

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
ATTORNEY GENERAL

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September 6, 2018

**VIA ELECTRONIC MAIL ONLY**

University of New Mexico  
Patrick Hart, Esq.  
Office of University Counsel  
1 University of New Mexico MSC 05 3440  
Albuquerque, NM 87131-0001  
Email: [pahart@salud.unm.edu](mailto:pahart@salud.unm.edu)

**Re: Inspection of Public Records Act Complaint – Andrew Lyman**

Dear Mr. Hart:

This letter addresses the complaint submitted by Mr. Andrew Lyman with the Office of the Attorney General alleging that the University of New Mexico (“the University”) violated the Inspection of Public Records Act (“IPRA”), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2018), in connection with his IPRA request submitted on May 4, 2018. Mr. Lyman’s complaint alleges that the University improperly redacted responsive records and charged him fees far beyond those authorized by IPRA. We have also reviewed your letter on behalf of the University responding to our inquiry, as well as a letter from the Foundation for Open Government (“FOG”) addressing the University’s IPRA cost policy. *See* Letter from Patrick Hart, UNM Office of University Counsel (August 30, 2018) (“Response”), and Letter from Melanie J. Majors, Executive Director of New Mexico Foundation for Open Government, to John Rodriguez, University Records Custodian (August 15, 2018) (“FOG Letter”). Based on our review of the evidence and applicable laws, we conclude that the University’s proposed fees violated IPRA. We direct the University to reevaluate its proposed fees in this case, charge only the actual costs for transmitting or downloading the electronic records, and otherwise provide the requested records to Mr. Lyman as soon as possible. With respect to the redacted records, we also direct the University to issue a revised denial letter, disclosing the individuals responsible for the redactions, in compliance with its obligations under IPRA.

Mr. Lyman’s Records Request

Mr. Lyman submitted an IPRA request to the University on May 4, 2018. *See* Complaint. He sought “documents or correspondence” pertaining to a specific court case. *See* Response. After

sending an acknowledgment letter on May 4, 2018, the University wrote to Mr. Lyman on May 21, 2018, seventeen (17) days after receipt of his request, stating that that it had determined his request to be excessively burdensome or broad. *Id.* This letter informed Mr. Lyman that he would “receive responsive records by no later than June 21, 2018.” Response. The University’s next written communication to Mr. Lyman was sent on June 26, 2018, five days after their estimated date to provide the responsive records. *Id.* That communication stated that the University required additional time to respond and provided a new response date of July 13, 2018. *See* Response. On July 13, 2018, the University again wrote Mr. Lyman and explained that it would need even more additional time, now stating that their response would be no later than July 20, 2018. *Id.*

The University sent its final response to Mr. Lyman on July 18, 2018. *See* Response. This letter informed Mr. Lyman that the University had made a number of redactions and provided the estimated cost of producing the requested records. With respect to the redactions, the University explained that it had redacted “[c]ertain information” pursuant to attorney-client privilege and NMSA 1978, Section 15-7-9, which exempts from disclosure particular records “created or maintained by the risk management division.” The University’s letter did not state the individual responsible for these redactions. *See* Response.

Most relevant to our analysis is the costs the University proposed to charge Mr. Lyman, some \$586.60. *See* Response. This cost was calculated in accordance with the University’s IPRA costs policy for electronic records, which provides the first twenty pages to a requestor free of charge but then imposes a flat \$0.35 per page fee for all subsequent pages. *See id.*; *see also Administrative Policies and Procedures Manual - Policy 2300: Inspection of Public Records*, UNIVERSITY OF NEW MEXICO, <http://policy.unm.edu/university-policies/2000/2300.html> (last updated Dec. 12, 2016) (“University Fee Policy”). The University’s letter requested the cost of \$586.60 in advance of the records being provided to Mr. Lyman but also offered to arrange an opportunity for him to visit the University during normal business hours to personally inspect the records (without being provided a copy). *See* Response.

Mr. Lyman responded to the University on July 19, 2018, by requesting further confirmation that the proposed \$586.60 represented the University’s actual costs. *See* Complaint. He scheduled an appointment to inspect the records at the University. *Id.* At this meeting where Mr. Lyman visited the University, he was allowed to view the requested records as a .pdf file on a University computer. *Id.* During this meeting, Mr. Lyman asked the University’s custodian if he could personally transfer the file to his own device; the University custodian told him that he could only do so once he had paid the \$586.60 fee. *See* Complaint. In his complaint to our Office, Mr. Lyman challenges the legality of that fee as well as the propriety of redacting one particular email record (which he identifies as a “press statement that appeared to be approved to be released” to reporters). *Id.*

### The Inspection of Public Records Act

The Inspection of Public Records Act was designed to allow the public access 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 San Juan Agr. Water Users Ass'n v. KNME-TV*, 2011-

NMSC-011, ¶ 16, 150 N.M. 64, 257 P.3d 884, 888 (observing that “IPRA is intended to ensure that the public servants of New Mexico remain accountable to the people they serve”). IPRA provides the public with the right to inspect all “public records” with only limited and specifically enumerated exceptions. *See* § 14-2-1(A).

IPRA generally requires public bodies to provide all requested records within fifteen calendar days if not immediately. Section 14-2-8(D). This fifteen-day period begins upon the records request’s receipt by the public body’s designated records custodian. *Id.*; *see also* Attorney General’s Inspection of Public Records Act Compliance Guide, p. 34 (8<sup>th</sup> ed. 2015) (“IPRA Guide”) (noting that IPRA’s specified “time periods... for responding to an inspection request begin to run when the proper custodian receives the request”). The only exception to this fifteen-day deadline is for records requests determined to be “excessively burdensome or broad” by the public body. Section 14-2-10. In such a case, IPRA grants the public body an additional, reasonable amount of time to respond (to be determined individually, dependent on the circumstances). *Id.* However, in any event, the public body must either provide the requested records, deny the request, or designate the request as broad and burdensome in writing within fifteen calendar days. Section 14-2-11(A).

In order to withhold or redact a requested record, IPRA requires agencies to provide the requester with a “written explanation” of the denial or redaction. Section 14-2-11(B). Our Office has interpreted this as requiring a substantial justification for the agency’s actions. IPRA Guide, p. 12. This explanation of the denial or redaction must also provide a description of the requested documents and disclose “the names and titles or positions of each person responsible for the denial.” Section 14-2-11(B). As explained earlier, the explanation must “be delivered or mailed to the person requesting the records within fifteen days after the request for inspection was received,” meaning that the burden is not on the requester to demand an explanation for the denial or redaction. Section 14-2-11(B)(3).

IPRA’s few exceptions to disclosure, allowing a public body to withhold or redact a record, are narrowly construed in accordance with the “presumption in favor of the right to inspect.” Attorney General’s Inspection of Public Records Act Compliance Guide, p. 7 (8<sup>th</sup> ed. 2015) (“IPRA Guide”). *See also Cox v. New Mexico Dep’t of Pub. Safety*, 2010-NMCA-096, ¶ 16, 148 N.M. 934, 939, 242 P.3d 501, 506 (observing that courts employ a “strong presumption that the public has a right to inspect” requested documents). In determining whether a public body has the legal authority to redact or withhold a requested record, courts (and our Office) “restrict their analysis to whether disclosure under IPRA may be withheld because of a specific exception contained within IPRA, or statutory or regulatory exceptions, or privileges adopted by this Court or grounded in the constitution.” *Republican Party of N.M. v. N.M. Taxation & Revenue Dep’t*, 2012-NMSC-026, ¶ 16, 283 P.3d 853, 860. While IPRA provides an exception for documents which may be redacted or withheld “as otherwise provided by law,” Section 14-2-1(A)(8), “a public body may withhold a public record only if it is based on (1) a specific exception contained within the Act, (2) a statutory or regulatory exception, (3) a rule adopted by the New Mexico Supreme Court, or (4) a privilege protecting a record from disclosure that is grounded in the U.S. or state constitution.” IPRA Guide, p. 21.

### Preliminary Issues

Before turning to the crux of Mr. Lyman's complaint, we first address three smaller issues related to IPRA. First, in reviewing the evidence in this case we observed that the University's correspondence and communications with Mr. Lyman may not have been entirely compliant with IPRA's specified timelines. The University's letter to Mr. Lyman stating that they had determined his request to be excessively burdensome or broad was sent seventeen (17) days after receipt of his request. *See* Response (showing that the letter was dated May 21, 2018). This is beyond the fifteen calendar days provided by IPRA, Section 14-2-10. More consequential, however, was the fact that the University failed to provide the responsive records or otherwise communicate with Mr. Lyman in writing by its self-imposed deadline of June 21, 2018. *See* Response. Instead, the University responded a full five days later, on June 26, 2018, and then twice requested even more time to respond. *Id.* In the future, the University should be more diligent in providing reasonable communication to all requestors and meeting all IPRA deadlines.

Secondly, the University's final response to Mr. Lyman's complaint, dated July 18, 2018, provided an explanation for the redacted records but did not state the individuals responsible for these redactions. *See* Response. This was a violation of Section 14-2-11(B), which mandates that the public body disclose "the names and titles or positions of each person responsible" for the denial of a records request. This includes those records which have been redacted. As a result, we would encourage the University to issue a revised denial letter setting forth the individuals responsible for the redacted records.

As to Mr. Lyman's allegation that the University's redaction of one particular record, which appears to be (and he states it is) a draft of a press release, was unlawful, we do not have sufficient information to opine at this time. *See* Complaint. While Mr. Lyman argues that a statement "approved to provide to media should not qualify as attorney client privilege," the University's actual denial letter offered two justifications for its redactions: attorney-client privilege and the exemption for particular records "created or maintained by the risk management division" outlined by NMSA 1978, Section 15-7-9. On this point, the University's Response to our inquiry was a simple iteration of their denial letter, stating that information was redacted in accordance with both exceptions. While this response was not particularly enlightening, we have not reviewed the un-redacted record, nor have we much evidence as to the circumstances surrounding this record (such as its author or the email's recipients).

#### The University's Proposed Costs

The primary issue raised by Mr. Lyman's complaint is the University's proposed \$586.60 fee for an electronic copy of the requested records. Mr. Lyman and the Foundation for Open Government ("FOG") argue that this fee was illegal under IPRA because it did not represent the University's actual costs. For its part, the University maintains that it relied on its IPRA cost policy and that this policy "provides a viable method of allocating those costs and results in a reasonable per-page cost." Response.

The costs a public body is allowed to charge an individual requesting copies of public records are set forth in Section 14-2-9(C). That section generally authorizes "reasonable fees for copying

public records.” Section 14-2-9(C)(1). Public bodies may also, as the University did in this case, require fees to be paid in advance. Section 14-2-9(C)(5). The general limitations of Section 14-2-9 include the requirement to provide a receipt when one is requested and the flat prohibition against charging “a fee for the cost of determining whether any public record is subject to disclosure.” *Id.*

IPRA takes significantly divergent approaches, though, to printed and electronic copies. For most printed records, IPRA authorizes fees up to \$1.00 per page. Section 14-2-9(C)(2). By contrast, where electronic records are concerned public bodies may only charge the “actual costs” of downloading or transmitting the requested records. Sections 14-2-9(C)(3) and (4). This distinction is important because where a requestor seeks printed records, IPRA effectively allows public bodies to charge both a “reasonable” copying fee *and* their actual costs of mailing or otherwise transmitting the records. On the other hand, for electronic records, the public body is limited to only recouping their actual costs. In other words, the issue for electronic records is not whether the public body’s fees were reasonable; the question is whether the fees represented the public body’s actual costs of either downloading or transmitting the records to the requestor.

Given IPRA’s specific provisions pertaining to fees, the issue with respect to the University’s handling of Mr. Lyman’s request is whether \$586.60 represented its actual costs of downloading and transmitting the requested records. To recap, the University defends its proposed fee by reference to its written IPRA fee policy, which provides requestors with the first twenty pages of electronic records at no charge but imposes a flat \$0.35 fee for every additional page. *See* University Fee Policy (requiring “35 cents per page (in excess of 20 pages) to a computer disk, thumb drive or other storage device”). While the written policy itself provides virtually no explanation for this flat per-page fee, in its Response to our inquiry, the University explained that “the allowable costs are directly correlated to the volume of copies made.” Response. The University provided no further explanation as to why this \$0.35 fee represented its actual costs, although it did acknowledge that “ascertaining the costs is a difficult process.” *Id.*

Based on the aforementioned facts and provisions of law, we conclude that the University’s proposed fee of \$586.60 violated IPRA. The University has provided no evidence that \$0.35 per page represented the “actual costs” of either downloading or transmitting the requested records to Mr. Lyman. This is demonstrated most clearly through the fact that, while inspecting the records in person, Mr. Lyman offered to use his own device to download the requested records and was still denied without payment of the proposed fee. It is unpersuasive to maintain that the actual cost of having Mr. Lyman download those records (using his own device) was \$586.60. And, to be explicitly clear, the (probably significant) employee time and effort the University expended to compile those records in response to his request could not be included in the proposed fee, which could only include the actual costs of “downloading” or “transmitting” the records. Section 14-2-9(C).

The University’s reliance on its written fee policy also demonstrates the invalidity of the charges here. First of all, the policy itself is flawed on its face because, aside from the first twenty pages of electronic records, it charges *the same cost* for both printed and electronic records. *See* University Fee Policy (charging “35 cents per page” for most printed records). More importantly, however, the written policy itself almost certainly cannot support the \$0.35 per-page fee in this

case because electronic fees must be determined on a case-by-case basis. Even if the policy were appropriate in most cases, it would only be valid in this case if downloading the files actually cost the University \$0.35 for each page.

Mr. Lyman and FOG both maintain that a per-page fee for electronic records is “automatically suspect.” FOG Letter. We agree, and while we would not say that a per-page fee for electronic records would always conflict with IPRA, we think that such a policy is presumptively invalid. The legislature specifically authorized such fees for printed records; if they had meant to authorize them for electronic records, surely IPRA would reflect as much. *See* § Section 14-2-9(C)(2) (providing that public bodies “shall not charge fees in excess of one dollar (\$1.00) per *printed page*”) (emphasis added).

As in all cases, the purpose of IPRA, namely to facilitate an informed electorate and a transparent government, guides our analysis of this issue. *See Am. Civil Liberties Union of New Mexico v. Duran*, 2016-NMCA-063, ¶ 25, 392 P.3d 181, 188 (noting that IPRA’s purpose is “to promote the existence of (1) an informed electorate and (2) transparency in governmental affairs”). Fees charged by public bodies must be in compliance with IPRA in all respects. Therefore, a public body should not and cannot use substantial fees to restrain access to public records. Accordingly, we would instruct the University to reevaluate its proposed fees in this case and only charge Mr. Lyman its “actual costs” of either downloading or transmitting the requested documents. Section 14-2-9(C). It should provide Mr. Lyman with electronic copies of the documents he requested as soon as possible.

For your reference, a copy of the IPRA Guide is available on the website of the Office of the Attorney General at [www.nmag.gov](http://www.nmag.gov). If you have any questions regarding this determination or IPRA in general, please let me know.

Sincerely,



John Kreienkamp  
Assistant Attorney General

cc: Alfred Mathewson  
Andrew Lyman

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
ATTORNEY GENERAL

## Electronic Complaint Submission

### Submission Detail

<b>ECS Reference Number</b>	NMOAG-ECS-20180809-0ee4
<b>Final Submit Date</b>	8/9/2018 12:18:07 PM

**Disclosure of your complaint:** This complaint is a public record, thus available under provisions of the NM Inspection of Public Records Act.

**Disclosure to other entities:** This complaint, its content, and other information may be disclosed to other law enforcement and regulatory agencies.

**I understand this complaint and any submitted documents are public record and may be shared with other law enforcement and regulatory agencies.**

**DECLARATION:** By submitting this form, I attest that the information in this complaint is true and accurate to the best of my knowledge. I further understand that by submitting this form I may be called to testify as a witness in this matter.

**I understand declaration statement.**

*The New Mexico Office of the Attorney General cannot give legal advice regarding this complaint and will not act as your personal attorney. If you have questions regarding your rights please contact a private attorney.*

*Submission of this complaint is not confirmation that an investigation will be initiated.*

## Complaint Detail

**Complaint Type** Inspection of Public Records (IPRA) Complaint

**Retained Attorney**

## Parties

### Complainant

**Mr Andrew Lyman** [andrewglyman@gmail.com](mailto:andrewglyman@gmail.com)

Person

#### Address

[REDACTED]

#### Contact information

[REDACTED]  
[REDACTED]

### Complaint against

**University of New Mexico**

Public Body (Government Entity)

#### Address

#### Contact information

## Complaint Specifics

**Format of IPRA request:** Written

**Date IPRA request was submitted to the public body:** 05/04/18

**Date of all responses received from the public body:** 05/04/18 - three day letter 05/21/18 - broad request letter/extension 06/26/18 - extension letter 07/13/18 - extension letter 07/18/18 - documents ready for inspection 07/19/18 - confirmation from custodian that a cost of \$.38 per page would be charged to transfer electronic files 07/20/18 - appointment to inspect records confirmed

**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.

## Transaction

## Documents



UNM inquiry.JPG

An inquiry regarding the cost of transferring electronic files

### Comments

UNM proposed a charge of \$.38 per page to transfer electronic documents. I asked about the cost, considering that there should essentially be no charge to physically transfer even a large file to a disk or storage device. A charge for a physical device or disk is understandable, but neither of these things can possibly cost \$500.



UNM response to inquiry.JPG

UNM's response to the inquiry regarding the cost to transfer electronic files

### Comments

A UNM records custodian confirmed that it would cost \$.38 per page to transfer an electronic file to a device or disk. When I went to personally inspect the more than 1600 pages, I asked the custodian if I could use my own device to transfer the files and was told I would still be charged more than \$500 to simply transfer a file to my own device.

\*\*\* END OF COMPLAINT \*\*\*

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External Message [Hide](#)

Requester + Staff

Dear Requester:

With respect to your inquiry regarding the cost, correct, it will cost \$586.60 to receive the documents electronically or to either store to a storage device.

You are welcome to visit the office to inspect/view the documents at no-charge. Our office is open Monday through Friday from 8 AM to 5 PM. Please provide some dates/times that fit with your schedule so that I may confirm and get a date scheduled.

Sincerely,

Office of The Custodian of Public Records

*July 19, 2018, 4:32pm by Christine Landavazo, Custodian of Public Records (Staff)*



**External Message** [Hide](#)

Requester + Staff

Hello,

I received a final letter regarding request #18-312. I understand the records are ready for inspection and in order to receive the related documents the cost is \$586.60. Can someone confirm that this is the actual cost to either transmit the electronic documents or transfer to a storage device?

NM 14-2-9 outlines that a fee not exceeding \$1.00 per PRINTED PAGE can be charged and that a custodian "may charge the actual costs associated with downloading copies of public records to a computer disk or storage device, including the actual cost of the computer disk or storage device;"

or

"may charge the actual costs associated with transmitting copies of public records by mail, electronic mail or facsimile"

but

"shall not charge a fee for the cost of determining whether any public record is subject to disclosure; and"

I respectfully request a more detailed breakdown or explanation of the \$.35 per page cost.

In the meantime, I also respectfully request to schedule a time to inspect the pages in person.

Thank you,

Andy Lyman



Salazar, Patricia &lt;psalazar@nmag.gov&gt;

## Inspection of Public Records Complaint – University of New Mexico

**Andy Lyman** <andy@nmpoliticalreport.com>  
 To: "Salazar, Patricia" <psalazar@nmag.gov>  
 Cc: Andy Lyman <andrewglyman@gmail.com>

Wed, Aug 22, 2018 at 12:31 PM

Hi, sorry for the delay.

The narrative of my complaint, that is actually filed as two separate complaints is as follows:

I have been requesting records regarding a legal settlement from UNM since May. I was repeatedly denied the request based on state statute 15-7-9, which I understand and agree is valid based on the dates of the settlement.

But in a subsequent request for communications surrounding said settlement, I was offered 1,696 pages of electronic records at a cost of \$.38 per page. UNM offered 20 free pages, but still maintained it would cost \$.38 per page to electronically transfer those records either through email or on a storage device. UNM did offer to let me inspect the records in person, so I did. When I arrived to inspect them, I was allowed to scroll through a large PDF document on a laptop by myself. But when I asked if I could simply transfer the file to my own device, the records custodian Christine Landavazo told me I would still be charged \$.38 per page, with 20 for free. The total I would have had to pay to transfer the PDF file to my device would have been \$586.60.

Ms. Landavazo did say I could make a note of any pages I wanted to take with me and she would print up to 20 pages for free, which she did.

One of the pages I was able to take with me contained a redacted press statement that appeared to be approved to be released to me and other local reporters. In other words, months earlier two other reporters and I asked for a comment from the UNM medical school regarding a then confidential legal settlement. I can see in the records I have that a spokeswoman emailed her supervisor or supervisors and asked for an appropriate statement from UNM medical school head Paul Roth. In response, someone sent the spokeswoman a statement I would assume was to be sent out to media. But in the email records I obtained, that statement was redacted. In a previous note from the UNM custodian, I was told the redactions were done to attorney client privilege. My concern is that the statement that was purportedly approved for the public was later redacted incorrectly as attorney client privilege. Further, if that statement was incorrectly redacted then, I'm also concerned there is other information that was incorrectly redacted.

In summary, I believe UNM violated IPRA twice. Once when they tried to charge \$.38 a page to transfer electronic copies and again when they redacted a statement that appears was later sent out to the press.

Below I will add details about my correspondence with UNM in regards to these two possible violations.

The New Mexico Political Report  
[@nmpol](https://twitter.com/nmpol) | [nmpoliticalreport.com](http://nmpoliticalreport.com)

The following is from me to the custodian on July 19, 2018

*Hello,*

*I received a final letter regarding request #18-312. I understand the records are ready for inspection and in order to receive the related documents the cost is \$586.60. Can someone confirm that this is the actual cost to either transmit the electronic documents or transfer to a storage device?*

*NM 14-2-9 outlines that a fee not exceeding \$1.00 per PRINTED PAGE can be charged and that a custodian "may charge the actual costs associated with downloading copies of public records to a computer disk or storage device, including the actual cost of the computer disk or storage device;"*

*or*

*"may charge the actual costs associated with transmitting copies of public records by mail, electronic mail or facsimile"*

*but*

*"shall not charge a fee for the cost of determining whether any public record is subject to disclosure; and"*

*I respectfully request a more detailed breakdown or explanation of the \$.35 per page cost.*

*In the meantime, I also respectfully request to schedule a time to inspect the pages in person.*

*Thank you,*

*Andy Lyman*

Next is the response I got from the custodian, later the same day.

*Dear Requester:*

*With respect to your inquiry regarding the cost, correct, it will cost \$586.60 to receive the documents electronically or to either store to a storage device.*

*You are welcome to visit the office to inspect/view the documents at no-charge. Our office is open Monday through Friday from 8 AM to 5 PM. Please provide some dates/times that fit with your schedule so that I may confirm and get a date scheduled.*

*Sincerely,*

*Office of The Custodian of Public Records*

Beyond that, we corresponded back and forth arranging a time for inspection.  
Below is a copy of the page that contains what seems to be a redacted press statement

I apologize for the lengthy email.  
-Andy Lyman

On Aug 20, 2018, at  
1:40 PM, Salazar,  
Patricia  
<[psalazar@nmag.gov](mailto:psalazar@nmag.gov)>  
wrote:

Good Afternoon!

I was hoping that  
you could provide  
any  
correspondence  
between yourself

and UNM and a detailed narrative or timeline to further assist us in reviewing this matter. Thank you and please feel free to contact me if you have any further questions or concerns.

"Courage is fear holding on a minute longer." George S. Patton

On Thu, Aug 9, 2018 at 1:50 PM, Salazar, Patricia <[psalazar@nmag.gov](mailto:psalazar@nmag.gov)> wrote:

VIA ELECTRONIC MAIL ONLY

Andrew Lyman  
729 Valverde Dr. SE  
Albuquerque NM 87108  
Email: [andy@nmpoliticalreport.com](mailto:andy@nmpoliticalreport.com) or [andrewglyman@gmail.com](mailto:andrewglyman@gmail.com)

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

Dear Mr. Lyman:

The Office of the Attorney General ("OAG"), Open Government Division ("OGD"), has received your complaint(s) 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.

We are currently in the process of reviewing your complaint(s). Our office may contact you to further clarify

8/22/2018

The Office of New Mexico Attorney General Mail - Inspection of Public Records Complaint – University of New Mexico

issues raised in your complaint(s). In the meantime, if you may have any questions or concerns, please feel free to contact me.

Sincerely,

Patricia M. Salazar  
Patricia M. Salazar  
Open Government Division

"Courage is fear holding on a minute longer." George S. Patton

Andy Lyman - Reporter  
[New Mexico Political Report](#)  
[andy@nmpoliticalreport.com](mailto:andy@nmpoliticalreport.com)  
505-226-3195

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## 2 attachments

 **No. 18-312 Final Response Letter (3).pdf**  
36K

 **Redacted statement from UNM.pdf**  
242K



The University of New Mexico

**Office of The Custodian of Public Records**

MSC05 3440  
Scholes Hall Room 208  
1 University of New Mexico  
Albuquerque, NM 87131-0001  
Telephone (505) 277-5035  
<http://publicrecords.unm.edu/>  
[unmipra@unm.edu](mailto:unmipra@unm.edu)

July 18, 2018

Via Email Transmission: [andy@nmpoliticalreport.com](mailto:andy@nmpoliticalreport.com)

Andy Lyman  
625 Silver Ave SW Ste 320  
Albuquerque, NM 87102

**Re: IPRA Request No. 18-312**

Dear Mr. Lyman:

Per your IPRA request dated May 4, 2018, you requested the following:

- Any documents or correspondence regarding a legal settlement in civil legal case D-202-CV-2011-06915, involving Cynthia Herald from November 1, 2017 through May 4, 2018
- This includes, but is not limited to, emails, letters or text messages regarding the above request for the above time period.
- This also includes, but is not limited to, the specifics of the settlement itself.

Certain information has been redacted under Section 14-2-1(A)(8) “as otherwise provided by law,” of the Inspection of Public Records Act (IPRA), specifically, NMSA 1978, § 15-7-9(A) (Confidentiality of Records) and Rule 16-106 NMSA 1978, “Lawyer-Client Privilege.” Information not subject to public disclosure under IPRA and/or protected personal identifier information contained in the requested records has been redacted under Section 14-2-1(B) of the Inspection of Public Records Act.

The public records responsive to your request are now available and the cost for this production is as follows:

Total Pages:	1696
Complimentary Pages:	20
Adjusted Total Pages:	1676 @ .35 per electronic page
<b>Total Cost:</b>	<b>\$586.60</b>

UNM requires advance payment of fees, either by cash or credit card, before copies are provided to the requestor. Cash payments must be made at the UNM Cashier's Office located in the Perovich Business Center, Suite 1100, on the southwest corner of Lomas and University Boulevards. Credit card payments can be made online at:

[https://secure.touchnet.com/C21597\\_ustores/web/product\\_detail.jsp?PRODUCTID=1651&SINGLESTORE=true](https://secure.touchnet.com/C21597_ustores/web/product_detail.jsp?PRODUCTID=1651&SINGLESTORE=true)

Checks can be mailed directly to:

Office of the Custodian of Public Records  
MSCO5 3440  
Scholes Hall Room 208  
1 University of New Mexico  
Albuquerque, NM 87131-0001

You may also arrange a time and date during regular operating business hours to inspect the records in person by contacting this office at [unmipra@salud.unm.edu](mailto:unmipra@salud.unm.edu).

This request is considered fulfilled, should you require further information please submit a new IPRA request to this office at <https://unmipra.nextrequest.com/>.

Sincerely,

*Christy Armijo*

Christy Armijo  
IPRA Paralegal  
Office of the Custodian of Public Records

Took Mike off as it's not a uh issue and added Libby and cinnamon from main

Statement:

[REDACTED]

Sent from my iPhone

On Nov 17, 2017, at 11:07 AM, Sara Rose Mota <[SMota@salud.unm.edu](mailto:SMota@salud.unm.edu)> wrote:

Likewise, NM Political Report's Andy Lyman is publishing at noon.  
He'll add comments once they are received.

Sara Mota, MFA/MA  
Marketing and Art Director  
UNM Health Sciences Center  
Communications & Marketing

MSC 07 4360  
1650 University NE  
Albuquerque, NM 87131  
505.272.4589  
Cell: 505.219-5951

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**From:** Sara Mota <[SMota@salud.unm.edu](mailto:SMota@salud.unm.edu)>  
**Date:** Friday, November 17, 2017 at 11:06 AM  
**To:** William O Sparks <[WSparks@salud.unm.edu](mailto:WSparks@salud.unm.edu)>, Chamiza Pacheco de Alas <[Chamiza1@salud.unm.edu](mailto:Chamiza1@salud.unm.edu)>, "Paul B Roth M.D." <[PROth@salud.unm.edu](mailto:PROth@salud.unm.edu)>, Michael J Chicarelli <[MChicarelli@salud.unm.edu](mailto:MChicarelli@salud.unm.edu)>, Scot Sauder <[SSauder@salud.unm.edu](mailto:SSauder@salud.unm.edu)>  
**Subject:** Re: Two media inquiries

Maggie Shepard is posting to ABQ Journal online now.  
She'll update it with our comment once we send it over to her.

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
ATTORNEY GENERAL

## Electronic Complaint Submission

### Submission Detail

<b>ECS Reference Number</b>	NMOAG-ECS-20180809-9f68
<b>Final Submit Date</b>	8/9/2018 12:32:44 PM

**Disclosure of your complaint:** This complaint is a public record, thus available under provisions of the NM Inspection of Public Records Act.

**Disclosure to other entities:** This complaint, its content, and other information may be disclosed to other law enforcement and regulatory agencies.

**I understand this complaint and any submitted documents are public record and may be shared with other law enforcement and regulatory agencies.**

**DECLARATION:** By submitting this form, I attest that the information in this complaint is true and accurate to the best of my knowledge. I further understand that by submitting this form I may be called to testify as a witness in this matter.

**I understand declaration statement.**

*The New Mexico Office of the Attorney General cannot give legal advice regarding this complaint and will not act as your personal attorney. If you have questions regarding your rights please contact a private attorney.*

*Submission of this complaint is not confirmation that an investigation will be initiated.*

## Complaint Detail

**Complaint Type** Inspection of Public Records (IPRA) Complaint

**Retained Attorney**

## Parties

### Complainant

Mr Andrew Lyman [andy@nmpoliticalreport.com](mailto:andy@nmpoliticalreport.com)

Person

#### Address

[REDACTED]

#### Contact information

[REDACTED]  
[REDACTED]

### Complaint against

University of New Mexico

Public Body (Government Entity)

#### Address

#### Contact information

## Complaint Specifics

**Format of IPRA request:** Written

**Date IPRA request was submitted to the public body:** 05/04/18

**Date of all responses received from the public body:** 07/18/18

**Records** The agency provided some but not all of the records responsive to the request.

## Transaction

## Documents



Redacted statement from UNM.pdf

One page of more that 1600 that were redacted under attorney/client privilege exemption

### Comments

I inspected, in person more than 1600 redacted pages. The reason given was attorney client privilege. But this document shows a statement given to a spokesperson, by a superior, to provide to the press. I'm assuming this is the same statement that was provided to me, but there is no way to tell. A statement approved to provide to media should not qualify as attorney client privilege and it is not unreasonable to suspect at least some of the other redacted information is also not privileged information.

\*\*\* END OF COMPLAINT \*\*\*