

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
ATTORNEY GENERAL

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October 31, 2017

Mr. Alfred Milligan  
P.O. Box 2223  
Silver City, New Mexico 88062  
Email: [amilligan@zianet.com](mailto:amilligan@zianet.com)

**Re: Inspection of Public Records Complaint- Western New Mexico University**

Dear Mr. Milligan:

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 2013) by Western New Mexico University ("WNMU"). Your complaint states the public body did not provide or allow for the inspection of all documents requested, nor did the public body comply with the timeframes required under Section 14-2-8(D) regarding the request made on January 23, 2017.

After review of the documents, we find WNMU responded to you within the required timeframe. The public body responded to your January 23, 2017 request on January 26, 2017, saying that they needed additional time to gather more information. The January 26 response complies with IPRA's three (3) day deadline for an initial response to a request. *See* NMSA 1978, 14-2-8(D). WNMU's second response to you on January 27, 2017, denying your request due to WNMU not having the requested data, complies with the IPRA's fifteen (15) day deadline under NMSA 1978, 14-2-11(B).

WNMU states the information you requested is not available to the University. According to NMSA 1978, 14-2-8(B), a public body shall not be required to create a public record. Thus, WNMU did not violate the IPRA requirements for failing to provide documents they do not currently possess.

Although the New Mexico Courts have not addressed the issue raised in your complaint, other courts have found that speculating that responsive records exist, should exist, or could be easily created, without more, is not sufficient evidence to question a public body's representation that it does not possess the requested public records. *See e.g., Safecard Serv., Inc. v. SEC*, 926 F.2d 1197, 1201 (D.C. Cir. 1991)(explaining mere speculation that records in a public agency exist undermines the agency's reasonable but unsuccessful search to locate such records). *See also, Kozol v. Washington State Dep't of Corrections*, 366 P.3d 933 (Wash. Ct. App. 2016)(finding the public records law only required access to records that existed, "not nonexistent records that one believes should exist").

After a review of the documents, there are insufficient facts to find a violation of a specific section of the IPRA. As such, the OGD will not further review this matter and considers this matter closed.

The OGD appreciates you bringing possible violations to this office. If you have any concerns in the future, please do not hesitate to contact us.

Sincerely,



Marylou Poli  
Assistant Attorney General

INSPECTION OF PUBLIC RECORDS ACT ("IPRA") COMPLAINT FORM

New Mexico Office of the Attorney General  
Open Government Division

017 MAR 14 AM 8:37

YOUR CONTACT INFORMATION:

First Name: ALFRED Last Name: MILLIGAN

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): Western New Mexico University

Format of IPRA Request:  Written  Oral

Date IPRA Request was Submitted to the Public Body: Jan 23, 2017, ~~FEB 1~~,  
Jan 27, 2017

Date of all Responses Received from the Public Body: Jan 27, Jan 26,  
Jan 27 Feb 9, 2017

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)

\_\_\_\_\_ 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.



During the summer of 2016 Western had a recruiting program to recruit DREAMer/DACA students. The University invested several hundred thousand dollars in the program. My goal in sending a public records request was to get the number of DREAMer/DACA students attending Western to see if the program was effective.

On Jan 23, 2017, I requested the number of DREAMer/DACA attending Western New Mexico. The University responded that it doesn't have any data responsive to my request. (Communications enclosed)

The University's directions to DREAMer/DACA students when filling out an admission form was to check the box "Undocumented Resident" in the "Citizenship" question.

On Jan 27, 2017 I requested the number of students that checked the "Undocumented Resident" box under the Citizenship option.

The University responded that the information is in their data base but is not available as a record and the University is not required to create a new public record because a programmer would need to develop a view for the citizenship field.(communications enclosed)

The effort required to query the data base for this information is way over stated. I've had communication with people at Western that operate this data base. Their opinion is that any clerk familiar with the data base could create a query for this information in less than 5 minutes and get the single number I requested.

For example it could be as simple as typing in: query: count citizenship = undocumented resident.

The data base is the record, I'm only asking that information be obtained from the record.

In modern record keeping nearly all data is kept on computer data bases, when information is required the data base is queried. Querying a data base is not the equivalent of creating a new public record.

Please direct the Western New Mexico University to comply with my request.



Alfred W Milligan

**Subject:** Public Records Request - Dreamer/DACA followup  
**From:** Julie Morales <Julie.Morales@wnmu.edu>  
**Date:** 1/27/2017 9:55 AM  
**To:** "amilligan@zianet.com" <amilligan@zianet.com>

VIA EMAIL ONLY

January 27, 2017

Hello Dr. Milligan,

You requested the following information:

1. [How many students are attending Western under DREAMer/ DACA ?](#)

RESPONSE: The WNMU Admissions Office reports that DACA/Dreamer is not a category that can be selected by an applicant seeking admission to Western New Mexico University. WNMU does not have any data responsive to your request.

Sincerely,  
Julie Morales  
Records Custodian

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**From:** Julie Morales  
**Sent:** Thursday, January 26, 2017 9:39 AM  
**To:** amilligan@zianet.com  
**Subject:** RE: Public Records Request - Dreamer/DACA

VIA EMAIL ONLY

January 26, 2017

Hello Dr Milligan,

Western New Mexico University is in receipt of your public records request for the following information:

1. [How many students are attending Western under DREAMer/ DACA ?](#)

WNMU needs additional time to gather the information and will do so no later than February 7, 2017.

Sincerely,  
Julie Morales  
Records Custodian

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**From:** Alfred Milligan [amilligan@zianet.com]  
**Sent:** Monday, January 23, 2017 12:25 PM  
**To:** Julie Morales  
**Subject:** Public Records Request

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First Name	Alfred
Last Name	Milligan
Email Address	amilligan@zianet.com
Full Mailing Address	po box 2223 Silver city nm 88062

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<b>Phone Number</b>	5753881108
<b>Detailed description of item(s) requested</b>	Happy New Year Julie, How many students are attending Western under DREAMer/ DACA ? Thanks Al Milligan

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**Subject:** Public Records Request - Undocumented Students Completed  
**From:** Julie Morales <Julie.Morales@wnmu.edu>  
**Date:** 2/9/2017 5:09 PM  
**To:** alfred milligan <amilligan@zianet.com>

VIA EMAIL ONLY

February 9, 2017

Dr. Alfred Milligan  
[amilligan@zianet.com](mailto:amilligan@zianet.com)  
PO Box 2223  
Silver City, NM 88062

RE: Request to Inspect Public Records

Dear Dr. Milligan,

On January 27, 2017, Western New Mexico University received your request to review the following records:

1) The number of "Undocumented Residents" that attend Western.

You stated that this information *"should be available since in the instructions below for DACA students it is one of the options under "Citizenship"*

*FROM WNMU web site:*

*Apply to WNMU*

*Students who meet the criteria above should apply to Western New Mexico University through the online application at <http://wnmu.edu/applynow/>*

*When the applicant reaches Step 2, Personal Information, they should answer the question "Citizenship?" by selecting the option "Undocumented Resident".*

*The applicant should complete all remaining sections of the application accurately to their experience"*

RESPONSE:

We cannot permit inspection of these records because they are excepted from disclosure for the reason described below.

The records requested are not available as a record. While the information is on the application, it is not a field that is accessible for reporting in the university's current software program/system. In order to create this information for you, a programmer would need to develop a view for the "Citizenship" field.

The Inspection of Public Records Act, NMSA 1978 §14-2-8(B) states, "Nothing in the Inspection of Public Records Act shall be construed to require a public body to create a public record."

I would be happy to discuss this further if you have any questions or concerns.

Sincerely,  
Julie Morales  
Records Custodian

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**Julia Morales**  
Chief of Staff  
Office of the President  
P.O. Box 680 Silver City, NM 88062  
P: (575) 538-6743  
F: (575) 538-6364



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**From:** Julie Morales <[Julie.Morales@wnmu.edu](mailto:Julie.Morales@wnmu.edu)>  
**Date:** Friday, January 27, 2017 at 1:43 PM  
**To:** alfred milligan <[amilligan@zianet.com](mailto:amilligan@zianet.com)>  
**Subject:** RE: Public Records Request

VIA EMAIL ONLY  
January 27, 2017  
Hello Dr Milligan,  
Western New Mexico University is in receipt of your Public Records Request dated January 27, 2017. WNMU needs additional time to locate the information requested and will do so no later than February 10, 2017.

Thank you  
Julie Morales  
Records Custodian

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**From:** Alfred Milligan [[amilligan@zianet.com](mailto:amilligan@zianet.com)]  
**Sent:** Friday, January 27, 2017 12:38 PM  
**To:** Julie Morales  
**Subject:** Public Records Request

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First Name	Alfred
Last Name	Milligan
Email Address	<a href="mailto:amilligan@zianet.com">amilligan@zianet.com</a>
Full Mailing Address	PO Box 2223 silver city nm 88062

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<b>Phone Number</b>	5753881108
<b>Detailed description of item(s) requested</b>	<p>Hi Julie, Perhaps my question on DACA students should be restated as: the number of "Undocumented Residents" that attend attend Western. That should be available since in the instructions below for DACA students it is one of the options under "Citizenship"</p> <p>&gt;From WNMU web site: Apply to WNMU Students who meet the criteria above should apply to Western New Mexico University through the online application at: <a href="http://wnmu.edu/applynow/">http://wnmu.edu/applynow/</a> When the applicant reaches Step 2, Personal Information, they should answer the question "Citizenship?" by selecting the option "Undocumented Resident". The applicant should complete all remaining sections of the application accurately to their experience</p> <p>Thanks Al Milligan</p>

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