

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

October 10, 2019

VIA ELECTRONIC MAIL ONLY

Charles Wood, Chief of Police
Tularosa Police Department
609B St. Francis Dr.
Tularosa, NM 88352

RE: Inspection of Public Records Act Complaint—Cele Barker

Dear Chief Wood,

The Office of the Attorney General, Open Government Division (“OGD”) has received and completed its review of a January 10, 2018 complaint filed by Cele Barker, alleging violations of the Inspection of Public Records Act (“IPRA”), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2013) by the Tularosa Police Department (“the Police Department”). The complaint alleged that the Police Department failed to provide a written explanation to Ms. Barker within three (3) days from receiving the request regarding when the documents would be available for inspection. The complaint also alleged that the Police Department denied “access to the records in electronic form.”

In a letter dated December 29, 2017, Ms. Barker requested the following records from the Police Department:

All documents between January 1, 2010 to December 29, 2017 regarding any and all phoned, written, or personally delivered complaints and/or requests for assistance, reports, questions, or information relayed or requested by the public to the Police Department, Otero County Sheriff’s Department, or Tularosa ACO related to the condition, welfare, behavior, status, health, or barking of the dogs located at 713 Chris, Tularosa, NM.

The letter was received by the Police Department on January 2, 2018. In its response to OGD’s inquiry letter, the Police Department stated that it responded to Ms. Barker’s request “on January 5, 2018 via telephone and notified her that her request for 17 years of documents was so burdensome that it would require additional time to hand search each call in the vicinity...”

Under NMSA 1978, Section 14-2-8(D):

A custodian receiving a written request shall permit the inspection immediately or as soon as is practicable under the circumstances, but not later than fifteen days after receiving a written request. *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.*" (Emphasis added).

Thus under the IPRA, the Police Department has an obligation to provide Ms. Barker with timely access to the records she requested. When the Police Department did not permit Ms. Barker to inspect the records within three (3) business days of her request, it was required to send Ms. Barker a written explanation regarding when the records would be available for inspection. Although the Police Department alerted Ms. Barker via telephone on January 5, 2018 that her request was burdensome, that phone call did not absolve the Police Department of providing the written explanation required by IPRA. Therefore, we conclude that the Police Department violated IPRA because it did not provide access to the records requested or an explanation regarding when the records would be available for inspection within the three (3) day time frame established by §14-2-8(D).

In regards to Ms. Barker's allegation that she was denied access to the records she requested in electronic form, § 14-2-9(B) of the IPRA states:

A custodian shall provide a copy of a public record in electronic format if the public record is available in electronic format and electronic copy is specifically requested. However, a custodian is only required to provide the electronic record in the file format in which it exists at the time of the request.

In this instance, Ms. Barker's written request did not specifically request that the documents be provided to her in an electronic format. It also is not clear from the Police Department's response whether the documents requested by Ms. Barker were initially available in an electronic format. The response states that when Ms. Barker appeared at the Police Department to inspect the records, she attempted to log into a computer workstation to review them. If the records were not available in electronic format at the time of Ms. Barker's request, the Police Department is not required to create an electronic record to fulfill her request. In any case, the Police Department was required to allow inspection of the hard copy if the documents are not available in electronic format.

Finally, while this is not an issue raised by Ms. Barker, in our review of her complaint and the Police Department's response, we noticed that the Police Department, via the January 5, 2018 telephone call, informed Ms. Barker that her "request was so burdensome" that it would require additional research. Under § 14-2-10, Procedure for Excessively Burdensome or Board Requests,

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If a custodian determines that a written request is excessively burdensome or broad, an additional reasonable time shall be allowed to comply with the request. *The custodian shall provide written notification to the requester within fifteen days of receipt of the request that additional time will be needed to respond to the written request...*(emphasis added).

When the Police Department's records custodian determined that Ms. Barker's request was burdensome, the custodian was required to provide *written* notice to Ms. Barker within the fifteen day period outlined under § 14-2-10. Again, providing notice to Ms. Barker via telephone call does not absolve the Police Department of providing a written notice required by the IPRA. Therefore, we conclude that the Police Department violated IPRA because it did not provide a written notification as is required under § 14-2-10 for excessively burdensome or broad requests.

To summarize our conclusions, it appears the Police Department violated IPRA because it did not provide access to the records requested or an explanation regarding when the records would be available for inspection within the time frames established by IPRA. To secure compliance in the future, we strongly encourage the Police Department to review its procedures for receiving and responding to IPRA requests to ensure that it adheres to all IPRA requirements and prevent further similar violations.

For more information regarding the IPRA, you may refer to the Office of the Attorney General's Inspection of Public Records Act Compliance Guide, which is available on our website at www.nmag.gov. The OGD also provides monthly training on IPRA throughout the state. If you have any questions regarding the issues addressed in this letter, you may contact me at (505) 490-4870.

Sincerely,



Delilah Tenorio
Assistant Attorney General
Open Government Division

Cc: Margaret Lucero, Tularosa Village Clerk
Cele Barker

Dear Attorney General:

On January 2, 2018, I made a written request for documents, which I delivered personally in writing to the Village of Tularosa. On

January 9, 2018, I received a telephone call in response, well after the required 3 day response time. At no time did I receive a

mailed communication of any type.

Deidre, representing the Village of Tularosa told me over the phone that all of the public records are on a computer and it is too

sensitive and private, and that it has something to do with the FBI, for me to sit at that computer to inspect the documents. She

stated that I would therefore need to buy 198 pages of the printed documents at \$1 per page, sight unseen, payment in advance for

documents I do not know are all relevant and how many are duplicates.

I am therefore making a formal complaint that the Village of Tularosa is violating the IPRA by not giving a 3-day notice, and denying my access to records in electronic form, documents they agreed are covered under the IPRA. I request that you investigate.

Respectfully,

Cele Barker

A handwritten signature in cursive script that reads "Cele Barker".