

New Mexico Foundation for Open Government

April 1, 2010

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Nicole Gillespie
Records Custodian
NM Department of Finance and Administration
180 Bataan Memorial Building
Santa Fe, NM 87501

Sent via e-mail to Nicole.Gillespie@state.nm.us

Dear Ms. Gillespie,

The New Mexico Foundation for Open Government is puzzled by redactions that were made on various financial records provided to Allen Weh pursuant to an Inspection of Public Records Act request. Under the Inspection of Public Records Act, “requested public records containing information that is exempt and nonexempt from disclosure shall be separated by the custodian prior to inspection, and the nonexempt information shall be made available for inspection.” (NMSA 1978 14-2-9.A)

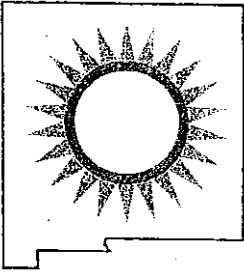
Therefore, the only question facing a records custodian is whether information in a requested document is exempt or nonexempt from disclosure – not whether that information fits within the scope of the original request. With regard to exempt information, there is no exemption for handwritten notations on documents. The Attorney General’s interpretive commentary on page 31 of the IPRA Compliance Guide, which you cite, discusses materials prepared or collected by public employees “solely for their own use.” The commentary goes on to describe individual research and brainstorming activities, or experimenting with creative ideas in work that is not intended for circulation.

Even if one accepts this extremely permissive interpretation of IPRA law, it is difficult to imagine how notations on a payment invoice – which presumably indicate that a particular employee has reviewed and approved that invoice, or perhaps identify the account from which payment will be drawn – would be construed as personal note-taking, the disclosure of which would unnecessarily hamper employees’ ability to think creatively or do their jobs.

In light of these facts, I hope you will reconsider this redaction decision.

Finally, please consider this a formal request under the Inspection of Public Records Act. Individually and on behalf of the New Mexico Foundation for Open Government, I wish to inspect the following documents:

1. Invoice #09/07-360.01, dated 10/1/2007, from GSD Aviation Services Bureau to the Lieutenant Governor’s Office.
2. Aviation Services Bureau Aircraft Utilization Report, dated 10/29/08, for account number 360.01, with a total charge of \$715.94.



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3. Voucher Batch Report for business unit 36000 as of 5/6/2008, detailing payments under account number 405 – lodging in-state.
4. Invoice #10149 from Dennis L. Garman, dated 5/11/2007 and billed to the Lieutenant Governor's Office. Total amount, \$270.

Please notify me when these records are available. I am willing to pay a reasonable fee for copies, but I would appreciate being notified of the total charges before any copies are produced. I can be reached by phone at (505) 764-3750 or (888) 843-9121, by fax at (505) 764-3714, or by e-mail at info@nmfog.org. I would be happy to discuss this request or anything else in this letter; please do not hesitate to contact me.

Thank you for your time and your prompt attention to this matter.

Sincerely,

Sarah Welsh
Executive Director