

ENDORSED
First Judicial District Court

COPY

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

FEB 04 2010

Santa Fe, Rio Arriba &
Los Alamos Counties
PO Box 2288
Santa Fe, NM 87504-2288

JRN

ROBERT RICHARDS
Petitioner,

v.

Cause No. D 0101 CV 2009 02055

DEVELOPMENTAL DISABILITIES
PLANNING COUNCIL, DEVELOPMENTAL
DISABILITIES PLANNING COUNCIL, OFFICE
OF GUARDIANSHIP and PATRICK PUTNAM,
Records Custodian
Respondents.

**CONDITIONAL AMICUS BRIEF OF
THE NEW MEXICO FOUNDATION FOR OPEN GOVERNMENT**

I. THE IMPORTANCE OF THE ISSUE AT STAKE AND THE INTEREST OF THE AMICUS

The New Mexico Foundation for Open Government ("NMFOG") is an educational non-profit association founded to assist people with the exercise of their rights under the federal and New Mexico Constitutions, the Inspection of Public Records Act ("IPRA"), the New Mexico Open Meetings Act, and the federal Freedom of Information Act (FOIA). NMFOG has an office in Albuquerque and members throughout New Mexico. NMFOG maintains a website with information and resources (www.NMFOG.org). NMFOG also operates a toll-free hotline at (888) 843-9121 to assist citizens, journalists and public officials interested in open government, particularly First Amendment rights.

NMFOG has a vital interest in the attorney fee issue in this litigation, because the denial of the heretofore mandatory award of attorney fees for violations of the Inspection of Public Records Act (IPRA) would: 1) limit the ability of citizens to enforce IPRA requests; 2) chill IPRA requests made to public agencies by other persons or entities in New Mexico; and 3) encourage non-compliance by the government. This issue has an importance that transcends this case. As *amicus*, NMFOG would like to present a broader perspective to the Court, by

emphasizing that the denials, delays and obstacles in this IPRA case are all too typical and without an attorney fee for a successful suit, the ability and interest of citizens to effectively access public records would be seriously undermined.

In NMFOG's experience, public agencies and officials who do not want to comply with IPRA will delay or deny IPRA requests through a variety of means. NMFOG, primarily by former Executive Director Robert Johnson, lobbied the Legislature and the Executive Branch in 1992 and 1993 to enact a strong public records law. IPRA is that law and the statute provides in unusually clear and mandatory language that attorney fees are awarded for a successful suit: "The court shall award damages, costs and reasonable attorneys' fees to any person whose written request has been denied and is successful in a court action . . ." §14-2-12 (D) NMSA 1978 (1993).

The public is encountering increasing resistance from public agencies that refuse to comply with IPRA. See Exhibit A, *Amicus* Brief of the New Mexico Foundation for Open Government, Fay v. New Mexico Educational Board, D-202-CV-2009-1587 (filed December 9, 2009). Public officials are sometimes motivated not to comply with IPRA because they fear that compliance will reveal information which will embarrass or worse, provide evidence of malfeasance. NMFOG thus seeks to appear as *amicus curiae* in this matter, in support of Mr. Richards to assist the Court and to ensure that IPRA's stated purpose is achieved in this and other cases. A denial of attorney fees is contrary to both the letter (§ 14-2-12 (D)) and the spirit of the law. To deny fees for "budget" reasons will encourage public bodies to violate the public's right to the greatest possible information regarding the affairs of government and the official acts of public officers and employees[,] NMSA 1978, § 14-2-5 (1993). [emphasis added]. Under IPRA, the public policy articulated by our Courts is clear: "[t]he citizen's right to

know is the rule and secrecy is the exception [,]" State ex rel Newsome v. Alarid, 90 N.M. 790, 797, 568 P.2d 1236, 1243 (1977).

II. Factual Background

The Petitioner, Robert Richards requested an inspection of certain public records from the Developmental Disabilities Planning Counsel and the Guardianship Advisory Council. Respondents did not allow Petitioner to inspect the public records. Respondents failed and refused to provide Mr. Richards with a written explanation and denial describing the records sought and the names and titles of each person responsible for the denial as required by NMSA 1978 § 14-2-12(B). The documents requested by Mr. Richards are public records under the Act and the documents are not exempt from disclosure. This Court has determined that the Developmental Disabilities Planning Council and the Developmental Disability Planning Counsel Office of Guardianship have demonstrated a pattern and practice of obstructing the public's access to public records and official acts of its officers and employees. The Court stated, however, at the close of the hearing on January 8, 2010, its determination that attorneys' fees and costs would not be awarded "in light of the current financial situation of the State of New Mexico" and the burden an award would impose upon Respondents. Respectfully, the Legislature has already determined that attorney fees for successful suits are mandatory ("shall be awarded") and an exception for "budget" purposes is not warranted in this case and such an exception cannot be created by the judicial branch of government.

III. Argument

A) An award of attorney fees is mandatory under the text of the statute.

A Petitioner whose request for public documents has been denied and who is successful in a court action to enforce provisions of the inspection of public records act is entitled to attorneys fees and costs as a matter of law, NMSA § 14-2-12(D)(1993). (“The Court shall award damages, costs and reasonable attorneys’ fees to any person whose written request has been denied and is successful in a court action to enforce Inspection of Public Records Act.”). Shall is mandatory. “Shall” and “must” expresses a duty, obligation, requirement or condition precedent § 12-2A-4 NMSA 1978. “Shall” is mandatory. *See e.g. Robinson v. King*, 86 NM 231, 522 P.2d 83 (1974); *Mantz v. Follingstad*, 84 NM 473, 505 P.2d 68 (Ct App. 1972); and *State v. Davis*, 97 NM 745, 643 P.2d 614 (Ct. App. 1983).

“The Inspection of Public Records Act Guide” (5th Edition 2008) by the Attorney General notes the critical role of private enforcement: “The act provides that an action to enforce its provisions may be brought by the Attorney General, District Attorneys, or person whose written request for inspection has been denied. The last category of “private attorneys’ general” is particularly important. Because the Attorney General and District Attorneys cannot be everywhere, and resources are limited, private citizens denied inspection often will be able to obtain more effective and efficient enforcement of the act.” *Inspection Guide at 44.*

This mandatory attorney fee provision was designed to give private attorneys general the teeth and an incentive to effectuate the new Act. Of course, the previous statute and common law in effect prior to 1993 did not provide for attorney fees. The Legislature added attorney fees to ensure enforcement and this attorneys’ fee provision is not to be construed narrowly. *See e.g.* §12-2A-18 NMSA 1978 (“The presumptions that a civil statute in derogation of the common law is construed strictly does not apply to a statute of this state”). To impress upon government officials that the essential function of government and the integral duties of the public

employees, the Legislature included the mandatory attorneys' fee requirement. §14-2-12(D) 1978 NMSA (1993) (Laws 1993, ch. 258 §9) (for provisions of former section, see 1988 Replacement Pamphlet).

IPRA's provisions concerning attorney fees were originally modeled loosely on the federal Freedom of Information Act, 5 USC §552(a)(4)(E) ("the court may assess . . . reasonable attorney fees and other litigation costs reasonably incurred . . . in which the complainant has substantially prevailed." (Underlining added). The New Mexico Legislature by IPRA provided a substantially stronger attorney fee provision ("shall award"), recognizing the importance of open government and the citizens' right to know in New Mexico. The federal case law is also supportive of an award of fees in this case. See e.g. Anderson v. Sec. of Health & Human Serv., 80 F.3d 1500, 1505 (10th Cir. 1996) (attorney fees proper for FOIA litigation that furthers the fundamental purpose of FOIA to provide a method of informing the public as to governmental operations); Miller v. United States Dep't of State, 779 F.2d 1378, 1389 (8th Cir. 1985) (award of attorney fees important to promote the underlying purpose of FOIA, which is to ensure that government is conducted in the open); Seegull Mfg. Co. v. NLRB, 741 F.2d 882, 886 n. 1 (6th Cir. 1984) (recognizing that the public interest served in awarding attorney fees is the vindication of the Act itself); Cazalas v. United States Dep't of Justice, 709 F.2d 1051, 1053-54 (5th Cir. 1983) (awarding attorney fees to promote public interest in open access to government); Cuneo v. Rumsfeld, 553 F.2d 1360, 1363-64 (D.C. Cir. 1977) (award of attorneys fees under FOIA is intended to address "the insurmountable barriers presented by court costs and attorney fees to the average person requesting information under the FOIA [which] enabled the government to escape compliance with the law."). Particularly in this case, the court's finding of a "pattern or

practice” of violation of the law and the need for effective enforcement of these critical rights, compel an award of attorney fees.

B.) Both the text and the context of IPRA compel an award of attorney fees.

The Inspection of Public Records Act contains both specific language mandating the payment of attorney fees and additional, unique language emphasizing the critical nature of the obligations a public body owes to all persons who inquire about “the affairs of government” and the official acts of public employees:

Recognizing that a representative government is dependent upon an informed electorate, the intent of the legislature in enacting the Inspection of Public Records Act is to ensure, and it is declared to be the public policy of this state, that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees. It is the further intent of the legislature, and it is declared to be the public policy of this state, that to provide persons with such information is an essential function of a representative government and an integral part of the routine duties of public officers and employees.

§14-2-5 NMSA 1978 (1993). This declaration of public policy is unique and the language of the Legislature was designed to recognize the critical importance of 1) an “informed electorate”; 2) providing to “all persons ... the greatest possible information”; and 3) identifying and announcing a “public policy” that the responsibility to provide public records is an essential function of government and an integral part of the routine duties of our public employees.

The New Mexico Court of Appeals has noted that a plaintiff who is successful in a court action to enforce IPRA rights is entitled to “mandatory costs, fees and damages . . .” Derringer v. State, 133 N.M. 721, 68 P.3d 961, 2003 NMCA – 073 ¶10 (N.M. App. 03/07/2003). (In Derringer, the appellate court determined that attorney fees could not be awarded for a lawsuit filed one year after the public documents were produced. The court, however, noted the mandatory award for successful suits).

C.) A judicially created exception for Government in “tight” years will cause greater harm to good, open government.

Neither the mandatory language of § 14-2-12(D) nor the declaration of public policy supports any argument that attorney fees can be avoided on the basis that the state budget is tight. The Government’s obligation to consider the consequences of its actions and possible non-compliance is upon receipt of the request, not after an unnecessary battle to keep public documents secret. While judicial notice and concern about the current state budget difficulties is probably appropriate and understandable, the obligation to provide public information to the public is described like no other obligation of government. Providing all persons with the “greatest possible information” concerning the affairs of government and the activities of government officers and employees is the only duty that has been described as an “an essential function” of the government and “an integral part of the routine duties” of public employees.

§ 14-2-5 NMSA 1978.

Moreover, the need to encourage private attorneys general will be ever more critical if the Attorney General and the District Attorneys budgets are cut. And lastly, while budgets may indeed be cut or flat for some temporary period of time for some programs for some agencies, open government and the disclosure of the details of the expenditures of public tax dollars would surely generate a more informed debate about how to address the budget issues. In turn, the information and the debate might yield helpful ideas that might improve government. Secrecy traditionally breeds only mistrust and the mistrust is growing. See Exhibit A, *Amicus* Brief of the New Mexico Foundation for Open Government, Foy v. NM Educational Board, D-202-CV-2009-1587 (filed December 9, 2009) and Exhibit B, Albuquerque Journal editorial from Sunday January 31, 2010: “State Needs to Open Up Its Payroll Records”. The payment of attorney fees

and strict compliance with IPRA should lead to more funds for useful government programs, not less.

IV. Conclusion

As *amicus*, NMFOG respectfully requests that this Court honor the letter and the spirit, both the text and the context of the Inspection of the Public Records Act and require the payment of attorney fees to ensure all citizens have effective access to public documents.

Respectfully submitted,

MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.

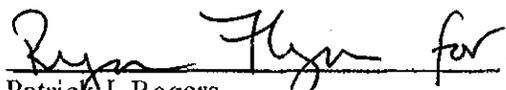
By: _____


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WE HEREBY CERTIFY that a true and correct copy of the foregoing pleading was e-mailed and sent by US Mail to all counsel of record this 4th day of February, 2010.

MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.

By: _____


Patrick J. Rogers

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

FRANK C. FOY,

Plaintiff,

v.

No. D-202-CV-2009-1587

NEW MEXICO EDUCATIONAL
RETIREMENT BOARD; BRUCE MALOTT;
and GARY BLAND,

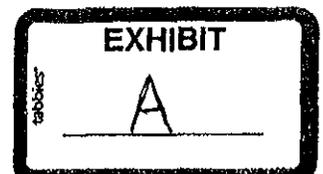
Defendants.

AMICUS BRIEF OF
THE NEW MEXICO FOUNDATION FOR OPEN GOVERNMENT

INTEREST OF THE *AMICUS*

The New Mexico Foundation for Open Government ("NMFOG" or "FOG") is an educational and charitable organization dedicated to assisting New Mexico citizens with understanding, exercising and preserving their rights under the federal and New Mexico Constitutions, the Inspection of Public Records Act ("IPRA"), the New Mexico Open Meetings Act, and the Arrest Record Information Acts, as well as their rights under the federal Freedom of Information Act. NMFOG has an office in Albuquerque and members throughout New Mexico. NMFOG maintains a website with information and resources on open records, at www.NMFOG.org. NMFOG also operates a toll-free hotline at (888) 843-9121 to assist citizens, journalists, and public officials who need help in protecting openness in government.

NMFOG has a vital interest in the matters at issue in this litigation, because some of the arguments made by Defendants, if adopted by the Court, would limit the ability of citizens to enforce IPRA requests and have a chilling effect on IPRA requests made to



public agencies by other persons or entities in New Mexico. These issues have an importance that transcends this case. As *amicus*, NMFOG would like to present a broader perspective to the Court, by emphasizing that the denials, delays and obstacles in this IPRA case are all too typical and undermine the important purposes behind the IPRA. In NMFOG's experience, public agencies and officials who do not want to comply with IPRA will delay or deny IPRA requests through a variety of means. Even though IPRA is strongly written, NMFOG encounters dogged resistance, over and over again, from public agencies that refuse to comply with IPRA. Unfortunately, it is often the case that public officials are motivated not to comply with IPRA because they fear that compliance will reveal information which will embarrass or incriminate them. NMFOG thus seeks to appear as *amicus curiae* in this matter, in support of Mr. Foy, in order to inform the Court and to ensure that IPRA's stated purpose becomes a reality in this case, and in all cases: that "all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees[,]" NMSA 1978, § 14-2-5. [emphasis added].

COMMENTS BY NMFOG

For ease of reference, NMFOG will refer to the issues as numbered by Mr. Foy in his Motion for Additional Preliminary Relief and Sanctions. NMFOG will confine its remarks to the issues that have the greatest effect beyond this case.

Issue #1 – Defendants' prolonged refusal to produce records. Although the records were requested by Mr. Foy in January 2009, more than 10 months have passed without complete production. The IPRA requires that records must be made available quickly –

within 15 days – precisely because the statute recognizes that delay can make public documents so stale that they will be of little use in revealing and, when necessary, correcting the course of government. Although IPRA includes monetary penalties for delay, those penalties are no substitute for prompt access to and inspection of public records.

Unfortunately, it has been NMFOG's experience that public officials will often claim that a request is too burdensome, or that it seeks confidential, privileged or draft records, as a tactic to delay inspections as long as they possibly can, even when the records are clearly public. Ten months is surely a long enough period for the state agencies in Mr. Foy's case to have addressed all their objections. Moreover, the agencies should have acted to expedite the process after the Court this case in July 2009 issued an Order apparently directing a process for production of the requested documents. It has been NMFOG's experience in other cases that when the Court has ordered production, the public agencies then usually comply rapidly.

Issue #6 – electronic copies. New Mexico citizens should be able to obtain electronic copies of public records, when the records already exist in electronic form. Where public information exists in electronic form, making an electronic copy is much less expensive, both for the citizen and for the public agency. Technology is a great equalizer for the ordinary citizen who wants to cull through government records, because the citizen or journalist can use electronic search engines to zero in on “the needle in haystack.”

There are instances in which public records only exist on paper, but even in those instances it may be cheaper to produce a digital copy rather than a paper copy. Most modern copiers use a digital scanner to capture a digital image before printing it on paper.

Therefore, even when paper documents must be run through a "copier," the IPRA inspector should have the option to choose an electronic copy rather than a paper copy.

Issue #7 – \$1.00 per page. A charge of \$1.00 per page for paper copies is excessive and unreasonable. It discourages citizens from exercising their IPRA rights by making copies prohibitively expensive. The IPRA specifically does not allow public agencies to recoup the expenses of assembling the records, as opposed to just obtaining reimbursement for the actual cost of copying them. § 14-2-9(b) (1) and (4). This is also contrary to IPRA's express mandate "that to provide persons with such [the greatest possible] information is an essential function of a representative government and an integral part of the routine duties of public officers and employees." § 14-2-5.

If a citizen wants paper copies of paper records, then the paper copies should be provided at actual cost, based upon competitive prices from commercial copy shops. If a citizen wants electronic copies of paper documents, then these electronic copies should also be provided at actual cost, based upon competitive prices from commercial copy shops, which are willing and able to provide electronic copies in standard formats like Adobe PDF, with or without OCR (optical character recognition). Citizens and journalists also have the right to use their own technology to make notes, or to make copies. If a journalist comes across a public record which contains some very interesting text, plainly he or she can transcribe the passage into a notebook by hand, old-style, or take a picture of the public record with his cell phone.

Issue #8 – Clawback. Apparently the agencies in this case are insisting on a "clawback" provision, to recover documents under certain circumstances after they are

produced. After 10 months of review of the requested documents and this Court's orders there is no justification for this novel proposal. Once a government record has been provided to a citizen, it is *ipso facto* a public document, so the government cannot control or censor its subsequent use.

Issue #9 – Government surveillance of record inspections. Government agencies have no right to demand to know what documents a citizen – or a journalist – might find interesting nor how the citizen intends to use the documents. The IPRA specifically does not require that a citizen justify or explain in any way a request for public documents. The only legitimate inquiry is whether the document requested is a public document within the meaning of the IPRA. If so, there can be no further inquiry regarding the purpose of the request or the use to which the document may be made. In addition, if a journalist or a citizen looks at a document and transcribes part of it in his notebook, the government has no right to see his notes. The same rule applies if the citizen journalists use a digital camera or scanner.

Issue # 10 – Who is making the decision not to comply with IPRA? This ought to be a simple question to answer, but in NMFOG's experience it is not. In many cases the decision of the records custodian concerning non-production of documents has been directed by officials higher up in government. It has also been FOG's experience that senior public officials will often try to conceal the fact that they, rather than the records custodian for the agency, are making the decision to refuse an IPRA request. In these instances, it may be necessary to conduct discovery to find out who is actually making the decisions, and why. As long as the real decision makers can hide behind their records custodians, "public

information officers” and lawyers, the courts may not be able to determine the merits and motives of production objections. When this happens, citizens have had to rely on the courts to break down the stonewall.

The inquiries and complaints that NMFOG has received over the last eight years indicate that this pattern of obstruction and concealment has been more prevalent under the current administration. Political reporter Jackie Jadnak of the Albuquerque Journal summed up the closed climate of the executive branch in a column published November 22, 2009. Jadnak described the communications changes instituted when Governor Bill Richardson took office:

“PIOs [Public Information Officers] from throughout state government were rounded up and given their marching orders. Any news media inquiries had to be reported to the communications operation in the Governor's Office. The nooks and crannies of government were ordered to stay “on message.” . . . and if you wanted written records from any of the agencies? File an open records request, which then would be funneled through the gatekeepers in Richardson's office.”

See Exhibit 1 hereto.

In this atmosphere, many of the IPRA refusals are ludicrous. As an example, *see* Exhibit 2 hereto, an IPRA request for public salary information by Kate Nash, a reporter for The Santa Fe New Mexican. Nash requested a listing of salary increases for employees at the State Personnel Office since January 2008, but the agency refused to disclose this information: “Since the legislatively approved salary increase is performance based and performance can potentially be related to discipline, I cannot individually list employees who did/did not receive that increase.”

Thus, under the current administration, the public is often deprived of public information unless individual requestors are willing to seek enforcement of IPRA through the courts. Fortunately, the Courts have been vigorous defenders of the IPRA and citizens' rights to access to documents.

CONCLUSION

As *amicus*, NMFOG respectfully requests that the Court exercise its authority to ensure that the IPRA is enforced and citizen's access to public documents is ensured. Ten months of delay in the production of documents and the imposition of costly and onerous conditions on production does not further the purposes of this law and its policy of government in the sunshine.

Respectfully submitted,

s/Daniel Yohalem
Daniel Yohalem
1121 Paseo de Peralta
Santa Fe, New Mexico 87501
505-983-9433 FAX 505-989-4844
Attorney for the NM Foundation for Open Government

I hereby certify that a true and correct copy of the foregoing was emailed to counsel of record this 9th day of December, 2009.

s/Daniel Yohalem

Albuquerque Journal
Sunday, November 22, 2009

Transparency Is Thing of the Past

By Jackie Jadrnak
Of the Journal

When Bruce King was elected to his third term as governor, seasoned New Mexico journalists warned me that I had no idea what I was in for.

They chuckled gleefully as they said it.

It didn't take too long to discover why they were snickering.

Trying to wrangle a clear, succinct sound bite out of the man was impossible. Pinning him down to specifics was akin to a greenhorn trying to lasso a wily, tough cow fond of the open range.

He'd talk your ear off, but darned if you could figure out exactly what he just said.

But while politicians today promise "transparency" in government and deliver opacity instead, King — who never would have bothered with such fancy words — sure walked the talk.

I don't think I wrote a single open records request in the four years I covered King as one of the Journal's state government reporters. Now if you ask a member of the current administration what time it is, they'll probably tell you to send them a written request for information and they'll get back to you.

Under King, a reporter could walk into any state agency, call just about any state worker, and people would answer your questions openly and fearlessly. Give them a few minutes to gather things up, and they'd hand over the documents you wanted.

I often wandered into the state's budget office and chatted with analysts about how the money was being spent. If I asked for a copy of some numbers, they often handed it to me on the spot.

When I wanted information about how the Medicaid program was working, I talked to the people who ran it, calling them directly.

If I wanted to understand tax policy, I called the Taxation and Revenue Department's research office and had the analysts lead me through the ins and outs of an issue. That might sound boring, but it yielded an understanding of how easy it is to dodge a tax, whose wallet ends up getting hit the hardest, and who (by category, not individuals) has enjoyed exemption from paying their share over the years.

Did you want to hear about caseloads for welfare workers? Give a call to a local office, and people would talk. Did you want to learn about illnesses hitting New Mexicans? Call the state or local public health office, and people would give the rundown.

King never insisted on being the center of attention. He let his department heads and employees talk about what they were doing within state government. He didn't mind them being quoted or getting their faces on TV.

Government wasn't all about him. It was about what state government was doing for its citizens.

Oh, that's not to say there still wasn't a certain reluctance to share some information.



I remember asking King's budget folks for a rundown of the tax increases during his third term when he was running for his fourth. Every time I called to check on the status of my request, they were "working on it."

Well, so was I.

So I called again on a Friday, said I had come up with my own list, was writing a story to run that weekend, and that I would really like to check my list against theirs. Their list was hand-delivered within a couple of hours.

A chill set in after King left office, though. More and more often, people in government would say they needed approval from their public information officer (PIO) before they could talk to reporters.

Then Bill Richardson swept into office. PIOs from throughout state government were rounded up and given their marching orders. Any news media inquiries had to be reported to the communications operation in the Governor's Office. The nooks and crannies of government were ordered to stay "on message."

Suddenly news releases from different departments prominently mentioned Richardson's name, giving him credit for just about anything that happened — as long as it had a positive spin.

As for the announcements coming out of the Governor's Office itself, reporters started making jokes about how many times "bold" and "innovative" showed up in the news releases.

State government news that might make the front page and cast a favorable light on the state — the improvement in childhood immunization rates, for example — was announced through Richardson's office, often with a live news conference featuring the Big Guy himself.

Less favorable developments were handled through the departments and agencies, always with an upbeat list of ways they were going to make things better. (When the state's ranking in immunization rates slipped again, we learned about it through a short written news release from the Department of Health.)

And if you wanted written records from any of the agencies? File a written open records request, which then would be funneled through the gatekeepers in Richardson's office.

Modern communications people would argue they simply were restoring discipline, making sure the news media — and you, the public — were getting information that was accurate and complete.

But it also meant information was going through a political filter, delivered by people who owed their jobs to the current administration.

Think about it. How often do you read or see someone quoted who is a longtime expert on a program, a classified employee whose tenure has run through several administrations of both parties?

King let them talk. And we were all the smarter for it.

-----Original Message-----

> From: Kate Nash [mailto:knash@sfnewmexican.com]
> Sent: Tuesday, September 22, 2009 2:59 PM
> To: Zamora, Sheila, SPO
> Subject: records request
>
> Hi Shelia,
>
> As per the state's Inspection of Public Records Act, I'd like a list of
> the salary increases paid to any and all employees in the SPO since Jan.
> 1, 2008.
>
> Thanks for your prompt attention to my request.
>
>
> Kate Nash
> Reporter, Santa Fe New Mexican
> Blog: www.greenchilechatter.com
> Twitter: www.twitter.com/thenewmexican
> Desk: 505.986.3036
> Cell: 505.470.1478
> Fax: 505.982.1609





BILL RICHARDSON
GOVERNOR

MARY LOU CAMERON
BOARD CHAIR

New Mexico
State Personnel Board
State Personnel Office

Post Office Box 26127
2600 Cerrillos Road
Santa Fe, New Mexico 87505-0127
(505) 476-7759

SANDRA K. PEREZ
DIRECTOR

REESE FULLERTON
DEPUTY DIRECTOR

RAY CAMP

October 6, 2009

Kate Nash
202 East Marcy Street
Santa Fe, NM 87501

Dear Ms. Nash,

I am writing this in response to your request received by this office on September 22, 2009 requesting a list of the salary increases paid to any and all employees at the State Personnel Office since January 1, 2008.

The State Personnel Office has given the legislatively appropriated salary increase to employees at the State Personnel Office who received a satisfactory employee performance rating for the year of 2008. No other salary increases were given.

Yours truly,

Sheila Zamora
Public Records Custodian

----- Original Message -----

From: Zamora, Sheila, SPO

[mailto:Sheila.Zamora@state.nm.us]

To: Nash, Kate

[mailto:knash@sfnewmexican.com]

Sent: Wed, 14 Oct 2009 10:02:57

-0600

Subject: RE: records request

> > Kate,

> > You stated that you'd like a list of the salary increases paid to any
> > and all employees in the State Personnel Office since Jan. 1, 2008.

> >

> > The State Personnel Office has not approved any salary increases for
> > State Personnel Office employees since January 1, 2008.

> >

> > However, to answer your question, the NM Legislature approved a 2.9%
> > increase to all state employees, which includes the State Personnel
> > Office, and that increase is based on employees who had a satisfactory
> > or greater performance rating.

> >

> > Since the legislatively approved salary increase is performance based
> > and performance can potentially be related to discipline, I cannot
> > individually list employees who did/did not receive that increase.

> >

> > For the purpose of inspection of public records under Subsection B of
> > 1.7.1.12 NMAC, the following material shall be regarded as confidential:
> > records and documentation pertaining to physical or mental examinations
> > and medical treatment of persons, including those confined to any
> > institution; records and documentation maintained for purposes of the
> > Americans with Disabilities Act [42 U.S.C. Section 101 et seq.]; letters
> > of reference concerning employment, licensing, or permits; records and
> > documentation containing matters of opinion; documents concerning
> > infractions and disciplinary actions; performance appraisals; opinions
> > as to whether a person should be re-employed; college transcripts;
> > military discharge, if other than honorable; information on the race,
> > color, religion, sex, national origin, political affiliation, age, and
> > disability of employees; and laboratory reports or test results
> > generated according to the provisions of 1.7.8 NMAC.

> >

> > I am considering this request complete.

> > Sheila Zamora

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Sunday, January 31, 2010

State Needs To Open Up Its Payroll Records

If you run a business, there are some things you or your human resources department just know. Things like who's on the payroll, what their duties are, how much they're making and who has been let go.

In theory, government works for you. You're the boss, and you fund the operation.

But if you are a New Mexico taxpayer, it's simply none of your business how many employees have been hired since a freeze was implemented in November 2008. Or how many temporary employees are collecting checks. Or who on the state payroll has received pay raises. Or who has been laid off under a budget-cutting measure. Or what any of them do — or did — for your money.

And that simply defies logic. Not to mention believability.

The office of Gov. Bill Richardson has refused to say how many temporary employees have been hired since he instituted a hiring freeze. It won't say how many and which ones are still hanging around more than a year later.

The Journal and other news media are still trying to find out which employees have been laid off under the governor's vow to cut 59 political-appointee positions. And who has received a pay raise in the past year as the state has claimed to be tightening its belt.

And every time the answer has been, in essence, that the information doesn't exist — or in the case of raises that it would somehow reveal confidential "personnel" information.

If they really don't know, it's no wonder the state is short more than \$600 million. But here's betting they do know.

In a recent meeting with Journal editors, Health Secretary Alfredo Vigil said his department had lost some governor-appointed staff members but was not allowed to say who or how many — because those people don't really work for him.

Nevertheless, a few of the proverbial needles in the haystack of state government have turned up.

One of them is Charles Lipski Sr., who was hired at the Department of Transportation two months before the freeze, at \$65K a year, with a resume that had his last job ending in 1994. He was given a state job that had no title and no description. Lucky for Lipski and others like him that these temp jobs don't have to be advertised to the public.

Getting that information wasn't easy — NMDOT tried to make a reporter go to Santa Fe to "sign in" to see Lipski in Bernalillo. Asked about what he did, Lipski would only say he was very "excited" about doing a job on the public payroll that he couldn't talk about publicly.

If you had spent the past year making \$65K as a temp responsible for



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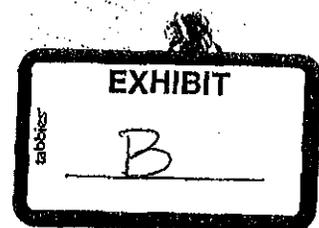
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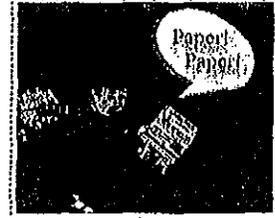
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the clerical duty of getting NMDOT to file its recycling reports on time — after apparently not having gainful employment for 15 years — you probably wouldn't be allowed to talk publicly, either. And if you spent your time making these kinds of hires — amid one of the worst budget crises ever — it's no wonder you'd spit out nonsense like the "State Personnel Office does not maintain document(s) relating to your request."

New Mexico's open-records law is based on a public policy statement that citizens are entitled to the greatest possible amount of information about their government.

Somebody in Santa Fe should read it.



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