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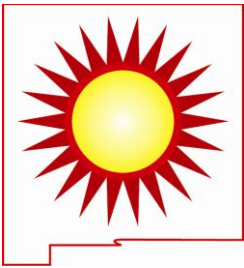
October 20, 2010

Ms. Lori S. Montgomery
Mayor
City of Truth or Consequences
505 Sims
Truth or Consequences, NM 87901

Dear Mayor Montgomery,

I am writing to share my concerns about several aspects of City Resolution #07-10/11 regarding procedures for the inspection of public records. While I applaud the city's efforts to update its fee schedule to reflect changing technologies, I urge you to rescind or revise the following provisions which conflict with state law or would benefit from additional clarification.

- 1. Exhibit "A," Inspection of Public Records Policy, Procedures for Requesting Records, Items 1-2.** Because the policy only mentions written requests, citizens may receive the impression that they are required to submit requests in writing. However, oral requests to inspect public records are also valid under NMSA 1978 § 14-2-8.A.
- 2. Exhibit "A," Inspection of Public Records Policy, Procedures for Requesting Records, Item 6.** It is true that the city is not required to create a record where one does not exist, pursuant to NMSA 1978 § 14-2-8.B. However, the city is required to produce records not within its control if those records are "used, created, received, maintained or held by or on behalf of" the city and relate to city business. Examples of such records might include jail records maintained by a private jail-management company, or city-related e-mails sent between city commissioners on private e-mail addresses. If and when such records are requested, the city does have an affirmative obligation to obtain them and produce them for inspection.
- 3. Exhibit "B," Fees for Reproduction of Public Record.** The New Mexico Attorney General's Office advises that copy charges for public records must only reflect a public body's actual cost of producing copies. If a paper document is scanned and e-mailed, the city may charge a requester only for the staff time needed to perform the scanning and attachment tasks. If a document already exists in electronic form, and merely needs to be e-mailed, the staff time needed to attach and send it will be negligible –



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and so will the copy cost. Because a 30-page document takes the same amount of time to e-mail as a one-page document, the copy cost for each will be equal. If an electronic document is burned onto a CD or DVD, the staff time and the cost of the blank digital medium itself can be passed onto the requester.

This is not the approach reflected in the city's fee schedule in Exhibit "B." Under this schedule, citizens must pay \$5.00 for any single digital file, regardless of its size and regardless of whether the copy is produced on physical media or sent by e-mail. Would a two-page memo, attached to an e-mail in its native Word format, cost a citizen \$5.00? This would be an unreasonable fee, and such a policy actively discourages citizens from requesting copies in what is the speediest and most cost-effective method for everyone involved.

Second, there is no immediately apparent reason why the first digital record costs twice as much as additional files; what actual cost does that reflect? There is also no apparent reason why the cost to copy police reports is four times that of routine public documents, or why it costs less to produce the second, third and fourth pages of a police report for a victim or complainant than for any other citizen. Whatever the actual copy cost is should be passed along to all citizens equitably.

Again, I urge you to rescind or revise these provisions in accordance with state law and the principles of open government. Alternately, if the city wishes to continue charging these fees, it must justify them using actual costs or by citing some additional statutory authority.

Thank you for your time and attention to this matter, and please don't hesitate to contact me to discuss this matter further.

Sincerely,

Sarah Welsh
Executive Director