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February 4, 2014

Joe Thomas (By mail)
Clovis City Manager
Clovis City Hall
321 N. Connelly
Clovis, NM 88101

Dave Richards (By mail)
Clovis City Attorney
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Steve Sanders (By mail)
Clovis Police Chief
Clovis City Hall
321 N. Connelly
Clovis, NM 88101

Janice Cross (by Email)
Records Clerk
Clovis Police Department

Re: Request to Inspect Public Records to the Clovis Police Department

Dear Gentlemen and Ms. Cross:

I am writing in regard to an inquiry of the New Mexico Foundation for Open Government made by the Clovis News Journal.

NMFOG questions the Clovis Police Department's (the "Department") policy on providing records to the public. Our understanding is that the Department does not make paper copies of incident reports available and instead enters them into the Department's internal information system. Further, the Department has adopted a policy that none of such electronic records may be inspected without the requestor first paying a fee. If this is in fact the Department's policy, it violates the Inspection of Public Records Act ("IPRA"). IPRA authorizes a records custodian to charge fees only for copying, downloading or electronically transmitting public records. *See* NMSA § 14-2-9(C). It does not permit a public entity to charge a fee just for



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inspection of records. Pursuant to NMSA § 14-2-7(C) the obligation of a records custodian is to provide reasonable facilities **to inspect** (emphasis added) public records. A separate obligation arises under NMSA § 14-2-7(D) to make or furnish copies of public records. The requesting party is not obligated to purchase copies of the records either before or after inspection.

Further, if, after inspection, a requestor wants an electronic copy of the report, the Department may charge only the “actual costs of transmitting copies of public records by mail, electronic mail or facsimile.” NMSA § 14-2-9(C)(4). The \$1.00/page maximum charge for paper copies set forth in NMSA 14-2-9(C)(2) does not apply. The actual cost of e-mailing reports is negligible. If the Department wants to charge a member of the public for that service, it bears the legal burden of showing that the cost charged does not exceed the actual cost.

Again, I urge you to rescind or revise these provisions in accordance with state law and the principles of open government. I call your attention to the enforcement section of IPRA (NMSA § 14-1-12) which provides for monetary damages as a result of noncompliance.

Thank you for your prompt attention to this matter.

Susan Boe
Executive Director
New Mexico Foundation for Open Government