

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

March 7, 2022

VIA ELECTRONIC MAIL ONLY

City of Rio Rancho
Gregory Lauer, Esq.
3200 Civic Center Cir NE
Rio Rancho, NM 87144-4503
Email: glauer@rrnm.gov

Re: Inspection of Public Records Act Complaint – T.J. Wilham

Dear Mr. Lauer:

Thank you for your response to our inquiry regarding the complaint filed with the Office of the Attorney General by Mr. T.J. Wilham alleging that the City of Rio Rancho (hereinafter the “City”) violated the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2019) (“IPRA”). As you know, Mr. Wilham alleges that the City violated IPRA when responding to his December 17, 2021 public records request. Having carefully reviewed this complaint and your response to our inquiry, we conclude that the City likely did not have the statutory authority to withhold many of the records responsive to Mr. Wilham’s request. We also agree with Mr. Wilham that the City improperly denied his request by citing generically to “NMSA §32A, the Children’s Code” rather than a specific statutory provision. We recommend that the City reopen Mr. Wilham’s request and provide him copies of all nonexempt public records as soon as possible.

Background

In New Mexico, the people are entitled to “the greatest possible information” about governmental affairs. NMSA 1978, § 14-2-5. Facilitating this bedrock principle of public policy is the purpose of the Inspection of Public Records Act, which declares that “provid[ing] 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.” *Id.* See also *San Juan Agr. Water Users Ass’n v. KNME-TV*, 2011-NMSC-011, ¶ 16 (“IPRA is intended to ensure that the public servants of New Mexico remain accountable to the people they serve.”). IPRA guarantees the public the right to inspect and copy all “public records” except as otherwise provided by law. Section 14-2-1. Public records requests may only be denied, consistent with IPRA, “because of a specific exception

contained within IPRA, or statutory or regulatory exceptions, or privileges adopted by [the Supreme] Court or grounded in the constitution.” *Republican Party of N.M. v. N.M. Taxation & Revenue Dep’t*, 2012-NMSC-026, ¶ 8.

Based on the information provided to us by Mr. Wilham and the City, we understand that a tragic incident occurred at a Rio Rancho residence involving the death of a two-year-old child on December 8, 2021. Although the complaint and the City’s response contain little information as to what occurred at this incident, we understand that the residence belonged to a Santa Fe Police Department officer and his wife, and that the two-year-old child was the officer’s son. There is also some indication that the officer and his wife may also have two other children, one of whom appears to be approximately four years old. The circumstances of the incident are highly unusual and involve a firearm, and we understand that the Rio Rancho Police Department sought a search warrant for the residence. The City also responded to our inquiry by stating that it referred the matter of the death of the two-year-old child to the New Mexico Children, Youth, and Families Department (“CYFD”).

On or about December 17, 2021, Mr. Wilham, an investigative producer with KOAT-TV, submitted a public records request to the City of Rio Rancho. Mr. Wilham asked for copies of ten separate categories of records, many of which related to the incident on December 8, 2021. This included “[a]ll belt tapes and lapel camera footage,” “[t]he Computer Automated Dispatch report,” incident reports, emails, and “9-1-1 recordings.” Three business days after receiving the request, and after exchanging several other emails with Mr. Wilham, the City replied to the request by stating that it required “additional time to respond” and would contact him again on or before December 30, 2021.

The City responded substantively to Mr. Wilham’s request on December 30, 2021. In relevant part, it appears that the City denied Mr. Wilham the right to inspect all records related to the December 8, 2021 incident, although it did provide him copies of other unrelated records (such as City emails containing Mr. Wilham’s name). In explaining its decision to withhold records, the City stated only that the decision was made “in accordance with the Inspection of Public Records Act Sections 14-2-1(H) ‘As otherwise provided by law, (F) ‘Attorney-client privileged information’ and NMSA §32A, the Children’s Code.” Notably, the City’s email denying wide swaths of Mr. Wilham’s request did not identify the statutory provisions within the Children’s Code it was relying on, nor did the City identify the employee or officer responsible for the decision to withhold and redact records.

Mr. Wilham’s complaint to our Office effectively presents two issues for review.¹ First, Mr. Wilham argues that the City failed to provide him an adequate “written explanation of denial”

¹ Mr. Wilham’s complaint also contended that the City violated IPRA by failing to review each of the responsive records prior to withholding them. *See Noll v. New Mexico Department of Public Safety*, No. A-1-CA-35981, mem. op. at ¶ 19 (N.M. Ct. App. Mar. 19, 2019) (non-precedential) (explaining that the defendants had “failed to satisfy their statutory responsibilities” because they “failed to take any steps to determine which documents were exempt and which were nonexempt so as to allow for the production of the nonexempt records in accordance with the requirements of IPRA”). However, this third argument, which is complicated by the City’s claim to have actually reviewed each of the records prior to partially denying the request, becomes a somewhat moot point in light of our disposition of the Children’s Code issue.

because it failed to identify the statutory provisions within the Children's Code that the City claimed as the basis for its decision to withhold records related to the December 8, 2021 incident. Although the City appeared to maintain in response to our inquiry that its written explanation was proper, it also stated that it relied upon NMSA 1978, Section 32A-2-32 and NMSA 1978, Section 32A-4-33 in denying the request. In turn, Mr. Wilham's second and more substantive contention is that neither of these statutory provisions permitted the City to deny him the right to inspect the records related to the December 8, 2021 incident. We will address first the allegation with respect to the form of the City's denial before considering its substance.

Written Explanation of Denial

Mr. Wilham first argues that the City violated IPRA by partially denying his request without providing him an adequate explanation. This contention relates to IPRA's Section 14-2-11(B), which requires any public body denying a request to provide the requestor a "written explanation of denial." These written explanations (which are more commonly referred to as "denial letters") must contain three critical pieces of information: the specific exception in law justifying the denial, a description of the records sought, and "the names and titles or positions of each person responsible for the denial." Section 14-2-11(B); *see also* IPRA Guide, p. 40 (stating that a denial letter must "describe the records sought to be inspected, set forth the names and titles or positions of each person responsible for the denial, and explain the reason for the denial").

We agree with Mr. Wilham that the City's citation to "NMSA §32A, the Children's Code" was not a legally sufficient description of its claimed exceptions to disclosure. Interpreted in light of IPRA's stated purpose of providing the public access to "the greatest possible information" about governmental affairs, Section 14-2-5, a general citation to an entire statutory chapter (in this case, Chapter 32A) cannot constitute a reasonable written explanation of denial. For one, the purpose of the written explanation of denial, as our Court of Appeals has explained, is to provide critical information to the requestor, and this information is simply not present when the public body claims an entire chapter as the basis for the denial. *See Am. Civil Liberties Union of New Mexico v. Duran*, 2016-NMCA-063, ¶ 38 ("Denials are valuable information-gathering tools. With respect to any given record request, the absence of either (1) production of responsive records or (2) a conforming denial based upon a valid IPRA exception sends a strong message to the requester that no responsive public record exists."). Furthermore, because a public body may only deny a request based on "a *specific exception* contained within IPRA, or statutory or regulatory exceptions, or privileges adopted by [the Supreme] Court or grounded in the constitution," *Republican Party*, 2012-NMSC-026, ¶ 8 (emphasis added), it follows that the public body must also identify that specific exception in its denial letter. Since, in this case, the City apparently relied (erroneously) on Section 32A-2-32 and Section 32A-4-33, we conclude that it was obligated to identify these specific statutory provisions in its denial letter and that its failure to do so constituted a violation of IPRA.

We would also note that the City's generic citation to Chapter 32A was not the only inadequacy in its written explanation of denial. The City also plainly failed to "set forth the names and titles or positions of each person responsible for the denial" as required by IPRA's Section 14-2-

11(B)(2).² For this reason too, the City’s written explanation of denying Mr. Wilham’s request was inadequate as a matter of law, and it denied Mr. Wilham the information to which he was statutorily entitled. *See Duran*, 2016-NMCA-063, ¶ 38 (“While information can come in the form of tangible documents, it can also be gathered based upon an agency’s denials.”).

The Children’s Code

More important than how the City denied Mr. Wilham’s request is the question of whether the denial itself was lawful. As explained previously, the City explained in response to our inquiry that it relied upon Section 32A-2-32 and Section 32A-4-33 in denying Mr. Wilham’s request for copies of records related to the December 8, 2021 incident. The City further summarized its position as, “[t]he Children’s Code prescribes confidentiality, inane arguments and anecdotal rabbit holes notwithstanding.” For the reasons that follow, we find the City’s interpretation of Sections 32A-2-32 and 32A-4-33 too simplistic and incompatible with the larger statutory context of these statutes.

In interpreting both Section 32A-2-32 and Section 32A-4-33, we begin with the basic rules of statutory construction and the fundamental aim of effectuating the Legislature’s intent. *See New Mexico Indus. Energy Consumers v. PRC*, 2007-NMSC-053, ¶ 20, 142 N.M. 533 (“When construing statutes, our guiding principle is to determine and give effect to legislative intent.”). “We look first to the plain language of the statute, giving the words their ordinary meaning, unless the Legislature indicates a different one was intended.” *Id.* In addition, and as our Supreme Court has repeatedly recognized, “[i]t is ... a cardinal rule that in construing particular statutory provisions to determine legislative intent, an entire act is to be read together so that each provision may be considered in its relation to every other part, and the legislative intent and purpose gleaned from a consideration of the whole act.” *Winston v. N.M. State Police Bd.*, 1969-NMSC-066, ¶ 5, 80 N.M. 310. *See also New Mexico Pharm. Ass’n v. State*, 1987-NMSC-054, ¶ 8, 106 N.M. 73 (noting that a statute must be read in its entirety and interpreted “as a whole so that each provision may be considered in relation to every other part”).

Applying these principles of statutory interpretation to the exceptions to disclosure relied upon by the City, we conclude preliminarily that Section 32A-2-32 almost certainly does not exempt from disclosure any of the records responsive to Mr. Wilham’s request. Section 32A-2-32 is a statute within the Delinquency Act, NMSA 1978, Sections 32A-2-1 to -33 (1993, as amended through 2019), a statute specifically applicable to “children committing delinquent acts.” Section 32A-2-2(A). As a result, the phrase “records pertaining to the child” in Section 32A-2-32(A) therefore clearly includes only records related to children accused of committing delinquent acts. *See also* § 32A-2-3 (defining the terms “delinquent act” and “delinquent child”). The statute cannot reasonably be interpreted as broader than delinquent children. As a result, and because here the December 8, 2021 incident does not appear to have involved either a delinquent act or a delinquent child, Section 32A-2-32 almost certainly does not represent an applicable exception to disclosure.

² Although the City’s records custodian signed the denial letter, nothing in the denial letter indicated that this employee made the decision to withhold and redact records. To the contrary, the letter itself stated that “[w]e have compiled and released records” without a first-person reference to the custodian.

Similarly, it appears that Section 32A-4-33 also does not provide for the confidentiality of the records requested by Mr. Wilham. As with Section 32A-2-32, Section 32A-4-33 must be interpreted as part of its larger statutory context within the Abuse and Neglect Act, NMSA 1978, Sections 32A-4-1 to -35 (1993, as amended through 2021). In particular, the Abuse and Neglect Act provides for “a neglect or abuse proceeding” as a special, *civil* proceeding brought in Children’s Court on behalf of children by the state that could result in the termination of parental rights. *See In re Pamela A.G.*, 2006-NMSC-019, ¶ 12, 139 N.M. 459 (“neglect and abuse proceedings are civil proceedings”); *see also* § 32A-4-17 (requiring the summons in a neglect or abuse proceeding to “clearly state that the proceeding could ultimately result in termination of the respondents’ parental rights”). In context, then, when Section 32A-4-33(A) provides for the confidentiality of “[a]ll records or information concerning a party to a *neglect or abuse proceeding*” (emphasis added), this extends only to those records related to these civil proceedings. Unless such a proceeding has commenced or is anticipated regarding the December 8, 2021 incident, the records from the incident would not appear to be exempt from disclosure.

More generally, the language of Section 32A-4-33 does not suggest that the Legislature intended to exempt from disclosure all law enforcement records related to an incident that might at some point give rise to an abuse or neglect proceeding. Notably, Section 32A-4-33(A) does not, by its plain language, exempt all records related to allegations of abuse or neglect, but instead more narrowly exempts “[a]ll records or information *concerning a party to a neglect or abuse proceeding*” (emphasis added).³ Similarly, in identifying some of the types of records exempt from disclosure – “social records, diagnostic evaluations, psychiatric or psychological reports, videotapes, transcripts and audio recordings of a child’s statement of abuse or medical reports” – Section 32A-4-33(A) does not include police reports, lapel camera video, or other types of routinely generated law enforcement records.

Section 32A-4-33.1 lends support to our interpretation of Section 32A-4-33(A). By its terms, Section 32A-4-33.1 imposes limitations on information released by CYFD in connection with the death of a child where “there is reasonable suspicion that the fatality was caused by abuse or neglect,” but the statute does not literally restrict the release of information by other governmental entities. In addition, Section 32A-4-33.1(C) expressly *allows* CYFD to release investigatory and medical reports “[u]pon completion of a child abuse or neglect investigation into a child’s death, if it is determined that abuse or neglect caused the child’s death.” By expressly permitting the release of these records, 32A-4-33.1(C) would irreconcilably conflict with Section 32A-4-33(A) if, as contended by the City, the latter exempts all records related to allegations of abuse or neglect in any and all circumstances.

Because we must read Section 32A-4-33 “in its relation to every other part” of the Abuse and Neglect Act, *Winston*, 1969-NMSC-066, ¶ 5, we conclude that this statutory provision does not appear to exempt the records related to the December 8, 2021 incident from inspection through IPRA. Section 32A-4-33 provides for the confidentiality of records related to “a party to a neglect or abuse proceeding,” not any and all law enforcement records related to allegations of child abuse or neglect. Although this issue may be slightly more nuanced if a civil “neglect or abuse

³ Under Rule 10-121(B) NMRA, the parties to a neglect or abuse proceeding are the state; a parent, guardian, or custodian alleged to have abused or neglected a child; the child alleged to have been abused or neglected; and any other person made a party by the state.

proceeding” has commenced or is anticipated regarding the December 8, 2021 incident, even in such a circumstance this would not appear to exempt all of the City’s records from inspection.⁴ In any case, based on the facts available to us, Section 32A-4-33 does not appear to be an applicable exception to disclosure for the records requested by Mr. Wilham.

Conclusion

Having carefully considered the facts available to us, we have concluded that the City violated IPRA in responding to Mr. Wilham’s December 17, 2021 public records request. Because the City did not identify the specific statutes within the Children’s Code it relied upon in denying his request or the individual responsible for making this decision, the City failed to provide Mr. Wilham a proper “written explanation of denial.” Section 14-2-11(B). More substantively, we have found that the language and larger statutory context of Section 32A-2-32 and Section 32A-4-33 are incompatible with the City’s denial of Mr. Wilham’s request. The City’s refusal to permit inspection of any records related to the December 8, 2021 incident therefore appears to have been unlawful, and accordingly it should provide Mr. Wilham all nonexempt records as soon as possible.

Moving forward, we urge the City to reevaluate its approach to both requests for records pertaining to children as well as public records requests more generally. The City’s policy concerns with releasing certain records are not a valid substitute for a specific exception in law, see *Republican Party*, 2012-NMSC-026, ¶ 16, and no provision of the Children’s Code creates a blanket exception to disclosure for any and all records mentioning or pertaining to a child in any and all circumstances. More generally, we are concerned that the City’s excessive reliance on policy concerns may indicate a lack of comprehension of its statutory obligation to provide the public with “the greatest possible information” about its affairs. Section 14-2-5. To be clear, providing public records upon request is “an *essential function* of a representative government and an integral part of the routine duties of public officers and employees,” *id.* (emphasis added), and it is our sincere hope that the City’s public records practices will better reflect this in the future.

For your reference, a copy of the IPRA Guide is available on the website of the Office of the Attorney General at www.nmag.gov. If you have any questions regarding this determination or IPRA in general, please let me know.

⁴ If a “neglect or abuse proceeding” has commenced or is anticipated, Section 32A-4-33(A) would appear to provide for confidentiality only for those records “incident to or obtained as a result of a neglect or abuse proceeding or that were produced or obtained during an investigation in anticipation of or incident to a neglect or abuse proceeding.” Most of the records requested by Mr. Wilham (for example, “9-1-1 recordings,” “[a]ll belt tapes and lapel camera footage,” “[t]he Computer Automated Dispatch report,” and the original incident reports) would not appear to fall within this exception because they were not obtained pursuant to the civil abuse or neglect proceeding and were not prepared in anticipation of such a proceeding.

City of Rio Rancho

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Sincerely,

A handwritten signature in blue ink, appearing to read "John Kreienkamp", is written over a light blue rectangular background.

John Kreienkamp

Assistant Attorney General

Enclosure

cc: Mr. T.J. Wilham