

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

July 21, 2017

Linda Alvarez
P.O. Box 1049
Hatch, NM 87937

RE: Inspection of Public Records Act Complaint- Village of Hatch

This letter addresses the complaint that you filed with the Office of the Attorney General alleging that the Village of Hatch ("VOH") violated the Inspection of Public Records Act ("IPRA"), NMSA 1978 Sections 14-2-1 to -12 (1947, as amended through 2013) in connection with your IPRA request. With respect to your complaint, you allege that the Village of Hatch only provided some, but not all of the records that you requested or otherwise did not provide documents that were responsive to your request. We have received VOH's response, where Mayor Andy Nunez answered your allegations and explains VOH's issues in complying with your requests.

I have reviewed your complaint, as well as VOH's response, and supporting documentation. Based on this review, I am unable to conclude that the VOH has violated IPRA. However, in your complaint, you have alleged that the VOH has not been compliant with IPRA in that they have refused to produce documents electronically at your request and have not complied with records inspection within the timeframes set forth in IPRA. At this point, it appears that the VOH has attempted to comply with ongoing requests for public information to the best of their abilities and has been working diligently to complete additional requests.

First, although I understand that you have requested all of your documents electronically, please keep in mind that a custodian only must produce a copy of a public record in electronic format *if* the public record is available in electronic format and an electronic copy is specifically requested. However, a custodian is only required to provide the electronic record in the file format in which it exists at the time of the request (*emphasis added*). NMSA 1978, § 14-2-9(B). IPRA does not require that the VOH scan, convert, or create any records that have not previously been stored in this manner. However, if a requester specifies that they want the requested records in electronic format, then they may be subject to the public body's fee policy regarding the copying or transmitting of public records.

The majority of the disagreement between yourself and VOH appears to be the VOH's compliance with the amount of records requested and VOH's ability to comply with your requests. The VOH has indicated that several of your requests are burdensome and that they will need extra time to produce the documents requested. Under NMSA 1978, § 14-2-10 of IPRA, "if a custodian

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determines that a written request is excessively burdensome or broad, an additional reasonable period of time shall be allowed to comply with the request. The custodian shall provide written notification to the requested within fifteen of receipt of the request that additional time will be needed to respond to the written request." *See*, NMSA 1978, § 14-2-10. The proper procedure for requests that include multiple documents or are voluminous in nature is that the VOH must notify you that the request is burdensome, and then must inform you as to when the records will be produced. It appears that the VOH has responded to several of your requests stating that the production of these records will take time, and then has produced these records in sections, which is appropriate. At this time, it appears that there is one, outstanding request for check registers from 2011 to the present. VOH has stated in their response that that this request involves hundreds of pages of original documents that either would need to be examined in person with a member of the VOH present or copied. Although the VOH may not refuse to produce these records, it is permissible to have the VOH set up appointments when they have staff available in order to view sections of the records. Please note that these meetings must coincide with staff availability. The VOH is permitted to impose reasonable conditions on access, including appropriate times when and where the records may be inspected. However, the VOH must provide access to the records within a reasonable amount of time. *See*, NMSA 1978 § 14-2-10.

Thank you for affording our office the opportunity to be of assistance. Our office takes great care in educating public bodies of their responsibilities under IPRA. It appears at this time that the VOH has attempted to comply with the requests you have made under IPRA as best they can. It is our expectation that the VOH will continue to be compliant and work with you in producing the remaining records, including those that they have deemed to be burdensome, within a reasonable period of time. Please do not hesitate to contact our office if you have questions about this determination or IPRA in general.

Sincerely,



Dylan K. Lange
Assistant Attorney General

Enclosure

cc: Andy Nunez
Patrick Banegas

INSPECTION OF PUBLIC RECORDS ACT ("IPRA") COMPLAINT FORM
New Mexico Office of the Attorney General
Open Government Division

YOUR CONTACT INFORMATION:

First Name: Linda S. Last Name: Álvarez
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): Village of Hatch

Format of IPRA Request: Written + Oral

Date IPRA Request was Submitted to the Public Body: 2/11/16 and ongoing

Date of all Responses Received from the Public Body: See attached.
The problem is they are hedging, not forthcoming or delaying / playing games.

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.

DENIED REQUESTS TO INSPECT PUBLIC RECORDS

Although some records were provided, the custodian did not include a written explanation for denying the production of exempt records or for redacting confidential information from records.

No records were provided and the records custodian did not deliver or mail a written explanation to the requester within fifteen (15) calendar days after receiving the request that included a description of the records sought, the names and titles of each person responsible for denying the request, and a description of the reasons for the denial.

NOTICE

Public body did not post in a conspicuous location at its administrative office or on the public body's website a notice setting forth: the rights of any person to inspect the public body's public records, the public body's responsibility to make public records available for inspection, the procedures for requesting inspection of public records, the procedures for requesting copies of public records, and/or reasonable fees for copying public records

DEADLINES (For purposes of deadlines imposed by the IPRA, the date the request is received is not counted)

(serve) Inspection was not allowed within three (3) business days and the public body did not timely send a written "three-day letter" to the requester explaining when the records would be available or when the public body would respond to the request.

The public body did not allow inspection or otherwise respond to the request within fifteen (15) calendar days from the date the custodian received the request.

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.

The public body did not provide a receipt upon request.

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.

2/11/16 - Verbal Request to E. Poiras - 3 times
x unsure how to handle my request for a copy (electronic) of the budget.

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(My attempt to help find \$1 to allocate to the Police Dept. for cybercrime cyber security. ~~lower~~)

Luick, S. Alvarez - Complaint to AG's.

4/15/2016

2/12/16 - Requested Amended budget (that she had a hard copy in her hand on 2/11/16).

2/18/16/

2/24/16 - E. Porras e-mailed a Qtrly. Rpt. which was really a semi-annual budget.

→ Formal Request to Inspect Public Records to P. Banegas.

2/16/16: My plans changed & could come by for my hard copy.

Pat was too busy w/ Elections. Wait til Friday.

Let's take one request at a time since they are very busy w/ elections.

Never heard back from him.

March 2016: 3/4/16: e-mail f/P Banegas re providing requested docs. in a timely manner.

3/4/16 - My response - 15th-day - additional request.

3/7/16 - My e-mail  posting online.

Linda S. Alvarez - Complaint to AG's office

4/15/2016

3/14/2016: e-mail from P. Banegas re: which documents I have not seen.

E-mail of Liz re which documents do I want to view.

I e-mailed P. Banegas to allow me to continue to work w/ him vs. a lot of others.

3/15/16 - My e-mail telling P. Banegas which documents are outstanding.

I added # 4 & # 5 to my request.

3/16/16 - P. Banegas' Response to my 3/15 e-mail.

3/17/16 - Update on IPRH - Requests / Responses.

3/17/16 - P. Banegas Out-of-office

3/18/16 - Scheduling for review

3/29/16 - Updated attachment

to reflect reviewed documents

3/29/16 - w/ continue review

3/30/16 Confirmed.

3/31/16 - Continue review, as scheduled update review, close, and start new

review
my safety during

system requests.
journal



Unick S. Alvarez - Complaint to AG's Office
4/15/16

March 2016 - Continued

3/31/2016 : My e-mail suggesting ~~the~~
managing IPRA requests
in a different manner

" His response

" My e-mail to the Mayor

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4/15/2016

April 2016 :

- 4/8/16 - My request for NH IPRA ;
4/8/16 - " letters re: next review.
4/11/16 - P. Bavegas' Response
" - My clarification of Trustee
Mins. had none been shown /
presented to me.
4/11/16 - letter to Mayor
4/12/16 - My note re: leaving LC
for review.
4/12/16 - My email indicating what
was given to me to review.
" My request for 1st qtr
Budget Report to be sent
electronically.
4/13/16 - letter to Mayor, clarifying his
misunderstanding.
4/14/16 - My e-mail re: record review.
4/14/16 - My e-mail thanking them,
what I need to review, outlined,
x first mention of filing a complaint
w/ AG's Office.
4/14/16 : I can review records -
4/19, 20, 21 (830-5).

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4/18/2016: E-mail from Mayor re
AG's name + address + phone No.

4/18/2016: My response to Mr. Mayor:

- x thanking him
- x outstanding documents for review
- x an option to review (cursor) in Excel
- x e-mail to me certain documents
- x Out-of-compliance
- x they replaced their servers
- x Reporting to gov't. entities.

4/18/16

Copies to the State Auditor's Office -
Chelsea Martin

4/19/16 - PBanegas' E e-mail to me.
re: Review of documents.

4/19/16 - My response
I want to view report on *
their computer.

4/20/16 - PB's e-mail re one item at a time
4/20/16 - My review of records, as I request

4/21/16 - Complaint re Staff.

4/21/16 - Letter of Commendation for ~~Staff~~ Bertha.

4/21/16 - PB's letter re not available (last)

4/21/16 - I'm sitting in lobby working (minute)
on VOTH-business.

