

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

April 11, 2019

VIA ELECTRONIC MAIL ONLY

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

Re: Inspection of Public Records Act Complaint – Jackson Washington

Dear Mr. Hart:

This letter addresses the complaint submitted to the Office of the Attorney General by Mr. Jackson Washington alleging that the University of New Mexico (hereinafter “the University”) violated the Inspection of Public Records Act (“IPRA”), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2018). As you know, Mr. Washington’s complaint alleges that the University violated IPRA by denying his request on the basis of his lack of a valid, working phone number. We are in receipt of your response on behalf of the University to our inquiry. As explained in more detail below, we conclude that IPRA does not authorize a public body to deny a records request solely on the basis of a lack of a valid and working telephone number. We therefore direct the University to reopen Mr. Washington’s request and process it in accordance with IPRA.

On October 25, 2018, Mr. Washington submitted a public records request to the University. Although we have not reviewed a copy of this request, both Mr. Washington and the University appear to agree that his request included his name, email address, and reasonably specific information as to the records sought. However, Mr. Washington did not provide a “valid and working telephone number.”¹ He did provide two “non-working” numbers, which the University apparently tried calling only to discover that they were invalid. *See* Response. Two business days after receipt of Mr. Washington’s request, on October 29, 2018, the University denied the request solely due to his failure to provide “a valid and working telephone number.” As a result, Mr.

¹ In his complaint to our Office, Mr. Washington explained his lack of a telephone number by noting that “I am not rich and do not feel like I should be required to purchase a phone with minutes so they can call me.”

Patrick Hart, Esq.

April 11, 2019

Page 2

Washington's complaint presents only one issue for our review: whether a public body may deny an IPRA request on the basis of a requestor failing to provide a valid telephone number, even where the requestor has provided a working email address.

The Inspection of Public Records Act provides the public with access to "the greatest possible information" about government. Section 14-2-5. As with all matters of statutory interpretation, IPRA's purpose and underlying public policy is central to our analysis of its varied provisions and requirements. *See* Attorney General's Inspection of Public Records Act Compliance Guide, p. 7 (8th ed. 2015) ("IPRA Guide") (discussing the fact that courts employ a "presumption in favor of the right to inspect"); *see also Sims v. Sims*, 1996-NMSC-078, ¶ 21, 122 N.M. 618, 622 (noting that courts will reject "a wooden literal interpretation" in order to interpret a statute in line with legislative intent). Broadly speaking, IPRA gives 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). These exceptions are narrow, and courts interpret them "with the strong presumption that the public has a right to inspect" the requested documents. *Cox v. New Mexico Dep't of Pub. Safety*, 2010-NMCA-096, ¶ 16, 148 N.M. 934, 939.

These legal principles provide the context for the University's contention that IPRA authorizes public bodies to deny records requests if the requestor fails to provide a valid telephone number. In support of this proposition, the University cites to two bases of authority. First, it cites to IPRA's own language in Section 14-2-8(C), where it states: "A written request shall provide the name, address and telephone number of the person seeking access to the records and shall identify the records sought with reasonable particularity." According to the University, this provision must be interpreted strictly as a flat requirement that all records requests must include a valid and working telephone number. We note, however, that Section 14-2-8(C) neither states that its provisions can provide the basis to deny a request nor that the telephone number provided in the request must be valid or working.

Additionally, the University's argument relies heavily upon the New Mexico Supreme Court's decision in *San Juan Agricultural Water Users Association v. KNME-TV*, 2011-NMSC-011, 150 N.M. 64. In that case, the Court held that "an undisclosed principal" could, acting through an agent, submit a records request to a public body and then enforce that request in court. *San Juan*, 2011-NMSC-011, ¶ 36. Critically, the Court rejected a literal interpretation of Section 14-2-8, effectively concluding that a records request was still valid even where the real requestor's name was not provided. *Id.* However, the decision included the following language:

An IPRA request must include a name, address, and telephone number in order to facilitate the inspection procedures set forth in IPRA. In order to comply with IPRA's procedural provisions, a records custodian must have contact information that will enable the custodian to seek clarification of a records request, furnish public records for inspection, send written explanations of why any request has been denied, or inform the requester that more time is needed to respond to a burdensome request... A records custodian cannot perform the statutory duties set forth in IPRA unless the custodian has someone with whom to communicate. A

Patrick Hart, Esq.

April 11, 2019

Page 3

request's provision of a name, address, and telephone number is essential to the inspection process.

San Juan, 2011-NMSC-011, ¶ 30. Emphasizing this language, the University argues that in the absence of a working telephone number, a records request fails “to comply with law” and can therefore be denied.

We think the University reads Section 14-2-8 too literally. As the New Mexico Supreme Court’s decision in *San Juan* demonstrates, the purpose of including a phone number in a records request is to provide the records custodian with “contact information” with which they can use to communicate with a requestor. *San Juan*, 2011-NMSC-011, ¶ 30. Telephone numbers, while specified by the statute and undoubtedly constituting contact information, are not the only means of communicating with a requestor. So long as an email address was provided in the request, the records custodian has sufficient contact information at hand. Alternatively, if we were to agree with the University’s position, public bodies could deny records requests *even when possessing sufficient contact information*, effectively transfiguring a “telephone number” into a strict requirement used to deny records requests. This is inconsistent with IPRA’s purpose of providing the public with access to “the greatest possible information.” Section 14-2-5. As explained in our IPRA Guide, “courts interpreting the Act have established a clear presumption in favor of access” and we think that a strict construction of Section 14-2-8 would only serve to hinder disclosure. IPRA Guide, p. 1.

Moreover, the New Mexico Supreme Court’s decision in *San Juan*, if anything, reinforces the conclusion that a telephone number is not strictly necessary. The *San Juan* case rejected a literal interpretation of Section 14-2-8, allowing a person to enforce a records request even when it was submitted under another name (through an agent). *San Juan*, 2011-NMSC-011, ¶ 36. If we were to conclude that a telephone number was a strict requirement for all written requests, that would lead to an absurd result where a requestor need not provide his or her real name but must provide his or her valid, working telephone number. *See Inv. Co. of the Sw. v. Reese*, 1994-NMSC-051, ¶ 13, 117 N.M. 655, 658 (noting that courts “must look beyond the four corners of the statute” when a literal interpretation would lead to an absurd or nonsensical result). Given that *San Juan* embraced a more flexible interpretation of Section 14-2-8, we do not think it supports the University’s position in this case.

As a result, we conclude that the Inspection of Public Records Act does not permit a public body to deny a records request solely on the basis of the requestor’s failure to provide a valid telephone number, at least where the requestor has provided another valid means of communication. This interpretation is consistent with “IPRA’s guiding purpose of promoting government transparency,” and one with which we think a court would concur. *Republican Party of New Mexico v. New Mexico Taxation & Revenue Dep’t*, 2012-NMSC-026, ¶ 38, 283 P.3d 853, 867. As a result, in this case, we direct the University reopen Mr. Washington’s request, communicate with him via email, and handle his request in accordance with IPRA’s various requirements.

Patrick Hart, Esq.

April 11, 2019

Page 4

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. If you have any questions regarding this determination or IPRA in general, please let me know.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Kreienkamp". The signature is stylized and cursive.

John Kreienkamp
Assistant Attorney General

Enclosure

CC: Mr. Jackson Washington



Salazar, Patricia <psalazar@nmag.gov>

appeal

s. howey <sent@post.com>
To: psalazar@nmag.gov

Fri, Nov 2, 2018 at 2:46 PM

psalazar@nmag.gov

11.2.18

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

Dear Public Records Appeal Complaint Dept.,

I wrote the University of New Mexico and they cited some law that said I didn't have a valid phone number. My minutes ran out and I am not renewing. Now I do not own a phone and everybody reaches me by my email. I am not rich and do not feel like I should be required to purchase a phone with minutes so they can call me. Please obtain the records for me.

The dates of my and their letters seem to be Oct 25 and 29, 201

Thank you very much.

Jackson Washington (see attached)



Per the IPRA would you please provide all emails for the year 2011 from Eve Espey to:

- Southwestern Women's Options
- Curtis Boyd, M.D., P.C.
- Curtis Boyd, M.D.
- Emily Rothman, DO,
- Carmen Landau, M.D.
- Shelley Sella, M.D.
- Shannon Carr, M.D.
- Glenna Halvorson Boyd

Thank you very much.

2 attachments



unm response 708.pdf

26K



UNM RESPONSE TIMELINE 18-708.pdf

58K

October 29, 2018

Via Email Transmission: sent@post.com

Jackson Washington
BOX 5632
Riverside, CA 92502

Re: IPRA Request No. 18-708

Dear Mr. Washington:

I am writing in response to your request dated October 25, 2018, pursuant to the New Mexico Inspection of Public Records Act (IPRA), wherein you requested the following:

Per the IPRA would you please provide all emails for the year 2011 from Eve Espey to:

- *Southwestern Women's Options*
 - *Curtis Boyd, M.D., P.C.*
 - *Curtis Boyd, M.D.*
 - *Emily Rothman, DO,*
 - *Carmen Landau, M.D.*
 - *Shelley Sella, M.D.*
 - *Shannon Carr, M.D.*
 - *Glenna Halvorson Boyd*
- Thank you very much.*

After a review of your request, we have determined that you have failed to comply with IPRA, NMSA 1978, Section 14-2-8 (C), which requires that "a written request shall provide the name, address and telephone number of the person seeking access to the records and shall identify the records sought with reasonable particularity."

Your request fails to include a valid and working telephone number. "A records custodian cannot perform the statutory duties set forth in IPRA unless the custodian has someone with whom to communicate. A request's provision of a name, address, and telephone number is *essential* to the inspection process." *San Juan Agr. Water Users Ass'n v. KNME-TV*, 2011-NMSC-011, ¶ 30 (emphasis added). Your request does not follow IPRA's procedures for requesting records.

For the foregoing reason, this request is respectfully denied and will be closed.

Sincerely,

Christy Armijo

Christy Armijo
IPRA Paralegal
Office of the Custodian of Public Records

Request #18-708

CLOSED

As of November 2, 2018, 2:28pm

Request Visibility: Unpublished

Details

Per the IPRA would you please provide all emails for the year 2011 from Eve Espey to:

- Southwestern Women's Options
- Curtis Boyd, M.D., P.C.
- Curtis Boyd, M.D.
- Emily Rothman, DO,
- Carmen Landau, M.D.
- Shelley Sella, M.D.
- Shannon Carr, M.D.

[+ Read more](#)

Received

October 25, 2018 via web

Departments

Office of the Custodian of Public Records

Requester

Jackson Washington

✉ sent@post.com

📍 Box 5632, Riverside, CA 92502

📞 8590486975

Documents

Public (pending) ⓘ

(none)

Requester

No. 18-708 Final Response Letter.pdf

Staff

Point of Contact

Christy Armijo

Timeline

Request Closed

Public

Request denied under NMSA Section 14-2-8(C) as requester has failed to comply with IPRA procedures.

October 29, 2018, 2:42pm

Document(s) Released to Requester

Public

No. 18-708 Final Response Letter.pdf

October 29, 2018, 2:42pm

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 29, 2018, 2:41pm by Christy Armijo, Paralegal (Staff)

Department Assignment

Public

Office of the Custodian of Public Records

October 25, 2018, 6:17pm

Request Opened

Public

Request received via web

October 25, 2018, 6:17pm
