

Heath Haussamen  
Editor and Publisher  
NMPolitics.net

RE: Response to IPRA Request.

Dear Mr. Haussamen:

In response to your IPRA request of May 4, 2016, please find attached a redacted copy of material received by the City Council from the Mercer Group used in the interview of various applicants regarding the current search for a City Manager for the City of Las Cruces; an email submitted by the Mercer group with various resumes and related documents submitted by applicants; and the City's contract with the Mercer Group. The redacted material involves copyrighted material. There are no other documents held by the City that are responsive to your request.

With respect to documents held by the Mercer Group involving other applicants, it is the opinion of the City Attorney that the Mercer Group itself is a private entity and not a public entity that is subject to IPRA. The private documents gathered by Mercer in the fulfillment of their contract are not public records until they are delivered to the City.

The New Mexico Court of Appeals in Toomey v. City of Truth or Consequences, 2012-NMCA-104, 287 P.3d 364, 2012 N.M. App. LEXIS 76, 40 Media L. Rep. 2202 (N.M. Ct. App. 2012) adopted a nine-point test for courts to use in determining whether a private entity is performing public entity functions to such a degree that IPRA requirement apply to their activities. In reviewing the relationship between City of Las Cruces and the Mercer Group, the City Attorney found insufficient evidence to conclude that Mercer Group meets the Toomey test.

Please feel free to contact me if you have any questions.

Sincerely,



David Aguayo  
Senior Office Assistant  
City Clerk's Office