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

YOUR CONTACT INFORMATION:

First Name: Garth Last Name: Boyce
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): Town of Clayton

Format of IPRA Request: Written Oral

Date IPRA Request was Submitted to the Public Body: 05/20/2015⁽¹⁾, 09/29/2015⁽²⁾

Date of all Responses Received from the Public Body: 05/26/2015 & 06/17/2015
09/29/2015 & 10/9/2015

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.

See attached letter with exhibits.

OPEN MEETING ACT ("OMA") COMPLAINT FORM
New Mexico Office of the Attorney General
Open Government Division

Your Contact Information:

First Name: Garth Last Name: Boyce

Address: 612 Maple

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

Phone Number: [REDACTED]

Email: [REDACTED]

Name of Public Body that is the Subject of this Complaint (including city/town, district, county or region, if applicable): Town of Clayton

Specific date(s) of OMA violation(s): November 20, 2012

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

DEFICIENCIES IN NOTICE OF THE MEETING

- Notice did not comply with the deadlines or procedures for meeting notices adopted by the public body, or with the reasonable notice requirement in the OMA
- Notice did not include date, time, and/or location of the meeting
- Notice was not published or posted in a place and manner accessible to the public
- Notice did not include an agenda or information on how the public may obtain a copy of the agenda
- A meeting was reconvened by the public body, but notice of the date, time, and place of the reconvened meeting was not placed on or near the door of the place where the original meeting was held or in at least one other location appropriate to provide public notice

AGENDA

- Agenda was not available seventy-two (72) hours prior to the meeting

___ A committee was created by the public body that constitutes a policymaking body that formulated recommendations that were binding on the public body or otherwise established policy for the public body, outside of an open meeting

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

The debt was not discussed by the Clayton Town Council. It was incorporated in the "Consent Agenda" and passed without discussion.

ADDITIONAL INFORMATION: Please attach any documentation or evidence you have regarding the alleged OMA violation.

Letter and exhibit attached.

Office of the Attorney General
Open Government Division
P.O. Box 1508
Santa Fe, NM 87504-1508

Re: Town of Clayton Violations of Inspection of Public Records, Open Meetings Act, Violation of New Mexico Constitution, and Fraud

Dear Mr. Balderas-Attorney General,

I am concerned for our community for the lack of visible effort by the Town of Clayton to pay attention to our community's future. The following are items that have been revealed by presenting Inspection of Public Records requests with some exhibits found and provided to interpret for violations.

The Inspection of Public Records dated May 20, 2015 concluded in the Town of Clayton not finding the requested information (violation of IPRA). I was personally involved with the environmental inspection and reviewed copies of the environmental inspection. I did obtain the information from the New Mexico Environmental Department; however, the inability to find reports is still a violation. Attachment A, 3 pages.

The Inspection of Public Records dated September 25, 2015 resulted in violations of items 1, 2, 5, and 6.

- I explained to Holly Stein, Town Treasure/Clerk, that there was a significant expense spent over and above the bid for the sewer lagoons. Items 1 and 2 were not provided causing a violation of the Inspection of Public Records.
- Items 5 & 6 were requesting how debts created by the Town of Clayton followed the New Mexico Constitution, Article IX, Section 12, 13,14, and 15 specifically. The Town letter directed me to the New Mexico Compilation Commission which was indirectly furnished by the Town Attorney. This is a falsification by the Town of Clayton and a violation of the Inspection of Public Records Act and New Mexico Constitution. Attachment B, 3 pages.

Attached is a matrix of the Town of Clayton's "Debt Analysis" which I believe is in violation of the New Mexico Constitution as our community was not allowed to vote on any debt acquired by the Town of Clayton, a clear violation of the New Mexico Constitution. The two columns financed by "Gross Receipt Tax" was repayment of land acquired, 1,770 acres, under fraudulent conditions. The records in Clayton's District 8 court indicate that all records from Rules and Regulations 1780 from United States Department of Agriculture-Rural Development were not complete. The 1780 was required to meet all regulations of the grant/loan. This is a federal offence brokered by the President of First National Bank and the Town Attorney and the Town Mayor at the time. The Town Attorney is also the attorney for First National Bank. Attachment C, 1 page.

A "Letter to the Editor" was written by myself but was not sent for publication. The November 20, 2012 Minutes indicate a number of violations including Open Meetings Act and New Mexico Constitution. Attachment D, 2 pages.

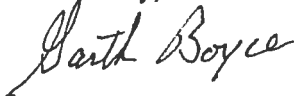
The bid for the Waste Water project is found in Attachment E, 2 pages.

I attended the regular Town of Clayton meeting, November 13, 2015 where the renewal of the bonds for the Northeastern New Mexico Detention Center was discussed for refinance to lower the cost of the bonds: however, another ten million dollars were incorporated for maintenance, shoring up security, and miscellaneous items totaling \$70 million dollars. Again no vote by the community and suspect that the over 4% of Clayton's tax assessment has been breached (Article IX /Section 13) the New Mexico Constitution. Attachment F, 2 pages.

By virtue of this letter I am requesting an investigation into the Town of Clayton's records to determine my allegations of violations for IPRA, OMA, NM Constitution, and fraud. I fully believe that the Town Attorney is required to advise the Town Council for legal actions. I believe that disbarment is warranted.

Thank you for addressing these concerns.

Yours truly,

A handwritten signature in cursive script that reads "Garth Boyce".

Garth Boyce

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

TANIA MAESTAS
Deputy of Civil Affairs

SHARON PINO
Deputy of Criminal Affairs

CARLA MARTINEZ
Chief of Staff for Operations

SONYA CARRASCO-TRUJILLO
Chief of Staff for Policy & Public Affairs

July 12, 2016

Garth Boyce
612 Maple
Clayton, NM 88415

Re: Inspection of Public Records and Open Meetings Act Complaints; Town of Clayton

Dear Mr. Boyce:

This determination letter addresses the complaint you filed with the Office of the Attorney General alleging that the Town of Clayton ("Town") violated the Inspection of Public Records Act ("IPRA"), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2013) and the Open Meetings Act ("OMA"), NMSA 1978, Sections 10-15-1 to -4 (1974, as amended through 2013). We have reviewed your complaint, as well as the Town's response, and based on the information available to us at this time, we conclude that the Town complied with both the IPRA and the OMA.

A. The Town complied with your May 20, 2015 and September 25, 2015 IPRA requests.

On May 20, 2015, you submitted an IPRA request to inspect "the reports that the New Mexico Environment Department contracted out for 6 environmental deficient properties in Clayton." The Town Clerk-Treasurer, Holly Steen, responded to your IPRA request on May 26, 2015. At that time, Ms. Steen indicated that the Town required additional time to locate the documents you requested. On June 17, 2015, Ms. Steen sent you a second letter to inform you that the Town did not "have custody and control of the records you requested because [the Town was] not responsible for maintaining those records." The letter also stated there was a possibility that the New Mexico Environment Department ("NMED") had custody of the requested records, consequently, Ms. Steen forwarded your request to NMED's records custodian, Melissa Mascareñas.

Based upon our review of the relevant documents, the Town substantially complied with the IPRA. Specifically, upon determining that the Town was not the custodian of the requested

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records, Ms. Steen forwarded your request to the proper records custodian. *See* NMSA 1978, § 14-2-8(E) (“In the event that a written request is not made to the custodian having possession of or responsibility for the public records requested, the person receiving the request shall promptly forward the request to the custodian of the requested public records, if known, and notify the requester.”). We do note, however, that the Town was somewhat untimely in responding to the request. A custodian who receives a written request must “permit the inspection immediately or as soon as is practicable under the circumstances, but not later than fifteen days after receiving a written request.” NMSA 1978, § 14-2-8(D). Here, the Town did not respond to your May 20, 2015 IPRA request until June 17, 2015. Nevertheless, since the Town ultimately responded and forwarded your request to the proper records custodian, no further action is required. *See, Derringer v. State*, 2003-NMCA-073, 133 N.M. 721.

Turning to your September 25, 2015 IPRA request, you allege that two of the six items you requested were not provided and further allege that the Town “falsified” information in response to one of the requested items. A review of the relevant documents indicates that the Town initially responded to your letter on September 29, 2015. At that time, the Town indicated that it needed additional time to respond – until October 9, 2015. It is my understanding that you went into the Town Clerk’s office on October 9, 2015, and you were provided with five of the six documents you had requested. On the same day, the Town wrote you a letter regarding your sixth request for “all statutes used to create debt (\$4,060,723) in contrast to New Mexico Constitution Article IX, Sections 12, 13, 14, 15.” Ms. Steen indicated that the Town was not responsible for maintaining records of statutes, consequently, she referred you to the proper records custodian, the New Mexico Compilation Commission. Ms. Steen also provided you with a website where the statutes in question could be accessed free of charge.

Based upon our review of the relevant documentation, we conclude that the Town complied with your September 25, 2015 IPRA request by providing you with copies of responsive documents. Your request for “statutes used to create a debt” is not an IPRA request; instead, it is an inquiry that requires the Town to create a document responsive to your request. However, the IPRA does not require a public body to create a record to respond to an IPRA request. *See* NMSA 1978, § 14-2-8(B) (“Nothing in the Inspection of Public Records Act shall be construed to require a public body to create a public record.”). Thus, we do not find a violation of the IPRA in connection with your September 25, 2015 IPRA request.

B. The Town Council complied with the OMA at its June, August and November 2012 meetings, as well as at its October 21, 2015 meeting.

Turning to your OMA concerns, you allege that the Town Council committed several violations at its June 13, August 8, and November 20, 2012 meetings. With respect to the Town Council’s June 13, 2012 meeting, you allege that the Town Council violated the OMA by voting to approve Ordinance 687 at that meeting instead of at a “separate meeting” after a hearing on the ordinance. The OMA’s purpose is to provide the public with transparency regarding public affairs and it requires that all public business be conducted in an open meeting. *See* NMSA 1978, § 10-15-1(A) (“All meetings of any public body . . . shall be public meetings, and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings.”). Your

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concerns regarding the propriety of the Town Council's vote to approve an ordinance without a hearing is outside the OMA's scope and is not addressed in this letter.

Regarding the August 8, 2012 meeting, you allege that the Town Council's "approval for a loan from the New Mexico Water Trust Board and the New Mexico Finance Authority" was improperly placed on the "consent agenda." The OMA requires that the agenda contain a specific list of items to be discussed and voted upon at a public meeting. See NMSA 1978, § 10-15-1(F) (specifying that an agenda must contain "a list of specific items of business to be discussed or transacted at the meeting"). Moreover, a public body may only take action on those items appearing on the agenda. See § 10-15-1(F) ("Except for emergency matters, a public body shall take action only on items appearing on the agenda."). A review of the agenda and minutes indicates that the Town's "approval for a loan from the New Mexico Water Trust Board and the New Mexico Finance Authority" was properly placed on the Town Council's agenda before a vote, thus, there was no violation of the OMA. The question of whether this item should have been placed on the Town Council's consent agenda is not governed by the OMA, and therefore, is not addressed in this letter. However, because the policy behind the OMA entitles all persons the greatest possible information regarding the affairs of government, it should be encouraged that the Town Council does not place contentious issues that greatly impact the community on the consent agenda; rather, place them as specific items of business to be discussed on its agenda.

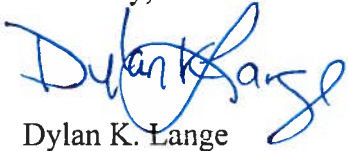
You also allege that the Town Council violated the OMA when it voted to approve a "bid for construction of the expansion of the lagoons" at its November 20, 2012 meeting. A review of the meeting minutes indicates that the item was properly noticed as an action item on the Town Council's agenda, therefore, there was no violation of the OMA. To the extent you allege that the approval of the contract was financially imprudent, this is beyond OMA's jurisdiction and is not addressed in this letter.

Finally, you allege that the Town Council violated the OMA when it adopted Jail Bond Ordinance 695 at its October 21, 2015 meeting. Specifically, you allege that there was "no vote by the community" taken with respect to this agenda item. A review of the minutes indicates that the Town Council properly placed this item on the agenda and properly voted to approve the ordinance. Because the OMA does not give the public a right to vote on agenda items, there was no violation of the OMA. See NMSA 1978, § 10-15-1(A) (providing the public with the right to "attend and listen to the deliberations and proceedings" but not expressly providing for a public right to participate or vote on matters). To the extent you allege that the Town Council did not follow the correct procedures in adopting the ordinance at issue, this raises a concern outside of the OMA's purview, and thus, it is not addressed in this letter.

Mr. Boyce
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Although we determined that the Town ultimately complied with the IPRA and OMA, we thank you for bringing these matters to our attention. Please do not hesitate to contact our Office should you have any questions regarding the IPRA or the OMA.

Sincerely,



Dylan K. Lange
Assistant Attorney General

cc: Holly Steen, Clerk-Treasurer, Town of Clayton
Robert Beck, Esq., Town Attorney