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January 24, 2010

Yolanda Y. Vigil
City Clerk
City of Santa Fe
P.O. Box 909
Santa Fe, NM 87504

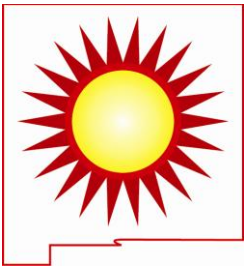
Sent via e-mail

Dear Ms. Vigil,

I am writing to express my concern over a recent Inspection of Public Records Act denial that the city issued to Julie Ann Grimm of the *Santa Fe New Mexican*. This denial, concerning a spreadsheet created and stored in Excel format, was based on the dual assumption that electronic records are not subject to IPRA in their native format, and that draft records are also not subject to IPRA. Both of these assumptions run counter to the letter and spirit of New Mexico sunshine law.

1. **Electronic Records.** NMSA 1978§14-2-6E clearly states that public records are all materials used, created, received, maintained or held by or on behalf of any public body, **“regardless of physical form or characteristics.”** Therefore, Excel spreadsheets, Word files and other electronic documents clearly fall within the definition of public records. And in their native format, these public records contain public information – such as information about when and by whom the records were created – that can only be accessed via that format.

This information or ‘metadata’ embedded in public records is subject to public inspection, pursuant to IPRA’s broad definition of public records and the law’s mandate in 14-2-5 that “all persons are entitled to the greatest possible information regarding the affairs of government.” Yet this public information is excised when the record is printed or exported to another format such as PDF. The only way for a citizen to access this public information is to request the record in its native format, which Ms. Grimm has done. She offered an explanation for why she wishes to receive the record in Excel format, but I would note that



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she is not required to do so – under 14-2-8C, she can inspect this public information for any reason or no reason at all.

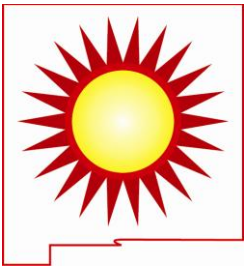
The city's denial letter maintains that it is seeking to preserve the integrity of the computer data contained in the spreadsheet. But the letter offers no explanation for how making an electronic copy would negatively affect the integrity of the original public record. Creating a duplicate copy of the Excel spreadsheet, and e-mailing that copy or transferring it to a portable storage device, should have no more effect on the original than would printing the spreadsheet or exporting it to PDF. All are snapshots of the original record at a given point in time. If city staff or administrators are concerned with how Ms. Grimm will use or manipulate the information after she receives her copy, they need not be – the information is public, and she is free to do whatever she likes with it. This too has no effect on the integrity of the original.

Although the issue of metadata has not been reviewed by New Mexico's appellate courts, the Arizona Supreme Court issued an influential ruling in October 2009 that dealt with precisely this issue. The opinion is attached to this e-mail and contains the following language in paragraphs 14 and 15:

“We accordingly hold that when a public entity maintains a public record in an electronic format, the electronic version of the record, including any embedded metadata, is subject to disclosure under our public records law.

Our decision is unlikely to result in the ‘administrative nightmare’ that the City envisions. A public entity is not required to spend ‘countless hours’ identifying metadata; instead, it can satisfy a public records request merely by providing the requestor with a copy of the record in its native format. Additionally, not every public records request will require disclosure of the native file. Public entities may provide paper copies if the nature of the request precludes any need for the electronic version.”

2. **Draft Records.** Any metadata information that falls under one of IPRA's 12 exceptions might properly be withheld from public inspection. However, “draft information” is simply not one of these exceptions. There is no language in IPRA to suggest that the word “records” implies a sense of “finality.” To the contrary, IPRA's definition of public records is exceedingly broad and inclusive. Legally, the distinction between draft documents and final documents exists only in the context of record-retention schedules. These schedules deal with the death of a record – during its life, it is subject to IPRA. And in practical terms, an



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interpretation which allows a public agency to stamp a document “draft” and thereby withhold it until it gains some highly subjective degree of “finality” would seriously infringe upon the public’s right to inspect records and oversee the functions of its government.

Again, I am concerned that the city’s denial in this matter is unreasonable and I urge you to release the requested document, in its native electronic format, to Ms. Grimm immediately. Please don’t hesitate to contact me if you have any questions or would like to discuss this further.

Sincerely,

Sarah Welsh
Executive Director

CC: Geno Zamora, City Attorney
Mayor David Coss
Julie Ann Grimm