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ALBUQUERQUE NEWSDESK

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AG says APS violated open records law. Now they're still denying a mother the documents

By **Joey Peters**



Joey Peters

Laura Gutierrez, center, speaks at a January 2016 press conference in Albuquerque. Her son Michael Bruening is pictured second from right.

For more than a year, Laura Gutierrez has been at standstill in a dispute with the state's largest public school district.

Gutierrez is seeking records from an internal investigation of an Albuquerque Public Schools police officer that came after she alleged the officer tased her son during the fall of 2014.

While APS handed over a memo stating that the investigation cleared the officer of any wrongdoing, it also withheld releasing supporting documents like a field investigator's supplemental report, witness statements and a forensic interview conducted with Gutierrez's son, Michael Bruening.

"I should be able to know what my son said in the interview," Gutierrez, who formerly went by the name Laura Bruening, told *NM Political Report*.

Gregory Williams, an Albuquerque attorney and president of the pro-transparency New Mexico Foundation for Open Government, agrees.

"If APS is saying that everything that has to do with that investigation is subject to exemption, that is wrong," Williams said.

The investigation looked into a September 2014 incident between Gutierrez's autistic son, Michael Bruening, and an APS police officer.

Bruening, then a 13-year-old student at Jimmy Carter Middle School, ran off school grounds. A school police officer employed by the district, according to Gutierrez, then ran after Bruening and allegedly used a taser on him.

Gutierrez went public with the allegation the following month. APS quickly denied her allegation, stating that a witness at the scene said otherwise and that the school district doesn't issue tasers to its officers.

Gutierrez then filed public records requests four times during November and December of last year. After the school district ignored her public records requests, Gutierrez filed a complaint with state Attorney General Hector Balderas, whose office is in charge of enforcing the state Inspection of Public Records Act.

APS later stated Gutierrez didn't file her four requests with the designated records custodian, but instead with officials in the school district's police division. This excuse, as Attorney General Communications Counsel Jennie Lusk explained in a September letter to APS, isn't covered by state law.

"The APS records custodian is responsible for making records available when requested, regardless of any interdepartmental or interagency mail problems," Lusk wrote to the school district's then-Communications Director Rigo Chavez in September. "APS violated IPRA when it did not gather and send the responsive requested records from all of its departments."

After the Attorney General's finding, the school district finally responded to Gutierrez on Oct. 7 by primarily cited two exemptions in the state's Inspection of Public Records Act to justify withholding the documents.

One is known as the law enforcement exemption, which excludes law enforcement records "that reveal confidential sources, methods, information or individuals accused but not charged with a crime."

The other exemption cited by APS allows public agencies to withhold "letters or memorandums which are matters of opinion in personnel files."

Both, according to Williams, are inadequate reasons to withhold entire documents Gutierrez sought. The law enforcement exemption, for example, means public agencies should redact the names of witnesses who ask for confidentiality and the use of confidential law enforcement methods like sting operations, Williams explained.

"It's a constant battle over this exemption," he said. "[The Foundation for Open Government] reads it narrowly and every law enforcement agency wants to read it broadly."

Entire internal investigations, Williams added, are not "matters of opinion." Anything that is a matter of opinion, such as a boss's evaluation of an employee, can be redacted from documents, Williams argued.

“If anything, that’s a weaker argument than law enforcement exemption,” he said.

APS spokeswoman Monica Armenta couldn’t definitively answer whether the school district always interprets the two IPRA exemptions as broadly in other public records requests.

That job, she added, falls to school district lawyers and Chavez, who retired this month after 17 years with the school district (APS is currently in the process of finding a replacement for him).

But Armenta added that she’s “pretty confident” the school district interprets IPRA law on a case-by-case basis.

Gutierrez, for her part, is now weighing options on what to do next.

State law subjects penalties for IPRA violations of up to \$100 a day from the day of the unfulfilled request as well as repayment of legal fees. But the state Supreme Court struck down the \$100 per day requirement and the legal fees only come after the conclusion of the trial — which puts the onus on citizens to file lawsuits themselves, which require lots of money and time.

Williams said people in her situation should not take such excuses for withholding public records “at face value.” Instead, he argued, they should contest them.

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