



STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
OFFICE OF THE SECRETARY
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BILL RICHARDSON
GOVERNOR

KATHERINE B. MILLER
CABINET SECRETARY

March 8, 2010

Mr. Allen Weh
Ms. Whitney Cheshire, Campaign Manager, Weh Campaign
6001 San Mateo NE Suite F2
Albuquerque N.M. 87109

Dear Mr. Weh and Ms. Cheshire:

This letter is in response to a letter faxed to me and dated on March 5, 2010 regarding the request for public records cited below.

At the outset, DFA affirmatively states that it is not “altering” or “misplacing” any public records requested by Mr. Weh. DFA is only redacting information that is either not a “public record” under the Inspection of Public Records Act, Sections 14-2-1 etseq. NMSA 1978 (“IPRA”) and the Attorney General’s IPRA Compliance Guide, Fifth Edition, 2008¹, or information that was not requested by Mr. Weh. Further, DFA is working diligently to locate and preserve all public records responsive to your request.

On February 4, 2010, as records custodian for the Department of Finance and Administration (“DFA”), I received a letter from the Lieutenant Governor’s Office (“LGO”) dated January 29, 2010 that indicated the LGO was forwarding to DFA your written request for public records received by the LGO on November 6, 2009. The letter

¹ As stated in the Attorney General’s Inspection of Public Records Compliance Guide, Fifth Edition, 2008, on page 31: “Even if related to the performance of their public duties, notes and other materials prepared or collected by public employees solely for their own use may not be public records. These preliminary materials do not share the degree of finality suggested by the terms “documents,” “papers” and “letters” in the definition of public records, and generally are not intended to perpetuate, formalize or communicate information for or on behalf of the public agency. Moreover, like information protected by the executive privilege (discussed above in Section III.B.7), dissemination could easily lead to misinformation or false conclusions about the public entity’s business. Anticipation of disclosure could unnecessarily hamper a public employee’s ability to do his or her job by discouraging or tempering the employee’s taking of notes, keeping research materials or experimenting with creative ideas in preliminary drafts of memoranda and letters. An agency’s effectiveness would be significantly undermined if its employees, worried that every scrap of paper recording their own impressions or notes could be disclosed publicly, limited what they wrote down in the course of performing their duties. Thus, such materials generally will not be considered public records, provided employees create or use them solely for their own convenience and unless the materials are expressly referenced in or attached to a clearly public document, such as a final report.”

from the Lieutenant Governor's Office dated January 29, 2010 indicated that you requested to inspect the following records:

“With respect to unallocated federal fiscal stimulus funds transferred to the New Mexico Treasury under the 2003 Jobs and Growth Tax Relief Reconsolidation Act used of spent by the Lt. Governor:

- 1) A copy of all contracts entered into between the Lt Governor's office, or state, that purported to expend such funds.
- 2) A copy of all billings or invoices including all supporting receipts, time sheets and attachments to such billing or invoices.
- 3) A copy of any and all memos, correspondence or any other documentation discussing the expenditure, invoicing, or payment of such sums to any third party.
- 4) A copy of any request for proposal or any solicitation that purported to seek a lower or lowest bid for the provision of the services or work procured.
- 5) Copies of all checks, purchase orders, or other indicia or payment by the Lieutenant Governor's Office, or the state, for such services or work”

On February 19, 2010 I sent you a letter stating that, as custodian of these records pursuant to Section 14-2-10 NMSA 1978², I determined this request to be excessively broad and burdensome and, as permitted by law, we needed an additional reasonable time period to satisfy the request. I also indicated that some of the responsive records located at DFA were available for inspection, and that some of these documents contained redactions in which DFA removed comments in the form of hand written notations that are not part of the public record. I asked you to contact me to schedule a time for you to review the documents.

DFA, by telephone and letter dated March 3, 2010 has been working with you to arrange a time to inspect the responsive documents that are available. DFA has some of the documents responsive to request #1 and most of the documents responsive to request #2 available for inspection at our offices, excluding documents DFA may possess that relate to requests #3, #4 and #5. The aforementioned documents are available for inspection at the DFA offices. DFA needs to reserve a conference room prior to your arrival to provide you with space to inspect the documents. We will make our facilities available to you to copy any documents you desire at the cost of \$0.25 per page.

Please do not hesitate to call me at 827-3881 if you have any further questions regarding this matter. We will continue working to locate the additional responsive documents until all five of your requests have been fully closed out.

Sincerely,

² Section 14-2-10 NMSA 1978:

“If a custodian determines that a written request is excessively burdensome or broad, an additional reasonable period of time shall be allowed to comply with the request. The custodian shall provide written notification to the requester within fifteen days of receipt of the request that additional time will be needed to respond to the written request. The requester may deem the request denied and may pursue the remedies available pursuant to the Inspection of Public Records Act [14-2-4 NMSA 1978] if the custodian does not permit the records to be inspected in a reasonable period of time.”

Nicole Gillespie
DFA Records Custodian

CC: Mr. Christopher Collins, Barnett Law Firm, P.A.