HOW PRIVATE ATTORNEYS CAN USE IPRA IN LITIGATION:
ETHICAL AND PRACTICAL CONCERNS

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1. In the Beginning ... Faber(s)

In the context of ongoing federal litigation where specific discovery was denied a party due to a court-imposed stay, the use of an IPRA request to obtain the same information is improper. In this context, the IPRA is a discovery device. The Court cannot condone Plaintiffs’ use of the IPRA to obtain specific records where a discovery stay was in place. Lowe v. N.M. Ex Rel. King, 2011 WL 13284675 (D.N.M. 2011).

The stay of discovery entered by the federal court did not preempt the statutory rights granted to New Mexico citizens by IPRA, and that the Attorney General violated IPRA by denying Faber’s request. The court also issued a writ of mandamus ordering the Attorney General to comply and ruled that damages would be considered at a later date. ... The Attorney General appealed the state district court’s award of damages. The determination of the IPRA violation was not at issue on appeal. See, generally Faber v. King, 2013-NMCA-080; Faber v. King, 2015-NMCA-015.

2. Progeny and Animation.

Noland (2009):

“The County Defendants state no sound reason supported by any relevant legal authority why Noland cannot make requests for public information while his lawsuit is pending. The Court will not prohibit Noland from exercising his right under New Mexico law to make valid requests for public records.”

“The Court further concludes that the federal rules of discovery are not the exclusive method by which a litigant may obtain information from an opposing party.”
Republican Party of N.M. (2012):

Noting differences between discovery and IPRA requests. Unlike a party seeking discovery in civil litigation, a party requesting public records under IPRA need not assert any particular need for disclosure. Section 14-2-8(C) ("No person requesting records shall be required to state the reason for inspecting the records."). Balancing the competing needs of the executive and the party seeking disclosure does not apply to claims of executive privilege under IPRA. Instead, courts considering the application of executive privilege to an IPRA request must independently determine whether the documents at issue are covered by the privilege, and whether the privilege was invoked by the party to whom the privilege is reserved.

De Los Santos (2013): No Waiver of Privilege where Records Officer Mistakenly Released Document Requested by Plaintiff

The City Clerk has not been delegated sufficient authority to waive the City's privilege. His role under IPRA is administrative—he receives requests, collects responsive documents from the appropriate parties, and releases those documents. Although he has a duty to refrain from disclosing exempt documents, he is not the person who determines whether particular documents are exempt; he relies on others with more specialized expertise to make those determinations. His mistaken release of a privileged document is not a voluntary waiver of the City's privilege. Cf. Bd. of Supervisors of Milford Twp. v. McGogney, 13 A.3d 569, 574 (Pa. Commw. Ct. 2011), appeal denied, 611 Pa. 644, 24 A.3d 364 (July 8, 2011)

Burke v. New Mexico (2016):

A motion to compel filed in Federal Court is not the proper vehicle for Plaintiff to seek IPRA materials. See Fed. R. Civ. P 37(a)(3) (listing the instances when a motion to compel a disclosures or discovery responses is appropriate).

Dunn v. Brand (2019):

"[P]ersons subject to an injunctive order issued by a court with jurisdiction are expected to obey that decree until it is modified or reversed, even if they have proper grounds [*9] to object to the order." GTE Sylvania, Inc. v. Consumers Union of US., Inc., 445 U.S. 375, 386, 100 S. Ct. 1194, 63 L. Ed. 2d 467 (1980); In re Philip M Kleinsmith, 2005-NMCA-136, ¶¶ 11-12, 138 N.M. 601, 124 P.3d 579.

Moreover, to view IPRA as superseding a protective order would be contrary to constitutional separation of powers principles. "The district court is given broad discretion" to issue protective orders under Rule 1-026(C) NMRA. Bd. of Comm'rs of Doña Ana Cty v. Las Cruces Sun-News, 2003-NMCA-102, ¶ 8, 134 N.M. 283, 76 P.3d 36, overruled
August 25, 2015

VIA FEDERAL EXPRESS
City of Bloomfield
City Clerk
915 N. First Street
Bloomfield, NM 87413

Re: Request for Inspection of Public Records

Dear Sir or Madam:

This request is made pursuant to the New Mexico Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 et seq. Please provide for the inspection and copying of the following records immediately or as soon as practicable, but not later than fifteen days after receiving this request, see NMSA 1978, § 14-2-8:

1. All files and other documents that concern, relate to or pertain to the civil action known as Culpepper et al. v. Town of Farmington, et al., Cause No. 7581 in the New Mexico District Court for San Juan County, including but not limited to; (1) all documents that reflect or relate to the negotiation, drafting and interpretation of the April 28, 1960 Stipulation between Bloomfield and Farmington and the May 9, 1960 Final Judgment and Decree; (2) all documents that reflect or relate to any claim of the City of Aztec and the Village of Bloomfield, as described in Paragraph 10 of the May 28, 1959 Petition and Complaint filed in Cause No. 7581 (“Petition and Complaint”), that they were entitled to acquire the portion of the properties of Basin Light and Power Company serving their respective municipal corporations; and (3) all documents that reflect or relate to Aztec’s acquisition of portions of Basin Power and Light Company’s electric utility properties or utility system that was the subject of Cause No. 7581, as reflected in Aztec’s December 14, 1960 Motion for Supplementary Relief Based Upon the Final Judgment and Decree. Copies of the Petition and Complaint (with exhibits) and December 14, 1960 Motion are attached hereto as Exhibits 1 and 2, respectively.
2. All files and other documents that concern, relate to or pertain to the negotiation, drafting, interpretation and performance of the agreements that are attached as Exhibits A through D of the Petition and Complaint.

3. All files and other documents that concern, relate to or pertain to New Mexico Public Service Commission Case No. 649 and Cause No. 33,398 in the District Court for Santa Fe County, State of New Mexico, both proceedings of which are referred to in Aztec’s December 26, 1962 Motion filed in Cause No. 7581. A copy of the December 26, 1962 Motion is attached hereto as Exhibit 3.

4. All files and other documents that concern, relate to or pertain to the negotiation, drafting and approval of the Village of Bloomfield’s October 19, 1960 Ordinance No. 32, a copy of which is attached as Exhibit D to Bloomfield’s August 18, 2015 Complaint filed in City of Bloomfield v. City of Farmington, Cause No. CV-2015-0963 in the Eleventh Judicial District Court for the State of New Mexico.

5. All files and other documents that concern, relate to or pertain to the negotiation, drafting and approval of the Village of Bloomfield’s December 9, 1985 Ordinance No. 191, a copy of which is attached as Exhibit E to Bloomfield’s August 18, 2015 Complaint filed in Cause No. CV-2015-0963.

6. All files and other documents that concern, relate to or pertain to the City of Farmington’s sales to the City of Aztec of power lines, facilities and other equipment that are described in paragraphs of 29 through 37 of Bloomfield’s August 18, 2015 Complaint filed in Cause No. CV-2015-0963.

Very truly yours,

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By: [Signature]

Henry M. Bohnhoff

HMB/jcm
Attachments (as indicated)
cc: Nann M. Winter (via e-mail w/attachments)
     Sunny J. Nixcn (via e-mail w/attachments)
     Aaron Viets (via e-mail w/attachments)
     Jennifer Breakell (via e-mail w/attachments)
August 28, 2015

VIA EMAIL dsmylie@fmtm.org

Dianne Smylie, MMC
City Clerk
City of Farmington
800 Municipal Drive
Farmington, NM 87401

Re: Third Request for Inspection of Public Records (IPRA-3)

Dear Ms. Smylie:

This third request is made pursuant to the Inspection of Public Records Act, Chapter 14, Article 2 NMSA 1978 (IPRA) and in keeping with the City of Farmington’s commitment “to transparent and open government.”

Please provide for the inspection and copying of the records requested in the attached IPRA-3 at your earliest convenience.

Thank you.

Very truly yours,

STELZNER, WINTER, WARBURTON,
FLORES, SANCHEZ & DAWES, P.A.

BY: NANN M. WINTER

NMW/LG
Enclosure
CITY OF BLOOMFIELD IPRA-3

3-1: Please produce all files and other documents that concern, relate to or pertain to the civil action known as Culpepper et al. v. Town of Farmington, et al., Cause No. 7581 in the New Mexico District Court for San Juan County, including but not limited to:

(1) all documents that reflect or relate to the negotiation, drafting and interpretation of the April 28, 1960 Stipulation between Bloomfield and Farmington and the May 9, 1960 Final Judgment and Decree;

(2) all documents that reflect or relate to any claim of the City of Aztec and the Village of Bloomfield, as described in Paragraph 10 of the May 28, 1959 Petition and Complaint filed in Cause No. 7581 (“Petition and Complaint”);

(3) all documents that reflect or relate to Farmington’s admission, as described in its answer to Paragraph 10 of the Petition and Complaint, that Aztec and Bloomfield have a continuing right to acquire their electric power systems from the Town of Farmington; and

(4) all documents that reflect or relate to Aztec’s acquisition of the Farmington electric system lying within Aztec’s municipal boundaries, as reflected in Aztec’s December 14, 1960 Motion for Supplementary Relief Based Upon the Final Judgment and Decree filed in Cause No. 7581. A copy of the Petition and Complaint (with exhibits) is attached hereto as Exhibit 1, and a copy of the December 14, 1960 Motion is attached hereto as Exhibit 2.

3-2 Please produce all files and other documents that concern, relate to or pertain to the negotiation, drafting, interpretation and performance of the agreements that are attached as Exhibits A through D of the Petition and Complaint.

3-3 Please produce all files and other documents that concern, relate to or pertain to New Mexico Public Service Commission Case No. 649 and Cause No. 33,398 in the District Court for Santa Fe County, State of New Mexico, both proceedings of which are referred to in the City of Aztec’s December 26, 1962 Motion filed in Cause No. 7581. A copy of the December 26, 1962 Motion is attached hereto as Exhibit 3.

3-4 All files and other documents that concern, relate to or pertain to the negotiation, drafting and approval of the Village of Bloomfield’s October 19, 1960 Ordinance No. 32, a copy of which is attached as Exhibit D to Bloomfield’s August 18, 2015 Complaint for Supplementary Relief.

3-5 All files and other documents that concern, relate to or pertain to the negotiation, drafting and approval of the Village of Bloomfield’s December 9, 1985 Ordinance No. 191, a copy of which is attached as Exhibit E to Bloomfield’s August 18, 2015 Complaint for Supplementary Relief.

3-6 All files and other documents that concern, relate to or pertain to the City of Farmington’s sales of power lines, facilities and other equipment to the City of Aztec including those that are described in paragraphs of 29 through 37 of Bloomfield’s August 18, 2015 Complaint for Supplementary Relief.
March 7, 2016

VIA EMAIL emartinez@bloomfieldnm.com

Erikka Martinez
City Clerk
City of Bloomfield
915 N First Street
Bloomfield, NM 87413

Re: Request for Inspection of Public Records

Dear Ms. Martinez,

This request is made to the City of Bloomfield (Bloomfield) pursuant to the Inspection of Public Records Act, Chapter 14, Article 2 NMSA 1978 (IPRA).

Please provide for the inspection and copying of the records requested below within 15 days from the date of this letter.

CITY OF FARMINGTON IPRA – 3

3-1. Please provide all documents, information, materials, electronic entries, data, valuations, spreadsheets, calculations, appraisals, valuations, notes used or prepared by Robert Pender, R. E. Pender, Inc., and/or other Bloomfield appraiser(s), contractors, agents and/or consultants (whether preliminary, in progress, draft or otherwise), communications, and correspondence regarding appraisals or feasibility studies, and/or other studies (whether preliminary, in progress, draft, or otherwise) by Bloomfield (and its appraiser(s), contractors, agents and/or consultants) of Farmington’s/Farmington’s Electric Utility System’s (FEUS’s) electric system within and/or outside of Bloomfield’s municipal boundaries and which have not been previously provided in response to Farmington’s prior IPRA requests.

3-2. Please provide all correspondence to and from Bloomfield (including its agents, contractors, consultants and/or attorneys) and any appraiser, including Robert Pender and/or R.E. Pender, Inc., of the FEUS electric system located within and/or outside of the City of Bloomfield, and which has not been previously provided in response to Farmington’s prior IPRA requests.

3-3. Please provide all responses by appraiser(s), including Robert Pender and/or R.E. Pender, Inc., to Bloomfield’s (including its agents, contractors, consultants, and/or attorneys) requests for
proposals to appraisers to appraise and/or value FEUS’s electric system within and/or outside of Bloomfield’s municipal boundaries, and which have not been previously provided in response to Farmington’s prior IPRA requests.

3-4. Please provide all invoices from any appraisers, including Robert Pender and/or R.E. Pender, Inc., to Bloomfield (including its agents, contractors, consultants, and/or attorneys) for appraisal and/or valuation work on FEUS’ electric system within and/or outside of the Bloomfield municipal boundaries, and which have not been previously provided in response to Farmington’s prior IPRA requests.

The foregoing requests also apply to all requested documents within the possession of Bloomfield and its agents, contractors, consultants, and/or attorneys.

Thank You.

Sincerely,

[Signature]

Jennifer N. Breakell
City Attorney
Via Email and U.S. Mail  
emartinez@bloomfieldnm.com

City of Bloomfield  
City Clerk  
915 N. First Street  
Bloomfield, NM 87413

Attention: Erikkka Martinez, City Clerk

Re: City of Farmington Request for Inspection of Public Records (IPRA 4)

Dear Ms. Martinez:

This request is made pursuant to the New Mexico Inspection of Public Records Act, NMSA 1978, secs. 14-2-1 et seq. Please provide for the inspection and copying of the following records immediately or as soon as practicable, but not later than fifteen days after receiving this request, see NMSA 1978, sec. 14-2-8: the Village (at the time) of Bloomfield's answer and all other of Bloomfield's responsive pleadings to the Petition and Complaint filed by C.C. Cuipepper et al. on or about May 28, 1959 in Culpepper v. Farmington, No. 7581 and any other pleadings by Bloomfield prior to the Stipulation by Bloomfield and Farmington filed on April 28, 1960, except for the Entry of Appearance on behalf of Bloomfield filed on July 20, 1959.

Very truly yours,

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By: [Signature]

Aaron C. Viets
June 8, 2017
Page 2

cc: Nann Winter
Juan Flores
Ryan Lane
Jennifer Breakell
Sunny Nixon
Charles Hughson
March 26, 2019

VIA EMAIL ARPA@arpapower.org & U.S. Mail

Custodian of Records
Attn: Arvenia Morris
P.O. Box 70
Lamar, Colorado 81052

Re: CORA Request

Dear Ms. Morris:

Pursuant to the Colorado Open Records Act § 24-72-201 et seq., I request that you provide or make available for inspection and copying copies of the following public records:

1. Any document, including all public records and correspondence, that evinces the settlement of the litigation styled Twin Eagle Resource Mgmt LLC vs. Arkansas River Power Authority, case number 2019-CV-30198, filed on January 17, 2019 in Denver County District Court;

2. Any document, including all pleadings, public records and correspondence, that evinces the litigation styled Twin Eagle Resource Mgmt LLC vs. Arkansas River Power Authority, case number 2019-CV-30198, filed on January 17, 2019 in Denver County District Court;

3. Any document, including all public records and correspondence, by and between or to or from ARPA, Twin Eagle or Xcel Energy and relating to the litigation or settlement of the same; and

4. Any documents, including all public records and correspondence by and between or to or from ARPA, Twin Eagle or Xcel Energy and relating to the service territory of any of the aforementioned requests and dated January 2019-present day.

If you are not the custodian of records for this request, please forward this letter to the appropriate person or let me know which person(s) has custody of these records.
If there are any fees for searching or copying these records, please inform me of the costs.

I ask that records available in electronic format be transmitted by email to:
kherrmann@stelznerlaw.com.

Thank you for considering my request.

Very truly yours,

STELZNER, WINTER, WARBURTON, FLORES, SANCHEZ & DAWES, P.A.

BY: KEITH W. HERRMANN

KWH/jg
November 22, 2019

City of Raton
Records Custodian / IPRA Officer
224 Savage Ave.
P.O. Box 910
Raton, NM 87740

Mantonucci@cityofraton.com
drujillo@cityofraton.com

Dear Records Custodian/IPRA Officer:

I am writing to formally request the copying and delivery of records held by the City of Raton/Raton City Commission pursuant to the Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 to 14-2-12. Pursuant to NMSA 1978, § 14-2-8(C), my contact information is as follows:

Devon B. Westphal
Keleher and McLeod, P.A.
PO Box AA
Albuquerque, New Mexico 87103
Tel: (505) 346-4646
Fax: (505) 346-1370
Email: dbw@keleher-law.com

I request that the following documentation be copied and submitted to our office:

All documents relied upon or referred to during the Raton City Commission meeting that took place at approximately 9:00 a.m. on November 11, 2019, including but not limited to the powerpoint and all drafts thereof or other slideshow, including drafts, that was referred to and projected during the referenced meeting.

Please contact me to arrange for payment of the copying of the documents requested. While e-mail receipt of the requested documents is preferable, if they must be mailed, please add that amount to the invoice. Thank you for your prompt attention to this matter.

Very truly yours,

[Signature]

Devon B. Westphal, Paralegal