

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
ATTORNEY GENERAL

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August 16, 2021

**VIA ELECTRONIC MAIL ONLY**

Village of Bosque Farms  
Gayle A. Jones, Clerk/Administrator  
1455 West Bosque Loop  
Bosque Farms, NM 87068  
Email: [clerkadmin@bosquefarmsnm.gov](mailto:clerkadmin@bosquefarmsnm.gov)

**Re: Inspection of Public Records Act Complaint – Eric Granzberg**

Dear Ms. Jones:

Thank you for your response to our inquiry regarding the complaint filed with the Office of the Attorney General by Mr. Eric Granzberg alleging that the Village of Bosque Farms violated the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2019) (“IPRA”). As you know, Mr. Granzberg alleges that the Village violated IPRA in responding to his public records request dated August 27, 2020. Having carefully considered both his complaint and your response to our inquiry, we conclude that the Village likely failed to conduct a search for responsive records and also misapprehended the scope of Mr. Granzberg’s request. For these reasons, the Village likely violated IPRA by failing to provide him all of the records he requested. We recommend that the Village reevaluate its response to ensure that it has provided Mr. Granzberg with access to all nonexempt records.

**Background**

Mr. Granzberg requested certain public records from the Village through email on August 27, 2020. This request read, in relevant part:

This in [sic] an IPRA request for any and all records reflecting any communications between any employee, agent, and/or representative of the Village of Bosque Farms and anyone acting as private investigator on behalf of the Village of Bosque Farms or any of its employees, agents or representatives generated in August 2020.

Include, but do not limit your response to, records reflecting communications, payments, text messages and/or e-mails, between any employee, agent, and/or representative of the Village of Bosque Farms and anyone acting as a private investigator on behalf of the Village of Bosque Farms or any of its employees, agents, and/or representatives in August of 2020. In addition, provide any and all records referring to myself (Eric Granzberg) and/or Michael Burnell generated during August of 2020.

The Village's records custodian responded to this email approximately ten minutes later, on August 27, 2020, by stating, "As I told you earlier this morning, there are no records in regards to your IPRA request." Mr. Granzberg replied to the Village a few minutes later by requesting that the Village "double check" to "confirm there are zero records." Fourteen calendar days later, on September 10, 2020, the Village's records custodian responded again by stating, "There are no records to provide pertaining to your IPRA request of August 27, 2020."

Having received no records from the Village, Mr. Granzberg filed the present complaint with our Office alleging that the Village improperly withheld records responsive to his request. He argues that other Village employees can "confirm" that the Village did indeed hire a private investigator and has provided our Office with internal Village email records which he argues are responsive to his request and proof that the Village silently withheld responsive records. For its part, the Village has continued to deny Mr. Granzberg's allegations, stating to our Office that "[t]here are no records held by the Village of Bosque Farms pertaining to Mr. Granzberg's IPRA request dated August 27, 2020."

### Analysis

The Inspection of Public Records Act provides the people of New Mexico access to "the greatest possible information" about governmental affairs. NMSA 1978, § 14-2-5. *See also San Juan Agr. Water Users Ass'n v. KNME-TV*, 2011-NMSC-011, ¶ 16 (noting that, "IPRA is intended to ensure that the public servants of New Mexico remain accountable to the people they serve."). To that end, IPRA states that the public has the right to inspect and copy all "public records" except as otherwise provided by law. Section 14-2-1. Public records requests may only be denied, consistent with IPRA, "because of a specific exception contained within IPRA, or statutory or regulatory exceptions, or privileges adopted by [the Supreme] Court or grounded in the constitution." *Republican Party of N.M. v. N.M. Taxation & Revenue Dep't*, 2012-NMSC-026, ¶ 8.

In general, our Office cannot contest a public body's claim that no responsive records exist unless we have evidence to the contrary. That is, without evidence, we cannot engage in speculation. *See Kozol v. Washington State Dep't of Corrections*, 366 P.3d 933 (Wash. Ct. App. 2016) (noting that Washington State's public records law only required access to records that existed, "not nonexistent records that one believes should exist"). *See also Filippi v. Wallin*, No. A-1-CA-37195, mem. op. at ¶ 14-15 (N.M. Ct. App. Dec. 16, 2020) (non-precedential) (finding that there was evidence in the record to support the allegation that responsive records existed and were

withheld by the public body, thus requiring further inquiry and *in camera* review on the part of the District Court).

Interpreting the language of Mr. Granzberg's request, we think he effectively sought two different classes of records. First, he sought records related to "anyone acting as private investigator on behalf of the Village of Bosque Farms" dated within the month of August 2020. The text of his request focused primarily on this type of record, and we understand that the Village has denied that such records exist. However, his request *also* stated: "In addition, provide any and all records referring to myself (Eric Granzberg) and/or Michael Burnell generated during August of 2020." As we read Mr. Granzberg's request, this sentence operated independently of his request for private investigator records, meaning that any Village records referring to either Mr. Granzberg or Mr. Burnell would be responsive to the request. *See Am. Civil Liberties Union of New Mexico v. Duran*, 2016-NMCA-063, ¶ 30 (explaining that the language of a request could "be deconstructed using basic grammar").

We have evidence to suggest that the Village likely withheld responsive records from Mr. Granzberg. In particular, with respect to his request for Village records referring to either Mr. Granzberg or Mr. Burnell, Mr. Granzberg provided our Office with an email string (dated between August 6, 2020 and August 10, 2020) sent between himself and a number of Village employees. These emails did indeed "refer[] to ... Eric Granzberg," so they were responsive to his request. Given that these were internal Village emails, it would seem quite likely that the Village possessed them as of the date of his request, in which case it violated IPRA by failing to either provide them to Mr. Granzberg or send him a "written explanation of denial." Section 14-2-11(B). *See generally Dunn v. N.M. Dep't of Game & Fish*, 2020-NMCA-026, ¶ 7 (concluding that "the email addresses NMDGF collected in connection with its licensing system constitute 'public records' that are subject to disclosure under IPRA in the absence of an applicable exception"). Mr. Granzberg is also correct that these records suggest that additional records responsive to his request likely exist and were silently withheld by the Village.

More broadly, it appears that the Village almost certainly failed to abide by its obligations under IPRA by failing to conduct a search for records responsive to Mr. Granzberg's request. *See generally Britton v. Office of the Attorney General*, 2019-NMCA-002, ¶ 31 (referring to "[t]he expectation ... that records custodians will diligently undertake their responsibility to process and fully respond to requests, including determining what public records are responsive to the request"). As mentioned previously, the Village's records custodian responded to Mr. Granzberg's August 27, 2020 request approximately ten minutes later, hardly sufficient time to search for responsive records. The Village's failure to search extends to all of his request, including his request for records related to a private investigator. Without having searched for records, it is difficult to see how the Village can confidently assert that that "[t]here are no records held by the Village of Bosque Farms pertaining to Mr. Granzberg's IPRA request dated August 27, 2020." In any case, the Village was required by IPRA to conduct some type of search, and if has not done so, it should correct this error as soon as possible.

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Conclusion

Because it appears that the Village both failed to search for responsive records and misapprehended the scope of Mr. Granzberg's request, we recommend that it take remedial action as soon as possible. The Village should promptly reopen the request and conduct a thorough search for all responsive records. If, as it appears, the Village does have records responsive to Mr. Granzberg's request, it must either allow for inspection or provide Mr. Granzberg a "written explanation of denial." Section 14-2-11(B). Moreover, in light of its apparent deficiencies in responding to Mr. Granzberg's request, the Village should reevaluate its internal public records policies to ensure that it consistently provides the public access to "the greatest possible information" about its affairs.

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

Enclosure

cc: Eric Granzberg