

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

August 30, 2019

Mr. Richard Dock
P.O. Box 961216
Boston, MA 02196
Email: citizensfoia@protonmail.com

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

Dear Mr. Dock:

The Office of the Attorney General, Open Government Division (“OGD”) has received your complaint alleging violations of the Inspection of Public Records Act (“IPRA”), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2019), by the University of New Mexico (the “University”). The OGD is charged with enforcement of the IPRA and in that capacity has reviewed the facts and allegations in your complaint. *See* NMSA 1978, § 14-2-12(A).

In New Mexico, “all persons are entitled to the *greatest possible information* regarding the affairs of government and the official acts of public officers and employees.” Section 14-2-5. *See also Republican Party of New Mexico v. New Mexico Taxation & Revenue Dep’t*, 2012-NMSC-026, ¶ 38, 283 P.3d 853, 867 (observing “IPRA’s guiding purpose of promoting government transparency”). This vital public policy is reflected in the Inspection of Public Records Act, which is broadly written to give individuals the right to inspect all “public records” with only limited and specifically enumerated exceptions. *See* § 14-2-1(A) (setting forth eight narrow exceptions to disclosure). In line with IPRA’s purpose, courts employ a “presumption in favor of the right to inspect.” Attorney General’s Inspection of Public Records Act Compliance Guide, p. 7 (8th ed. 2015) (“IPRA Guide”).

In the complaint you submitted to us, your sole allegation is that the University did not provide you with records responsive to your request dated June 22, 2019. However, the documentation you provided to us shows that the University informed you in a letter dated July 9, 2019, that it did not have any records responsive to your request. Based on our research, there are no reported New Mexico cases addressing a challenge to a public body’s claim that records requested under IPRA do not exist. However, courts outside New Mexico addressing the issue under laws similar to IPRA have uniformly concluded that a public body’s assertion that it does not hold or possess a requested public record is accepted

Mr. Richard Dock

August 30, 2019

Page 2

as true, absent evidence that the public body failed to conduct an adequate search or otherwise acted in bad faith. *See e.g., 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") and *Smith Butz, LLC v. Pennsylvania Dep't of Env'tl. Prot.*, 142 A.3d 941, 945 (Pa. Commw. Ct. 2016) (without "competent evidence" that a public body "acted in bad faith or that the...records exist," the court will accept as true the public body's assertion that the public records do not exist.). Therefore, in the absence of any evidence to the contrary, we must accept as true the University's assertion that no responsive records exist, and we consider this matter closed.

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. Additionally, our IPRA Guide is available on the website of the Office of the Attorney General at www.nmag.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Kreienkamp", is written over a light blue rectangular background.

John Kreienkamp
Assistant Attorney General

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: Deck

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): Univ. of New Mexico

Format of IPRA Request: Written Oral

Date IPRA Request was Submitted to the Public Body: 6/22

Date of all Responses Received from the Public Body: 6/22, 6/24/7/9

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.

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.

Per the IPRA would you kindly send all payments check copies of checks sent to Planned Parenthood from Jan. 1, 2014 to the Dec. 31, 2018.

Thank you very much.

They did not look hard enough for the check copies. They have been working w/PP for a long time. In 2019 there was a check so there has to be more in years past.
Thank you very much.

ADDITIONAL INFORMATION: Please provide a copy of your original inspection request (if written), and any documentation or evidence you have regarding the alleged IPRA violation.

Request #19-300

CLOSED

As of July 9, 2019, 11:59am

Request Visibility: Unpublished

Details

Per the IPRA would you kindly send all payments check copies of checks sent to Planned Parenthood from Jan. 1, 2014 to the Dec. 31, 2018.

Thank you very much.

Received

June 24, 2019 via web

Departments

Office of the Custodian of Public Records

Requester

Richard Dock

✉ citizensfoia@protonmail.com

📍 box 961216, boston, MA 02196

📞 000-000-0000

Documents

Public (pending) ⓘ

(none)

Requester

[No. 19-300 Final Response Letter.pdf](#)

[No. 19-300 Three Day Acknowledgment.pdf](#)

Staff

Point of Contact

Aaron Viets

Timeline

Document(s) Released to Requester

Public

No. 19-300_Final Response Letter.pdf

July 9, 2019, 10:48am

Request Closed

Public

No responsive records located for request.

July 9, 2019, 10:47am

External Message

Requester + Staff

Dear Requester:

Pursuant to the New Mexico Inspection of Public Records Act (IPRA), attached please find the three business day acknowledgment letter for your UNM IPRA Request.

Thank you,

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

June 24, 2019, 11:45am by Marie Wright, Paralegal (Staff)

Document(s) Released to Requester

Public

No. 19-300_Three Day Acknowledgment.pdf

June 24, 2019, 11:45am

Department Assignment

Public

Office of the Custodian of Public Records

June 22, 2019, 5:15am

Request Opened

Public

Request received via web

June 22, 2019, 5:15am

July 9, 2019

Via Email Transmission: citizensfoia@protonmail.com
Richard Dock
P.O. Box 961216
Boston, MA 02196

Re: IPRA Request No. 19-300

Dear Requester:

We write in response to your Inspection of Public Records Act (IPRA) request received on Monday June 24, 2019 at 8:00 A.M. for the following:

*Per the IPRA would you kindly send all payments check copies of checks sent to Planned Parenthood from Jan. 1, 2014 to the Dec. 31, 2018.
Thank you very much.*

The appropriate departments have searched for responsive check copies and found none. Accordingly, this request will be closed.

Sincerely,

Aaron C. Viets

Aaron C. Viets
Custodian of Public Records
Office of the Custodian of Public Records