



OFFICE OF INSPECTOR GENERAL
City of Albuquerque

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Investigative Informative Case Synopsis

FILE NO: 24-0068-C

SUBJECT MATTER: Alleged violations of the Inspection of Public Records Act by the City Clerk's Office.

STATUS: Final

INVESTIGATOR: M. Santistevan

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May 15, 2024
Date of Completion

Signed by:
Victor Griego
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VICTOR GRIEGO, CPA
ACCOUNTABILITY IN GOVERNMENT
OVERSIGHT COMMITTEE CHAIRPERSON

August 28, 2024
Date of Approval

DISTRIBUTION:

- Honorable Mayor**
- President City Council**
- Chief Administrative Officer**
- City Councilors**
- Director Council Services**
- City Attorney**
- Department Director**
- Members, Accountability and Government Oversight Committee**
- File**

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EXECUTIVE SUMMARY

The Office of Inspector General (OIG) operates following the Association of Inspectors (AIG) standards, as outlined in City Ordinance 2-17-2. The overarching goals include conducting investigations impartially, preventing fraud and abuse, ensuring independence, and enhancing the city's accountability.

As defined in the Inspector General Ordinance §2-17-3, fraud is the knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. Waste is the thoughtless or careless expenditure, mismanagement, or abuse of resources to the detriment of the City. Abuse is the use of resources or exercise of authority that is contrary to rule or policy, or knowingly inconsistent with any established mission or objectives for the resource, or the position held by the person exercising the authority. Abuse does not necessarily involve fraud or illegal acts.

On March 12, 2024, the Office of Inspector General (OIG) received a complaint concerning the Inspection of Public Records Act (IPRA) requests alleging that “the clerk's office does not supply the records immediately or within 3 business days. They do not provide on the 3rd business day the record, the reason why the record was not made available, when the record will be made available, or the request is burdensome or broad and they are requesting additional time. Often 16 days or later the requester receives an email saying their request is burdensome or broad and they require more time because they are processing a large number of requests. This is a violation of the law.”

The OIG determined that it was appropriate for the OIG to conduct a fact-finding investigation for elements of abuse by violating the Inspection of Public Records Act (IPRA).

The purpose of the investigation was to substantiate or not substantiate, through the collection of sufficient evidence, the allegations of violations of IPRA because the clerk's office does not supply the records immediately or within 3 business days.

While this investigation did reveal a backlog of IPRA requests, it does not assess whether the backlog was related to excessively burdensome or broad requests.

The OIG observed that the City Clerk is taking action aimed at rectifying the identified issues and enhancing transparency but will likely need additional funding and resources to sustain compliance with the Act as the result of changes in the laws.

The OIG's investigation was inconclusive as a result of the reporting party not identifying a specific request for the OIG to review resulting in the OIG's inability to determine if a violation of the Inspection of Public Records Act occurred.

ABBREVIATIONS

City: City of Albuquerque
IPRA: Inspection of Public Records Act
OIG: Office of Inspector General

INTRODUCTION

The mission of the Office of Inspector General (OIG) is to promote a culture of integrity, accountability, and transparency throughout the City of Albuquerque (City) to safeguard and preserve public trust. Investigations, inspections, evaluations, and reviews are conducted following AIG Standards.

Complaint

“The clerk's office does not supply the records immediately or within 3 business days. They do not provide on the 3rd business day the record, the reason why the record was not made available, when the record will be made available, or the request is burdensome or broad and they are requesting additional time. Often 16 days or later the requester receives an email saying their request is burdensome or broad and they require more time because they are processing a large number of requests. This is a violation of the law.”

Background

By law, under the Inspection of Public Records Act (IPRA), NMSA 1978, 14-2-1 to -12, every person has the right to inspect public records maintained by the City. The Act also makes compliance with requests to inspect public records an integral part of the routine duties of the officers and employees of the City.

The City Clerk is the Chief Records Custodian for the City and processes requests for public records under the New Mexico Inspection of Public Records Act.

The City Clerk's Office created a 2024 Notice of Rights to Inspect Public Records that is posted on the City's website describing the process of requesting records.

SCOPE AND METHODOLOGY

Scope

Inspection of Public Records records between July 1, 2023 to March 30, 2024.

Methodology

The methodology consisted of:

- Assessing the complaint allegations
- Obtaining and reviewing evidence related to Allegation
- Review Chapter 14, Article 2
- Research FOIA and IPRA backlogs
- Physically inspect the Clerk's IPRA processes
- Request and review IPRA data analytics
- Conduct an inquiry with the City Clerk on the IPRA Process

This report was developed based on information from inquiries, inspections, observations, and the OIG's review of selected documentation and records available during the investigation.

INVESTIGATION

Allegations

Alleged violation of the Inspection of Public Records Act Chapter 14, Article 2 because "the clerk's office does not supply the records immediately or within 3 business days. They do not provide on the 3rd business day the record, the reason why the record was not made available, when the record will be made available, or the request is burdensome or broad and they are requesting additional time. Often 16 days or later the requester receives an email saying their request is burdensome or broad and they require more time because they are processing a large number of requests."

Authority

Inspection of Public Records Act Chapter 14, Article 2

City of Albuquerque Notice of Right to Inspect Public Records

Evidence

State Law

City Policies

Inquiries/Observations

Data analytics on IPRA requests

Analysis

In conducting our investigation, the OIG considered the evidence above as a basis for our analysis.

Inspection of Public Records Act, Chapter 14, Article 2, NMSA 1978

Every person has a right to inspect public records of the State with certain exceptions. According to the New Mexico Department of Justice, the New Mexico Inspection of Public Records Act provides an even greater presumption that favors public access to government records in declaring a policy that “ all persons are entitled to the greatest possible information regarding the affairs of government and the officials acts of public officers and employees. From the highest levels of the state to our smallest local and municipal governments, providing access to public records is a critical role every public body has in making information available to the people.”

Section 14-2-8 (d) Procedure for Requesting Records

“A custodian receiving a written request shall permit the inspection immediately or as soon as is practicable under the circumstances, but not later than fifteen days after receiving a written request. If the inspection is not permitted within three (3) business days, the custodian shall explain in writing when the records will be available for inspection or when the public body will respond to the request. The three-day period shall not begin until the written request is delivered to the office of the custodian.”

Section 14-2-10 Procedure for Excessively Burdensome or Broad Requests

“If a custodian 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 requester within fifteen days of receipt of the request that additional time will be needed to respond to the written request. The requester may deem the request denied and may pursue the remedies available pursuant to the Inspection of Public Records Act if the custodian does not permit the records to be inspected in a reasonable period of time.”

The Act does not define exactly what constitutes an “excessively burdensome, or broad” request but leaves it to the determination of the records custodian.

According to the NM Department of Justice compliance guide on Government Transparency for New Mexicans and their Public Officials, a request may be excessively burdensome or broad if :

- It requires the custodian to locate and review a very large number of records;
- The requested records are difficult to locate or obtain because they are not in one location;
- The search involves the coordination among multiple people;
- It requests records spanning many years or decades, or it encompasses a wide range of subjects or individuals, and the requester declines to narrow the parameter of the request;
- Legal review is needed on a large number of records to determine whether any exceptions to disclosure apply, or

- A significant number of other records requests were received unexpectedly about the same time and the public body that normally has adequate staff needs additional time to complete the unusually large list of requests.

City of Albuquerque Notice of Right to Inspect Public Records

“A person seeking to inspect public records may submit a request to the City Clerk orally or in writing. However, the procedures and penalties prescribed by the Act apply only to written requests. A written request must contain sufficient contact information for the person making the request, including a name and either a mailing or email address, or a telephone number. The request must describe the records sought in sufficient detail to enable the records custodian to identify and locate the requested records. The City will provide a copy of a public record in an electronic format if the record is available in an electronic format and an electronic copy is specifically requested. However, the City will provide the electronic record in the file format in which it exists at the time of the request. The City must permit inspection immediately or as soon as practicable, but no later than fifteen (15) calendar days after the records custodian receives the inspection request. If inspection is not permitted within three (3) business days, the person making the request will receive a written response explaining when the records will be available for inspection or when the City will respond to the request. If any of the records sought are not available for public inspection, the person making the request is entitled to a written response from the records custodian explaining the reasons the inspection has been denied. The written denial shall be delivered or mailed within fifteen (15) calendar days after the records custodian receives the request for inspection. If the custodian determines that a written request is excessively burdensome or broad, an additional reasonable period of time shall be allowed to comply with the request. Due to a significant number of uncollected requests, the City will make records responsive to public records requests available for sixty days. If the records are not collected during that time period, the copies will be destroyed or returned to the relevant department. The requester may then submit a new request. The City may charge a reasonable fee for copying public records in paper form and providing public data pursuant to Section 14-2-9(C) and (D), and Section 14-3-18. The fee for paper copies is \$1.00 per page as authorized by NMSA 1978 § 14-2-9(C)(2). The City may charge the actual costs associated with downloading electronic records to a disk or storage device, as well as for the actual costs associated with transmitting copies by mail, facsimile, or via other methods. NMSA 1978 § 14-2-9(C)(3) and (4). The fee for a CD or DVD is \$6.75. The actual costs of other electronic storage media will vary. The City may also charge reasonable fees in the case of the sale of data for the cost of materials, personnel time, access time, and the use of the City’s computer network. The fees for the sale of data may vary. A person requesting copies will be provided a receipt upon request for the payment of any copies of public records.”

Inquiries/Observations

The OIG met with the City Clerk and physically inspected the tracked metrics related to IPRA requests. During the meeting, the OIG was provided with historical data on IPRA requests. It was noted that there was a significant increase in requests at the end of 2020, during the coronavirus pandemic. The City Clerk stated that the increase in IPRA requests came on the heels of civil unrest in the U.S. due to the use of excessive force by police officers. In July 2020, the Governor of New Mexico signed the public safety accountability bill requiring New Mexico police officers

to wear body cameras as a deterrent against the unlawful use of force and establishing strengthened accountability measures in instances of inappropriate excessive force.

According to the data analytics, the majority of the IPRA requests are related to the Albuquerque Police Department. The City Clerk indicated that these requests vary from traffic incidents to crime scenes. Per the City Clerk, requests for police body camera footage can take longer for the City Clerk's Office to process depending on the number of officers at the scene and the amount of redaction necessary to comply with IPRA.

The City Council inquired about the status and challenges related to IPRA requests. The City Clerk outlined a plan, compiled with the help of a consultant, to address the issues related to the growing backlog of IPRA requests. In addition to streamlining the process, the plan would require additional staffing and funding. In December 2023, the City Clerk obtained additional funding to hire more staff to process IPRA requests. Additional staff was hired in January 2024 and was trained and working on IPRA requests as of March 2024. The current data analytics reflect a decrease in the backlog of IPRA requests. According to the City Clerk, IPRA requests are assigned based on complexity and staffing capabilities. The processes employed at the City Clerk's office are subject to continuous monitoring improvements. The City Clerk stated that in conjunction with the consultant, Phase II of the plan will be addressed in fiscal year 2025.

Data analytics on IPRA requests

The OIG's review of the data analytics on IPRA requests from from City Clerk's Office from July 1, 2023 through March 30, 2023, revealed that the City Clerk had received 10,132 requests and had processed 9,480 requests. As of March 30, 2024, there was a backlog of 1,798 requests and there were 2,450 accumulated open requests.

Data analytics for July 1, 2023 to May 12, 2024, reveals that the City Clerk had received 12,096 requests and processed 11,602 requests. As of May 12, 2024, there was a current backlog of 1,398 requests and there were 2,182 accumulated open requests.

This data reflects approximately 1,152 monthly requests but also shows that the City Clerk's Office closed out approximately 1,103 requests per month. At the current rate of closure, not considering fluctuations in staffing, additional resources would be necessary to reduce the backlog accruing from month to month.

The volume of IPRA requests and the lack of a specified period make locating a single violation time and resource-consuming. The OIG does not have the resources to conduct an open-ended investigation.

The OIG found that the City Clerk is taking action to address identified issues but will likely need additional funding and resources to sustain compliance with the act as the result of changes in the laws.

Conclusion

The OIG's investigation was inconclusive because the reporting party did not identify a specific request for the OIG to review resulting in the OIG's inability to determine if a violation of the Inspection of Public Records Act occurred.

While this investigation revealed a backlog of IPRA requests, it does not assess whether the backlog was related to excessively burdensome or broad requests.