

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

November 7, 2018

Richard Leirer
835 Baca Lane Unite B
Taos, NM 87571

RE: Inspection of Public Records Act Complaint - Town of Taos

Dear Mr. Leirer:

On or about May 14, 2018, the Office of the Attorney General, Open Government Division ("OGD"), received your complaint against Town of Taos ("Town") alleging violations of the Inspection of Public Records Act ("IPRA"), NMSA 1978, 14-2-1 through 14-2-12. The complaint alleges that the Town failed to provide records responsive to the IPRA request.

On April 17, 2018, you requested the Town provide you "all written correspondence between the Town Attorney and the Mayor or Town Councilors regarding 3.36.020: APPOINTMENT AND SECTION: The town manager shall be appointed by the mayor with the approval of the majority of all members of the governing body. The town manager shall be appointed solely on the basis of administrative qualifications, experience and criteria set forth in the job description . . ." The Town responded that your IPRA request was exempt pursuant to IPRA 14-2-1.A(8) and Rule 11-503 Lawyer-Client privilege.

Every person has a right to inspect public records of the state. NMSA 1978, Section 14-2-1. However there are exceptions to that right including records that are otherwise protected by law. NMSA 1978, Section 14-2-1A(8). One exception to the right to inspect records of the state includes records involving Lawyer-Client Privilege. NMRA 11-503(B). Rule 11-503 protects confidential records created when attorneys provide professional legal services to their client.

When denying a written request for documents, the agency must provide the requester with a written explanation for the denial. NMSA 1978, Section 14-2-11(B). The written denial shall (1) describe the records sought; (2) set forth the names and titles or positions

of each person responsible for the denial; and (3) deliver the written denial to the requester within fifteen days after the request for inspection is received.

The Town received your IPRA request on April 17, 2018. The Town sent you a written denial of your request six days later, on April 23, 2018. In the denial, the Town stated that the documents you sought were privileged information between the Town Attorney and the Mayor or City Counsel. The Town claimed its privilege pursuant to Rule 11-503 Lawyer-Client privilege. The denial was signed by the Town Clerk, Francella Garcia.

After review of your complaint, the Town's response and supporting documentation, our office cannot conclude that Town improperly denied your request based upon Lawyer-Client Privilege. Without reviewing the documents withheld by the Town, the OGD cannot definitively determine if the withheld documents fall under the IPRA exception. When a public entity withholds public records, a court may conduct an in camera review of the withheld records. *See, e.g., Bd. of Comm'rs v. Las Cruces Sun-News*, 2003-NMCA-102, ¶¶ 11-13, 134 N.M. 283, 76 P.3d 36. However, the OGD does not have the authority to conduct such a review. Accordingly, we consider this matter closed.

Thank you for affording our office this opportunity to be of assistance.

Sincerely,



Lori Chavez
Assistant Attorney General

cc: Francella Garcia, Town of Taos

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

YOUR CONTACT INFORMATION:

First Name: RICHARD Last Name: Leira
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): _____

Format of IPRA Request: Written Oral

Date IPRA Request was Submitted to the Public Body: 4/17/2018 - Reference # W 001588 - 041718

Date of all Responses Received from the Public Body: 4/23/2018

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.

Received 5/14/18 - us Postal Service

CC: rbellis@taosgov.com



RE: PUBLIC RECORDS REQUEST of April 17, 2018, Reference # W001588-041718

Dear Mr. Leiner,

The Town of Taos received a public records request from you on April 17, 2018. Your request mentioned:

"I am looking for all written correspondence between the Town Attorney and the Mayor or Town Councilors regarding 3.36.020: APPOINTMENT AND SELECTION: The town manager shall be appointed by the mayor with the approval of the majority of all members of the governing body. The town manager shall be appointed solely on the basis of administrative qualifications, experience and criteria set forth in the job description. The town manager is an at will employee. (Ord. 15-05, 2015)"

In response to your request for public records, I have been informed by the Town Attorney that the record you requested is exempt from disclosure under PRA 14-2-1, A.(8) as otherwise provided by law under Supreme Court Rules of Evidence Rule 11-503 Lawyer-Client Privilege which states "A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications between himself and his lawyer..."

Please do not hesitate to contact me if I can be of any further assistance. Your request is now complete.

Sincerely,
Francella Garcia
Town Clerk
(575)751-2004