February 26, 2019. Four business days later, on March 4, 2019, the County acknowledged receipt of Mr. Cales's requests and stated that it would provide a further response by March 13, 2019. However, the County did not respond until March 27, 2019, when it provided Mr. Cales the records he requested.

Mailed to us on March 19, 2019, Mr. Cales's complaint simply alleges that he failed to receive any of the records he requested. It appears that was true as of the date of his complaint, given that the County did not respond until March 27, 2019. However, in response to our inquiry, the County emphasized that it did belatedly provide Mr. Cales with all of the records he requested, and that no records were withheld or redacted. Although this appears to be a moot point in light of the County's late response, we would note that we generally do not contest a public body's assertion that it does not hold or possess additional requested public records absent evidence that the public body failed to conduct an adequate search or otherwise acted in bad faith. *See Kozol v. Washington State Dep't of Corrections*, 366 P.3d 933 (Wash. Ct. App. 2016) (public records law only required access to records that existed, "not nonexistent records that one believes should exist"). Thus, we accept as true the County's assertion that it ultimately provided Mr. Cales with all of the records he sought.

However, notwithstanding the fact that the County appears to now be in substantial compliance with IPRA, *see Derringer v. State*, 2003-NMCA-073, ¶ 13, the fact remains that the County missed several key deadlines in handling Mr. Cales's requests. First, the County itself acknowledges that it erred by failing to respond to Mr. Cales in writing within three business days of receipt of his request. *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."). Even more significant is that, after sending Mr. Cales written acknowledgment letters on March 4, 2019, the County did not further respond until March 27, 2019. This was a violation of Section 14-2-8(D), which generally requires public bodies to provide all requested records within fifteen calendar days. While IPRA provides an exception to this fifteen-day timeline for records requests designated in writing to be "excessively burdensome or broad," the County never conveyed any such message in writing to Mr. Cales. Section 14-2-10. As such, it was required to respond by fifteen calendar days – meaning March 13, 2019 – and it did not do so. We appreciate that the County stated that it "strives to avoid" these types of oversight, but going forward we would encourage it to be more diligent about adhering to IPRA's deadlines.

Our Office hopes to conduct a training for the public on both the Inspection of Public Records Act and the Open Meetings Act in September of 2019 in Taos. Please visit our website for more information on the exact date, time and location, <https://www.nmag.gov/events.aspx>, and make plans to attend. Additionally, for your reference, a copy of the IPRA Guide is available on the website of the Office of the

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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". The signature is stylized and written over a light blue rectangular background.

John Kreienkamp  
Assistant Attorney General

Enclosure

CC: Ivan Cales



3/19/19

Sir,

Enclosed are copies of an IPRA request I sent to the Taos County Detention Center. Enclosed is the letter from the records custodian. As of today's date I have not received the records requested, or a reason not. Today's date is plenty of time to send the records.

I request your office to look into this matter.

Thank You,

Ivan Cales #82258

3A113

LCCF

6900 W. Millen Dr.,

Hobbs, NM 88244

copy 1 of 2. copy 2 to self.

To: Taos Co. Detention Center, Records Custodian  
105 Albright St., Suite 0  
Taos, NM 87571

2/18/19

From: Ivan Cates #82258  
3A113

LCCF, 6900 W. Millen Dr., Hobbs, NM 88244

I would like to inspect and copy the following records:  
The record of when Raymond Martinez No. D-820-CR-2005  
00027 (STN: SP/400 15 0015) was released and transported  
out of Taos Co. Detention Center in 2015 to/bact to prison.

If your agency does not maintain these public records,  
please let me know who does, and include the proper custodian's  
name and address.

I agree to pay applicable fees for copying and transmitting  
the records. I understand that I may be asked to pay the fees in  
advance. Keep in mind I am an inmate and indigent.

Please provide a receipt indicating the charges for  
each document.

Thank you for your prompt attention to this matter,  
Sincerely,

  
Ivan Cates

P.S. - This request is under The Inspection of Public  
Records Act NMSA 1978, Chapter 14, Article 2

Copy 2 of 2. Copy 1 to Taos Co. Detention

4/18/11

To: Taos County Detention Center, Records Custodian  
105 Albright St., Suite O  
Taos, NM 87571

From: Ivan Cales #82258  
3A113

LCCF, 6900 W. Miller Dr., Hobbs, NM 88244

I would like to inspect and copy the following records: The record of money sent to Ivan Cales via U.S. Mail that was deposited in his/my account beginning March 2015.

If your agency does not maintain these public records, please let me know who does, and include the proper custodian's name and address.

I agree to pay the applicable fees for copying and transmitting the records. I understand that I may be asked to pay the fees in advance. Keep in mind I am an inmate and indigent.

Please provide a receipt indicating the charges for each document.

Thank you for your prompt attention to this matter.

Sincerely,

  
Ivan Cales

P.S. - This request is under The Inspection of Public Records Act  
NMSA 1978, Chapter 14, Article 2

copy 2 of 2, Copy 1 to Detention Center



TAOS COUNTY CLERK'S DEPARTMENT  
105 ALBRIGHT STREET, SUITE D  
TAOS, NEW MEXICO 87571  
(575) 737-6380 PHONE ▪ (575) 737-6390 FACSIMILE

ANNA MARTINEZ  
TAOS COUNTY CLERK  
anna.martinez@taoscounty.org

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March 4, 2019

*Via Mail*  
Ivan Cales #82258  
3A113  
LCCF, 6900 W. Millen Drive  
Hobbs, NM 88244

Re: Record of when Raymond Martinez No. D-820-CR-201500027 was released and transported out of Taos County Detention Center in 2015

Dear Mr. Cales,

On February 26, 2019 we received the above referenced request through your submission of an IPRA to the Taos County Clerk's Office for response. We will need additional time to process this request, until on or before March 13, 2019. If you should have any questions let me know.

Best,

Anna Martinez  
Taos County Clerk

cc: Shannan Brumley

Van Cales#82258  
3A113  
ECF, 6900 W. Milken Dr.,  
Hobbs, NM 88244

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Legal  
Mail

Attorney General's Office  
P.O. Drawer 1508  
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