

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

April 29, 2019

VIA ELECTRONIC MAIL ONLY

Jackie Whittington
P.O. Box 961216
Boston, MA 02196
Email: retro500@outlook.com

Re: Inspection of Public Records Complaint – University of New Mexico

Dear Ms. Whittington:

The Office of the Attorney General, Open Government Division (OGD), has received and completed its review of your October 22, 2018 complaint 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 University of New Mexico (UNM). Your complaint alleged that UNM failed to provide any of the emails you requested.

After reviewing UNM's response and the IPRA, we find that UNM complied with their obligations under the IPRA because the emails you requested fall under an exception to IPRA. Section 14-2-1(A)(1) says that "[e]very person has a right to inspect public records of [New Mexico] except [] records pertaining to physical or mental examinations and medical treatment of persons confined to any institution."

We understand UNM received two nearly-identical requests from you on October 18, 2018. The first stated that you would like "all emails for the year 2017 to the present from Lily Bayat, M.D. pertaining to Keisha Atkins." The second said that you would like "all emails for the year 2017 to the present from the UNM Center for Reproductive Health Dept. pertaining to Keisha Atkins." Although neither you nor UNM expressly state that Keisha Atkins is or was a medical patient, based on UNM's response, we conclude that this is the case. UNM states that the records you requested contain medical information and, presumably, they are records that relate to or identify a patient.

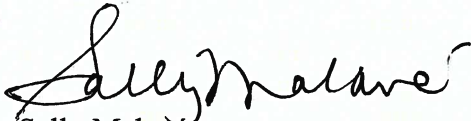
In addition to IPRA's exception at Section 14-2-1(A)(1), noted above, IPRA also specifically provides an exception for public inspection of records "as otherwise provided by law." Section 14-2-1(A)(8). Here, the other law that applies is New Mexico's Health and Hospital Records Act, which provides:

All health information that relates to and identifies specific individuals as patients is strictly confidential and shall not be a matter of public record or accessible to the public even though the information is in the custody of or contained in the records of a governmental agency or its agent, a state educational institution, a duly organized state or county association of licensed physicians or dentists, a licensed health facility or staff committees of such facilities.

NMSA 1978, Section 14-6-1(A). We conclude that emails generated from or received by UNM's Reproductive Health Department (or any medical department or physician) that contain health information and either identify or relate to a specific individual who is, was, may be, or may have been a patient there are protected from inspection in their entirety in accordance with the New Mexico Health and Hospital Records Act. As such, we will consider this matter closed.

For more information about IPRA, please refer to the Office of the New Mexico Attorney General's *Inspection of Public Records Act Compliance Guide*, available on our website at www.nmag.gov. The Office of the Attorney General appreciates you bringing possible violations to this office and will welcome any further complaints you may submit. If you have any concerns in the future, please do not hesitate to contact us.

Sincerely,



Sally Malave
Assistant Attorney General
Director, Open Government Division



Salazar, Patricia <psalazar@nmag.gov>

ipra appeal request

name name <retro500@outlook.com>
To: "psalazar@nmag.gov" <psalazar@nmag.gov>

Mon, Oct 22, 2018 at 6:58 PM

psalazar@nmag.gov

10.22.18

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

Dear IPRA Appeal Dept.,

Please assistance me in obtaining these records from the Univ of NM as they have denied me. The records are not owned by them but are public, of course they must redact all medical record info and send the rest. They sent nothing, zero, nada.

my request info was:

Request #18-658

Closed

As of October 22, 2018, 6:50pm

Would you kindly send all emails for the year 2017 to the present from Lily Bayat, M.D. pertaining to Keisha Atkins.

This is per the foia if need be.

Thank you very much.

Received

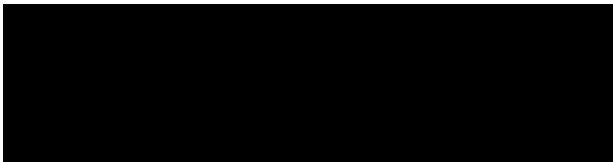
October 18, 2018 via web

Departments

Office of the Custodian of Public Records

Requester

jackie whittington



Please see the attached if this helps you to obtain the records from their tightly clenched fists.

Thank you very much.

JW

2 attachments

 **unm denial re bayat and atkins.pdf**
25K

 **REQUEST DATES.pdf**
58K

October 22, 2018

Via Email Transmission: retro500@outlook.com

Jackie Whittington
BOX 961216
Boston, MA 02196

Re: IPRA Request No. 18-658

Dear Ms. Whittington:

I am writing in response to your request dated October 15, 2018, pursuant to the New Mexico Inspection of Public Records Act (IPRA), wherein you requested the following:

*Would you kindly send all emails for the year 2017 to the present from Lily Bayat,
M.D. pertaining to Keisha Atkins.
This is per the foia if need be.
Thank you very much.*

The information you seek is protected as an exception pursuant to IPRA, NMSA 1978, Section 14-2-1(A)(1), as “records pertaining to physical or mental examinations and medical treatment of persons confined to any institution,” and NMSA 1978, Section 14-6-1 because “...health information relating and identifying specific individuals as patients is strictly confidential and not a matter of public record.” In addition, the Health Insurance Portability and Accountability Act of 1996, and the HIPAA Privacy Rule Regulation, preclude disclosure of protected health information about patients and, therefore, as otherwise provided by law, disclosure of this information is exempted under IPRA. *See* NMSA 1978, § 14-2-1(A)(8).

As a result, this request is respectfully denied.

This request is considered fulfilled and will be closed.

Sincerely,

Christy Armijo

Christy Armijo
IPRA Paralegal
Office of the Custodian of Public Records

Request #18-658

CLOSED

As of October 22, 2018, 6:50pm

Request Visibility: Unpublished

Details

Would you kindly send all emails for the year 2017 to the present from Lily Bayat, M.D. pertaining to Keisha Atkins.

This is per the foia if need be.

Thank you very much.

Received

October 18, 2018 via web

Departments

Office of the Custodian of Public Records

Requester

jackie whittington

✉ retro500@outlook.com

📍 box 961216, boston, MA 02196

📞 none

Documents

Public (pending) ⓘ

(none)

Requester

No. 18-658 Final Response Letter.pdf

Staff

Point of Contact

Christy Armijo

Timeline

Request Closed

Public

Request denied under NMSA Section 14-2-1 exceptions to IPRA.

October 22, 2018, 2:16pm

Document(s) Released to Requester

Public

No. 18-658 Final Response Letter.pdf

October 22, 2018, 2:16pm

External Message

Requester + Staff

Dear Requester:

Pursuant to the New Mexico Inspection of Public Records Act (IPRA), attached please find the final response letter for your UNM IPRA Request.

Sincerely,

Office of The Custodian of Public Records

The University of New Mexico

Office of University Counsel

1 University of New Mexico

UNM IPRA T: (505) 277-2440 F: (505) 277-4154

October 22, 2018, 2:16pm by Christy Armijo, Paralegal (Staff)

Department Assignment

Public

Office of the Custodian of Public Records

October 18, 2018, 7:14pm

Request Opened

Public

Request received via web

October 18, 2018, 7:14pm
