

CITY OF ALBUQUERQUE

BOARD OF ETHICS AND CAMPAIGN PRACTICES

NERI HOLGUIN,

Complainant,

v.

Case No. BOE 02-2021

MANUEL GONZALES, III,

Respondent.

RESPONDENT'S OBJECTIONS TO THE COMPLAINANT'S EXHIBITS

Respondent Manuel Gonzales, pursuant to § 4(E)(2) of the Rules and Regulations of the Board of Ethics and Campaign Practices, hereby “object[s] to [the] authenticity of [the] proposed exhibits” of the Complainant. The Gonzales campaign objects to Complainant’s Exhibits 1-173 and 176-179.

Exhibits 1 through 173 are comparisons of the (putatively) same voter’s signatures on a qualifying-contribution (“QC”) receipt and a nominating petition, along with, in a much smaller number of cases, a “statement” form putatively obtained from the voter by an unknow campaign volunteer or investigator. The Gonzales campaign has received complaints from voters alleging that the Keller campaign’s investigative efforts were coercive, suggestive, or perceived by the voter to be transparently designed to elicit an unfavorable answer — the lack of a “Don’t remember / Not sure” option on the forms used by Keller campaign do indeed seem, whether designed for this purpose or not, to invite ‘best-guess persuasion’ on the part of the canvasser/investigator. The Gonzales campaign certainly does not uncritically accept these allegations, but it will insist on statement-by-statement authentication, and it will ask the canvassers/investigators whether they audio-recorded their interactions with voters and how they framed certain questions; it is also

important to know who designed the form and why the form omitted a “Don’t remember” option. This verification is especially important now that the Keller campaign has admitted that some of the QC receipts it initially swore under oath were forgeries — making personal allegations of criminal conduct to the media — were in fact authentic. *See* Complainant’s Objections to Respondent’s Proposed Exhibits [1] and 5 (filed Sept. 7, 2021) (“Complainant initially identified the Qualifying Contribution submitted on behalf of Ms. Vigil as a potential forgery. But Complainant excluded that Qualifying Contribution from the set of documents submitted to the Board on July 8, 2021, after Ms. Vigil represented that the signature on the receipt was authentic.”).

As for the signature comparisons, such ‘evidence’ is typically inadmissible when presented testimonially, see Rule 11-901(B)(2) & (3) NMRA (allowing both “[a] nonexpert’s opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation,” and “comparison with an authenticated specimen by an expert”), and no competent handwriting expert can give an opinion based on a single exemplar of a person’s actual known signature, *see, e.g.,* Joe Nickell, *Detecting Forgery* 34 (1996) (“Several signatures should always be obtained, if possible, before any final decision is rendered, five signatures always constituting a more satisfactory basis for an opinion than one and ten being better than five.”); Heidi H. Harralson & Larry S. Miller, *Huber and Headrick’s Handwriting Identification: Facts and Fundamentals* § 10.2, at 238-39 (2d ed. 2018) (“[F]ive or six pages of continuous writing should be adequate for comparison with questioned extended writings, and 20 or more separate signatures should be adequate for comparison with questioned signatures. Others have suggested fewer, perhaps only half those numbers.”).

Exhibit 176 is the *last* designated-representative form filled out by the Gonzales campaign. The Gonzales campaign’s belief is that Ms. McMillan was only added to this form at the end —

she only served as a designated representative (someone who drops off completed QC books or picks up new blank ones for a campaign) on a single occasion — and as such, basic information like the date of the form and what previous forms looked like will need to be authenticated. The Gonzales campaign requested these records via IPRA (the only way the City Clerk will allow them to be requested) way back on August 23, but they have still not been produced. *See* City of Albuquerque IPRA Request #21-6607, <https://nextrequest.cabq.gov/requests/21-6607> (last visited Sept. 7, 2021) (Exhibit 1 to these Objections). As such, it is not remotely unreasonable for the Gonzales campaign to insist that these exhibits be authenticated by the City Clerk or another suitable records custodian — the Gonzales campaign will also question the City Clerk about why they were produced to the Keller campaign but not the Gonzales campaign.

Exhibit 177 does not match what the Gonzales campaign received when it submitted IPRA requests for these same forms way back on August 23 — which is nothing at all. *See* City of Albuquerque IPRA Request #21-6607, *supra* (Ex. 1). As such, it is not remotely unreasonable for the Gonzales campaign to insist that these exhibits be authenticated by the City Clerk on another suitable records custodian — the Gonzales campaign will also question the City Clerk about why they were produced to the Keller campaign but not the Gonzales campaign.

Exhibit 178 must be inauthentic: the Gonzales campaign submitted an IPRA request to the Inspector General for this material the same week that the report came out (on August 23), but just today (September 7), received notice *from the City Clerk* that the request was excessively burdensome and broad and no documents would be produced. *See* City of Albuquerque IPRA Request # 21-6608, <https://nextrequest.cabq.gov/requests/21-6608> (last visited Sept. 7, 2021) (Exhibit 2 to these Objections). Given this selective production, it is not remotely unreasonable for the Gonzales campaign to insist that these exhibits be authenticated by the City Clerk or another

suitable records custodia — the Gonzales campaign will also question the City Clerk about why they were produced to the Keller campaign but not the Gonzales campaign.

Exhibit 179 is irrelevant; the exhibit makes clear on its face that no laws about Ms. Martinez's timekeeping or on-the-clock hours were broken, so this appears to be an attempt to suggest that certain norms, laws, or expectations not applicable to Ms. Martinez in her role should nonetheless be applied to her by this Board.

Respectfully submitted,

HARRISON & HART, LLC

By: 

Carter B. Harrison IV
924 Park Avenue SW, Suite E
Albuquerque, NM 87102
Tel: (505) 369-6599
Fax: (505) 341-9340
Email: carter@harrisonhartlaw.com

Attorneys for the Respondent

Exhibit List (12 pages)

Ex. 1: IPRA Request # 21-6607 to the City Clerk (7 pages)

Ex. 2: IPRA Request # 21-6608 to the Inspector General (Answered by the City Clerk) (5 pages)

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of September 2021, I submitted the foregoing Objections via email to the Albuquerque City Clerk (ewatson@cabq.com), the Board of Ethics and Campaign Practices (aschultz@rodey.com), and to the following counsel of record:

Lauren Keefe
Keefe Law Firm
P.O. Box 40693
Albuquerque, NM 87196
(505) 307-3447
keefelawoffice@gmail.com

Attorneys for the Complainant

HARRISON & HART, LLC

By: /s/ Carter B. Harrison IV
Carter B. Harrison IV

This is a preview of the new request page request page preview

Request Visibility:  Unpublished

Request 21-6607 Open



Dates

Received

August 23, 2021 via web

Requester



Carter B. Harrison IV



carter@harrisonhartlaw.com



924 Park Avenue SW, Suite E, Albuquerque, NM, 87102



505-295-3261



Harrison & Hart, LLC

Staff Assigned

Departments

City Clerk

Point of contact

Yvette Gurule

Request

Hello, I'm writing to request the following records: (1) Video (and, if available, transcripts) of the Board of Ethics' hearing in Padilla v. Benavidez, BOE 02-2017. (2) All sets of rules/regulations promulgated (by the City Clerk and/or the Board of Ethics) pursuant to the City's Election Code, the Code of Ethics, and the Open and Ethical Elections Code prior to the current (in effect) sets of rules, and, in addition, any materials (created in or for the rulemaking process or otherwise) tending to explain the reason for amendments between sets of rules/regulations or showing, in redline, the changes made. (3) All "designated representative" forms (the forms used by campaigns to designate representatives to, among other things, pick up and drop off OEEC qualifying-contribution books) submitted by both the Tim Keller and Manny Gonzales 2021 mayoral campaigns -- specifically, not just the most recent forms, but all forms submitted by each campaign throughout the election cycle. (4) All documents, however titled, used to record the money submitted along with qualifying-contribution books by the Tim Keller and Manny Gonzales 2021 mayoral campaigns at each QC-book drop-off day (these documents show, e.g., the number of \$50 bills, \$20 bills, checks, etc. submitted each day). Thanks, Carter



Timeline Documents

 **External Message** 

Requester + Staff

Dear Requester:

This correspondence concerns your IPRA request. Please be advised upon further review, we have determined your request is “excessively burdensome and broad,” and my office respectfully requests an “additional reasonable period of time” to complete the request. NMSA 1978, § 14-2-10. We have deemed your request as “excessively burdensome or broad” because we need additional time to identify whether we have responsive records, gather any such records, and review them.

We anticipate having the non-exempt responsive records available for your inspection soon. We will continue to update you on our progress. We will promptly contact you as soon as those documents become available for your inspection or pick up.

Please let me know if you have any questions.

Sincerely,

Office of the City Clerk

September 7, 2021, 9:15pm by Ethan D. Watson, City Clerk (Staff)

External Message

Requester + Staff

Mr. Harrison:

The documents responsive to item (3) are available online in the City's Campaign Finance Reporting website:

<https://www.cabq.gov/vote/candidate-information/campaign-reporting>

Sincerely,

Ethan Watson

City Clerk

August 31, 2021, 4:48pm by Ethan D. Watson, City Clerk (Staff)

Document(s) Released to Requester

Public

2009 BOE rules election-code.pdf

2019 Election Code Regulations

Signed.pdf

2019 Open and Ethical Election Code

Rules Signed.pdf



External Message ▼

Requester + Staff

Mr. Harrison:

This email will serve to provide you a status update on your public records request dated August 23, 2021. We have responsive information to some of the items outlined in your request. Specifically, with regard to your request for:

All sets of rules/regulations promulgated (by the City Clerk and/or the Board of Ethics) pursuant to the City's Election Code, the Code of Ethics, and the Open and Ethical Elections Code prior to the current (in effect) sets of rules, and, in addition, any materials (created in or for the rulemaking process or otherwise) tending to explain the reason for amendments between sets of rules/regulations or showing, in redline, the changes made.

attached please find prior versions of BOE, EC, and OEEC rules from 2009 and 2019. We are still searching for additional records and need additional time to review and identify potentially responsive records. As a result, we are declaring this request excessively burdensome and

broad and need an additional period of time to respond.

Please let me know if you have any questions.

Sincerely,

Ethan Watson

Office of the City Clerk

August 31, 2021, 3:58pm by Ethan D. Watson, City Clerk (Staff)

 **External Message** 

Requester + Staff

Greetings:

We have received your request for public records and will begin processing your request. This correspondence is intended to acknowledge your request and alert you that it may take up to fifteen days to process your request. NMSA 1978 14-2-8(D). We will be in contact with you as we process your request if we need additional information or if it appears that your request is excessively burdensome and broad.

Please be advised, if you are requesting lapel and/or 911 audio from the Albuquerque Police Department (APD), your request may take a significant amount of time to review and provide the records. In

lieu of the 911 audio, my office can provide the Computer Aided Dispatch (CAD). The CAD provides information of when the call was received, when and what officers were dispatched, and a description of what happens throughout the incident. In addition, please keep in mind a 5 minute lapel video can take up to 20 minutes to review depending on the type of redactions that are necessary to complete. Please do not hesitate to contact us if you would like to know the status of your request, and please communicate all questions and status updates via NextRequest.

You may access your request by signing into your NextRequest profile at the following website:

https://nextrequest.cabq.gov/users/sign_in

If you have not created a profile, go to the following link:

https://nextrequest.cabq.gov/sign_in_help

Sincerely,

Ethan Watson

City Clerk

August 23, 2021, 12:29am





Department Assignment
City Clerk

Public



Request Opened

Request received via web

Public

This is a preview of the new request page request page preview

Request Visibility:  Unpublished

Request 21-6608 Open



Dates

Received

August 23, 2021 via web

Requester



Carter B. Harrison IV



carter@harrisonhartlaw.com



924 Park Avenue SW, Suite E, Albuquerque, NM, 87102



505-295-3261



Harrison & Hart, LLC

Staff Assigned

Departments

Office of the Inspector General

Point of contact

Yvette Gurule

Request

Greetings, I am writing to request the following records in relation to the Inspector General's investigation of 2021 mayor candidate Manny Gonzales' campaign practices (specifically, the campaign's compliance with the City's Open and Ethical Elections Act), undertaken at the behest of the Board of Ethics and Campaign Practices and the City Clerk: (1) All investigative work product, including notes and recordings of all interviews and phone calls; any forms, tally sheets, spreadsheets, or other documents used by, or to track the actions/findings of, the canvassers who talked to voters (putative qualifying-contribution donors) about whether they signed the qualifying-contribution receipts and/or gave \$5; and any draft of the Inspector General's final report any any edits/additions/revisions made or suggested by members of the Inspector General's team to either the final report or non-final drafts. (2) All emails and test messages sent by or to any member of the Inspector General's team (either internally among the team or between the team and any outside entity) in relation to the investigation; this includes emails/messages sent before the Board of Ethics formally ordered the investigation, and especially includes discussions regarding the scope

EXHIBIT

2

and direction in which the investigation should proceed. Thanks much, Carter

[Show less](#)

Timeline Documents

External Message

Requester + Staff

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We anticipate having the non-exempt responsive records available for your inspection soon. We will continue to update you on our progress. We will promptly contact you as soon as those documents become

available for your inspection or pick up.

Please let me know if you have any questions.

Sincerely,

Office of the City Clerk
Ethan D. Watson, City Clerk
(Staff)

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lieu of the 911 audio, my office can provide the Computer Aided Dispatch (CAD). The CAD provides information of when the call was received, when and what officers were dispatched, and a description of what happens throughout the incident. In addition, please keep in mind a 5 minute lapel video can take up to 20 minutes to review depending on the type of redactions that are necessary to complete. Please do not hesitate to contact us if you would like to know the status of your request, and please communicate all questions and status updates via NextRequest.

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If you have not created a profile, go to the following link:

https://nextrequest.cabq.gov/sign_in_help

Sincerely,

Ethan Watson

City Clerk

August 23, 2021, 12:42am



Department Assignment

Office of the Inspector General



Request Opened

Public

Request received via web