

STATE OF NEW MEXICO
BERNALILLO COUNTY
SECOND JUDICIAL DISTRICT

RIO GRANDE FOUNDATION,

Plaintiff,

v.

No. D-202-CV-2020-03054

YVETTE GURULE, Designated Records
Custodian for the City of Albuquerque,

Defendant.

**COMPLAINT FOR JUDGMENT ORDERING PRODUCTION OF
CERTAIN RECORDS AND INFORMATION**

COMES NOW, Plaintiff Rio Grande Foundation, by and through undersigned counsel
Western Agriculture, Resource and Business Advocates, LLP (A. Blair Dunn, Esq.) and states
the following:

GENERAL ALLEGATIONS

1. Plaintiff Rio Grande Foundation is a Domestic Nonprofit Corporation operating in New Mexico providing information to New Mexico's citizens.
2. Defendant Yvette Gurule is the designated records custodian for the City of Albuquerque.
3. This action is brought by Plaintiff against the Defendant to enforce the provisions of the New Mexico Inspection of Public Records Act, NMSA 1978 § 14-2-1 ("IPRA").

FIRST IPRA

4. The IPRA provides that, with only certain, specified limitations, "Every person has a right to inspect public records of the state." *Id.*
5. Patrick Brenner, policy analyst for the Rio Grande Foundation made an IPRA

request on December 20, 2019 to the City of Albuquerque requesting:

“Records” includes of course, emails, texts, drafts, voicemails, or other recordings, memos, letters, requests for approvals, directions, opinions and research. Public records also include the records concerning public issues and business on any private cell phone, computer, server or other “private” device that has public records or information. The individuals listed below must provide the public information and records on any private cell phone or other “private” device. I respectfully request that you confirm each individual has been reminded of this obligation to provide these public records that are located on private devices.

- 1) All records concerning the decision to use the city website and city resources to advocate for the passage of Proposition 1, Proposition 2 and the bond questions that appeared on the November 5, 2019 ballot;
- 2) The directions to the person or persons responsible for placing this bond and proposition information on the city website;
- 3) All emails or texts sent by or received by Isaac Padilla and Sarita Nair and Alan Packman from August 1, 2019 to November 6, 2019;
- 4) All emails or texts concerning Proposition 1, Proposition 2, the city bonds or the decision to use the city website to advocate for passage of these bonds and questions on any private cell phone or private device owned or used by Mark Leach, Sarita Nair, Isaac Padilla and Alan Packman from August 1, 2019 to November 6, 2019. (Exhibit 1 – IPRA request).

6. On December 23, 2019, the City of Albuquerque acknowledged the request.

7. On January 3, 2020, Plaintiff was informed that the request had been deemed broad and burdensome, and an additional period of time was requested to complete the request.

8. On January 8, 2020, Mr. Brenner submitted a note through the NextRequest open governmental portal requesting that all records located so far be produced. (Exhibit 2 – May 3, 2020 Correspondence to City Clerk Ethan Watson).

9. Mr. Brenner contacted Ms. Gurule via telephone on January 29, 2020 after not receiving a response, leaving a voice mail on her direct line requesting a status update. *Id.*

10. Additionally, Mr. Brenner sent an email requesting a status update on his request that all the records located at that time be forwarded to him. *Id.*

11. No response was received until February 4, 2020, when Ms. Gurule sent a note

through the NextRequest portal, stating:

“My apologies for not updating you on the status of your request. We are still reviewing records for your request. We will notify you once our review is complete. Thank you for your patience.”

12. Then, on March 9, 2020, rather than take any steps to provide any portion of the documents requested almost three months previously, Plaintiff received another communication from Ms. Gurule as follows:

“We are still reviewing records for your request. This communication is regarding clarification of one aspect of your request. In your request, it appears you are seeking various records ‘concerning Proposition 1, Proposition 2, the city bonds or the decision to use the city website to advocate for passage of these bonds and questions.’ Item number 3 of your request, however, appears to be seeking a broader range of materials including spam, random notices, etc. In item number 3, can you clarify are you seeking ‘all emails or texts sent by or received by Isaac Padilla and Sarita Nair and Alan Packman from August 1, 2019 to November 6, 2019 ’concerning Proposition 1, Proposition 2, the city bonds or the decision to use the city website to advocate for passage of these bonds and questions.’ Please clarify this part of your request. Thank you for your patience and cooperation.”

13. Plaintiff provided clarification on March 31, 2020, clarifying the records requested, explaining that “all” meant “all”; reminding Ms. Gurule that the request had been made that each individual has been reminded of their obligation to provide public records located on private devices, and asking what steps had been taken to preserve Mr. Padilla, Mr. Packman and Ms. Nair’s texts and emails. *Id.*

14. Defendant had waited 80 days to seek this clarification.

15. Plaintiff, through Mr. Brenner, then sent emails to Ms. Gurule on April 6, 2020 and April 8, 2020 requesting an update with all records produced to date.

16. On April 10, 2020, Ms. Gurule notified Mr. Brenner that it was taking longer than anticipated to process requests for public records due to the coronavirus pandemic, and that the status of the request would be reviewed and an update provided when records might be available.

Id.

17. Plaintiff again requested, that same day, a copy of all responsive documents collected to date. *Id.*

18. 5 days later, on April 15, 2020 Ms. Gurule responded:

“We have completed review of the first batch of 100 emails for your request. If you would like to purchase the CD of emails, it is \$6.75 for the CD, which we can mail to you upon receipt of your check or money order (please see the invoice that was released to you via NextRequest). If you would like to inspect the emails at our office, you will have to wait until the office is open to the public again. At this time, we anticipate the office will be open in early May. We will notify you when the second batch of emails is available.”

19. No invoice had actually been released via the NextRequest portal, and Mr. Brenner requested clarification as to where to send the payment for the CD and providing a mailing address for the CD. *Id.*

20. The invoice was paid, but no disk has been sent or received.

21. Additionally, Mr. Brenner called and emailed Ms. Gurule multiple times in an attempt to resolve the matter efficiently. *Id.*

22. Mr. Brenner reached out to the New Mexico Foundation for Open Government for help in resolving this issue with the City.

23. On April 27, 2020, the City Clerk, Ethan Watson, responded to NMFOG Director, Melanie Majors in an attempt to explain why the City had failed to provide the requested records. (Exhibit 3 – Communication from Ethan Watson to NMFOG). In this communication, Mr. Watson indicates that the check for payment for the CD has been received by the City, and that the City could begin to make items available on disc as each production is ready, and would mail them to Mr. Brenner.

24. Mr. Brenner responded to Mr. Watson’s communication with NM FOG to clarify

that yes, Plaintiff would like to begin receiving the requested documents. (Ex. 2.)

25. On Friday, May 1, 2020, Mr. Watson sent an email stating that the City had received the response, and that the disc with the first production would go out in the mail on that date.

26. To date, Plaintiff has not received the requested information on disc.

**COUNT I - VIOLATION OF THE NEW MEXICO
INSPECTION OF PUBLIC RECORDS ACT SECTION 11**

27. Plaintiff incorporates by reference the claims, facts, and allegations set forth in the above paragraphs.

28. Pursuant to NMSA 1978 § 14-2-11 Defendant has violated the New Mexico Inspection of Public Records Act by failing to respond or provide for inspection the requested public records in a reasonable time.

29. Via IPRA request, Plaintiff asked for documents that are public record to be provided in a timely manner, and Defendant failed to provide all responsive documents which are known to exist.

22. Because Defendant has violated the IPRA by failing to produce to Plaintiff the public records requested by Plaintiff without justification under the law, Plaintiff is entitled to an injunction ordering the Defendant to produce all relevant documents in the Defendant's possession.

23. Pursuant to NMSA 1978 § 14-2-11 Plaintiff is entitled to statutory damages, attorney's fees and costs for the failure of the Defendant to follow IPRA.

**COUNT II - VIOLATION OF THE NEW MEXICO
INSPECTION OF PUBLIC RECORDS ACT SECTION 12**

24. Plaintiff incorporates by reference the claims, facts, and allegations set forth in the above paragraphs.

25. Text messages are public record pursuant to the New Mexico Inspection of Public Records Act.

26. Defendant improperly denied Plaintiff the text messages and emails requested, which is a violation of NMSA 14-2-12.

27. Additionally, Defendant has not responded to Plaintiff's request to confirm any steps taken by Defendant to preserve Mr. Padilla, Mr. Packman and Ms. Nair's texts and emails. (Ex. 2).

29. Under IPRA, an action to enforce IPRA can be brought by a person whose request has been denied. NMSA §14-2-12(A).

30. Under IPRA, "A district court may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of the Inspection of Public Records Act." NMSA §14-2-12(B).

31. Pursuant to NMSA 1978 § 14-2-11 Defendant has violated the New Mexico Inspection of Public Records Act by failing to respond or provide for inspection the requested public records.

32. Exhaustion of administrative remedies is not required under IPRA. NMSA §14-2-12(C).

33. Under IPRA, "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 the provisions of the Inspection of Public Records Act." NMSA §14-2-12(D).

WHEREFORE, Plaintiff respectfully requests the Court exercise its jurisdiction and enter, pursuant to the Court's original jurisdiction, and the New Mexico Inspection of Public Records Act:

- A. A finding adjudicating that the failure of the Defendant to timely respond or provide the public records requested by Plaintiff is in violation of the New Mexico Inspection of Public Records Act, or if necessary, a writ of mandamus requiring the Defendant to produce the requested records;
- B. Judgment in favor of Plaintiff on Defendant's violation of the Inspection of Public Record Act;
- C. An injunction to enforce the provisions of the New Mexico Inspection of Public Records Act;
- D. An Order awarding Plaintiff statutory damages for violation of the Inspection of Public Records Act;
- E. An Order awarding Plaintiff its costs and reasonable attorneys' fees as provided by law;
- F. Such other and further relief as the Court deems just.

WESTERN AGRICULTURE, RESOURCE,
AND BUSINESS ADVOCATES, LLP

/s/ A. Blair Dunn
A. Blair Dunn, Esq.
400 Gold Ave SW, Suite 1000
Albuquerque, NM 87102
(505) 750-3060
abdunn@ablairdunn-esq.com



December 20, 2019

By E-Mail: cityclerk@cabq.gov

Office of the City Clerk
PO Box 1293
Albuquerque, NM 87103

Dear Records Custodian,

My name is Patrick Brenner. I am submitting this request for public records and information under the Inspection of Public Records Act (IPRA). Please produce the public records listed below for inspection and I will then designate the records and information to be copied.

“Records” includes of course, emails, texts, drafts, voicemails, or other recordings, memos, letters, requests for approvals, directions, opinions and research.

Public records also includes the records concerning public issues and business on any private cell phone, computer, server or other “private” device that has public records or information. The individuals listed below must provide the public information and records on any private cell phone or other “private” device. I respectfully request that you confirm each individual has been reminded of this obligation to provide these public records that are located on private devices.

- 1) All records concerning the decision to use the city website and city resources to advocate for the passage of Proposition 1, Proposition 2 and the bond questions that appeared on the November 5, 2019 ballot;
- 2) The directions to the person or persons responsible for placing this bond and proposition information on the city website;
- 3) All emails or texts sent by or received by Isaac Padilla and Sarita Nair and Alan Packman from August 1, 2019 to November 6, 2019;
- 4) All emails or texts concerning Proposition 1, Proposition 2, the city bonds or the decision to use the city website to advocate for passage of these bonds and questions on any private cell phone or private device owned or used by Mark Leach, Sarita Nair, Isaac Padilla and Alan Packman from August 1, 2019 to November 6, 2019.

My address is 4301 The 25 Way, Suite B, Albuquerque, New Mexico 87109.

My mailing address is PO Box 40336, Albuquerque, New Mexico 87196.

My phone number is 505-908-9040.

My email address is pbrenner@riograndefoundation.org

This information is public record and as such subject to requests under the Inspection of Public Records Act (IPRA).

Sincerely,

Patrick Brenner

Director, Rio Grande Foundation

EXHIBIT 2

May 3, 2020

Mr. Ethan Watson
City Clerk

Mr. Watson:

Thank you for your note directed to the New Mexico Foundation for Open Government. However, significant and critical questions and requests remain unanswered. I apologize for the length of this response, but the detailed history of this situation is important to understanding my frustrations with the delay and the failure to address my requests for public documents that should be readily accessible.

Firstly, I'd like to address the issue of timeliness on this particular request. I agree that the request was filed on December 20, 2019. Ms. Gurule promptly acknowledged receipt of the request on December 23, 2019. An additional note was received On January 3, 2020 whereby my request was deemed "excessively burdensome and broad" and an additional reasonable period of time was requested to complete the request. It is now April 30, 2020 and ample time has been provided for this request to be fulfilled and completed.

Further, on January 8, 2020, I submitted a note through the NextRequest open government portal whereby I requested that "all records located so far" be produced. After no timely response was provided, I called Ms. Gurule on January 29, 2020 after not hearing back. I left a voicemail on her direct line. I sent an email shortly afterwards whereby I kindly requested an update on the message that I had sent through the transparency portal. Here is the contents of my email, for your records:

"Happy Wednesday! I called earlier this morning and left a message on your voicemail. I'm just checking in on the status of IPRA request 19-8458. I had sent a message on January 8 using the transparency portal requesting 'Please produce all records located so far. Thank you.' Would you kindly look into this for me?"

I did not receive any sort of answer until February 4, 2020. On that date, Ms. Gurule sent a note through the NextRequest open government portal. Here is the contents of that note, for your records:

"My apologies for not updating you on the status of your request. We are still reviewing records for your request. We will notify you once our review is complete. Thank you for your patience."

I received another note from Ms. Gurule on March 9, 2020.

"We are still reviewing records for your request. This communication is regarding clarification of one aspect of your request. In your request, it appears you are seeking various records 'concerning Proposition 1, Proposition 2, the city bonds or the decision to use the city website to advocate for passage of these bonds and questions.' Item number 3 of your request, however, appears to be seeking a broader range of materials including spam, random notices, etc. In item number 3, can you clarify are you seeking 'all emails or texts sent by or received by Isaac Padilla and Sarita Nair and Alan Packman from August 1, 2019 to November 6, 2019 "concerning Proposition 1, Proposition 2, the city bonds or the decision to use the city website to advocate for passage of these bonds and questions.' Please clarify this part of your request. Thank you for your patience and cooperation."

Rather than take any steps to provide any portion of the public documents requested almost three months previously, Ms. Gurule thanked me for my patience and cooperation. I responded to Ms. Gurule on March 31, 2020 with the following message:

"Good afternoon Ms. Gurule: I am writing concerning the request for public records received by the City on December 20, 2019 and your most recent letter dated March 9, 2020. The December 20 request stated a very simple and clear request for these public records including: "All emails or texts sent by or received by Isaac Padilla and Sarita Nair and Alan Packman from August 1, 2019 to November 6, 2019". *The public records request also "respectfully" requested that you confirm each individual has been reminded of their obligation to provide all of the requested records:* Public records also includes the records concerning public issues and business on any private cell phone, computer, server or other "private" device that has public records or information. The individuals listed below must provide the public information and records on any private cell phone or other "private" device. *I respectfully request that you confirm each individual has been reminded of this obligation to provide these public records that are located on private devices. You have not confirmed that the appropriate people have been notified and I am increasingly concerned the delays are used to delete or "misplace" the requested public records. What steps to preserve Mr. Padilla, Mr. Packman and Ms. Nair's texts and emails have been taken?* Let me address your ostensible question directly: yes "all" means "all". Eighty days after the City receives the request for Mr. Padilla, Mr. Packman and Ms. Nair's texts and emails: "All emails or texts sent by or received by Isaac Padilla

and Sarita Nair and Alan Packman from August 1, 2019 to November 6, 2019", someone professes confusion about whether the request means ""All emails or texts sent by or received by Isaac Padilla and Sarita Nair and Alan Packman from August 1, 2019 to November 6, 2019"? I do not see how anyone could be confused about our request. If somehow any basis for confusion honestly existed waiting 80 days (to ask if "all" means "all") is clearly inconsistent with the duty to promptly produce public documents. *I am again respectfully requesting confirmation that appropriate steps have been taken to notify the appropriate people and I also request the details of any effort to preserve text messages and emails requested in December concerning this request from the date it was originally filed or received, on or about December 20, 2019.* Sincerely, Patrick M. Brenner Policy Analyst"

** (For clarity, ignored requests for confirmation that documents are not being destroyed are italicized.)*

After no reply from Ms. Gurule, I emailed her again on April 6, 2020:

"Ms. Gurule, These ongoing delays are inappropriate. Please respond with all requested documents immediately."

After no reply from Ms. Gurule, I emailed her again on April 8, 2020:

"Please respond promptly with an update and with all records produced so far. Thank you."

After these communications, I finally received a response back from Ms. Gurul on April 10, 2020:

"We have received your message. Due to the coronavirus pandemic, it is taking longer than anticipated to process requests for public records due to the dispersal of City personnel at multiple locations. We will review the status of this matter and update you as to when records will be available."

To which I responded on that same day of April 10, 2020:

"Dear Ms. Gurule: Without any further delay please provide all responsive documents collected to date."

After an additional delay of 5 days, Ms. Gurule responded on April 15, 2020:

"We have completed review of the first batch of 100 emails for your request. If you would like to purchase the CD of emails, it is \$6.75 for the CD, which we can mail to you

upon receipt of your check or money order (please see the invoice that was released to you via NextRequest). If you would like to inspect the emails at our office, you will have to wait until the office is open to the public again. At this time, we anticipate the office will be open in early May. We will notify you when the second batch of emails is available."

There apparently was a problem sending the invoices that was mentioned. No invoice that was released at the time this message had been sent at 1:08 pm, as time stamped by the NextRequest open government portal. I promptly requested clarification at 1:26 pm:

"Good afternoon Yvette: Your directions "please see the invoice that was released to you via NextRequest", I see there was no invoice that was released to me via NextRequest. Where should payment be sent? Upon receipt of my check or money order, please send the CD to my mailing address which is: PO Box 40336, Albuquerque, New Mexico 87196. Please respond promptly, thank you kindly."

At 1:31 pm, Ms. Gurule responds:

"The invoice for the first CD of emails has been provided via NextRequest. Below this email will be a link to view/download the responsive record(s)."

"Once we receive your payment we will mail the CD to you."

This invoice was paid, however, no disk has been sent or received.

In your letter responding to the New Mexico Foundation for Open Government:

"We have received Mr. Brenner's check"

Additionally, I have called Ms. Gurule over a half-dozen times on her direct line, leaving voicemails each time. On January 29, April 16, April 17, April 24, April 28 and again on April 30 in an attempt to speak with someone over the phone so that this might be resolved amicably. None of my calls have ever been returned. I have sent emails directly to Ms. Gurule outside of the NextRequest open government portal in an attempt to solicit appropriately responsive communications. My emails directly on January 29 and April 17 have gone unanswered. Surely you understand my thoughts in seeking guidance from the New Mexico Foundation for Open Government. I merely want to inspect these records, which have still not been provided.

The original request has certainly not, in any way, been addressed even 130 days later.

Next, I would like to address the argument that it is "not feasible to produce numerous emails other than on disc or a flash drive". I am including a screenshot from the NextRequest open government

portal which sufficiently demonstrates the ability to both send and receive attachments between the requester and the designated custodian.




nextrequest.cabq.gov/requests/19-8

Bookmarks Rio Grande Founda... ARMIS


Patrick Brenner
 Director, Rio Grande Foundation

— [Read less](#)

- [Patrick Brenner Reply \(1\).pdf](#)
- [USAA Pay Bills.pdf](#)
- [yvette email 1.pdf](#)
- [yvette email 2.pdf](#)
- [yvette email 3.pdf](#)
- [yvette phone calls.jpg](#)

<i>Received</i>	December 20, 2019
<i>Departments</i>	Mayor/CAO's Office
<i>Requester</i>	Patrick Brenner  pbrenner@riog...  4301 The Way ,  505-908-9040

Documents

<i>Public (pending)</i>	(none)
	
<i>Requester</i>	Invoice.pdf

Screenshot from NextRequest open government portal.

By sending these email attachments as PDFs through the NextRequest open government portal, and in receiving the City's invoice dated April 15 through the NextRequest open government portal, it is crystal clear that the city has already demonstrated the capability and capacity of producing numerous emails other than on disc or a flash drive. The delays and the attempt to misread the simple request, the failure to address telephone calls and emails and the suggestion that the city has complied is not only problematic but strongly suggests an improper and illegal effort to avoid producing public documents.

I respectfully request that you confirm each individual has been reminded of their obligation to provide all of the requested records. Public records also include the records concerning public issues and business on any private cell phone, computer, server or other "private" device that has public records or information. The individuals named in the initial request must provide the public information and records on any private cell phone or other "private" device. They have not done so.

I respectfully request that you confirm each individual has been reminded of this obligation to provide these public records that are located on private devices. You have not confirmed that the appropriate people have been notified and I am increasingly concerned the delays are used to delete or "misplace" the requested public records. Again, what steps to preserve Mr. Padilla, Mr. Packman and Ms. Nair's texts and emails have been taken?

More than eighty days after the City received the request for Mr. Padilla, Mr. Packman and Ms. Nair's texts and emails "All emails or texts sent by or received by Isaac Padilla and Sarita Nair and Alan Packman from August 1, 2019 to November 6, 2019", someone professes confusion about whether the request means "All emails or texts sent by or received by Isaac Padilla and Sarita Nair and Alan Packman from August 1, 2019 to November 6, 2019"? I do not see how anyone could be confused about my request. The specificity of the documents requested could not be more clear. Again, I respectfully request "All emails or texts sent by or received by Isaac Padilla and Sarita Nair and Alan Packman from August 1, 2019 to November 6, 2019".

Waiting eighty days to ask if "all" means "all" is clearly inconsistent with the duty to promptly produce public documents. I am again respectfully requesting confirmation that appropriate steps have been taken to notify the appropriate individuals and I also request the details of any effort to preserve text messages and emails requested in December concerning this request from the date it was originally filed or received, on or about December 20, 2019.

Respectfully, the Inspection of Public Records Act requires something more than delay and obfuscation and more delay.

14-2-5. Purpose of Act; Declaration of Public Policy. "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."

Please, I implore that you fulfill the essential function of a representative government to provide me with the greatest possible information regarding the affairs of government and the official acts of public officers and employees as I have requested.

Thank you for your prompt attention,

Patrick M. Brenner

CITY OF ALBUQUERQUE

EXHIBIT 3



April 27, 2020

Melanie Majors, Director

New Mexico Foundation for Open Government
2333 Wisconsin St. NE
Albuquerque, NM 87110

Re: Request 19-8458

Dear Ms. Majors:

Thank you for writing me regarding public records request 19-8458 which is pending with the City of Albuquerque. The initial letter from FOG and some supplemental correspondence from Mr. Brenner to our Office raised several different issues which I will address in turn. I have personally reviewed the request and am writing this letter to both explain some of the obstacles and describe my solutions.

First, Mr. Brenner's correspondence to our Office raised the issue of the timeliness of the City's response. This request was received on December 20, 2019, acknowledge on December 23, 2019, and deemed broad and burdensome on January 3, 2020. As you know, the City of Albuquerque receives more public records requests than any other New Mexico public body we have identified and we are currently processing around eight thousand requests per year. Although the City Clerk's public records team processes numerous requests each year, the last five months have been challenging. Due to a member of our public records team being on leave and another individual retiring unexpectedly, all requests are taking longer than usual to fulfill. In short, as the Albuquerque Journal noted in its March 18, 2020 editorial on Sunshine Week, we have working diligently to clear the backlog of currently pending requests. Our efforts to process public records requests were further complicated by the COVID-19 pandemic and the dispersal of numerous City employees to a teleworking environment. Our productivity has increase, however, the longer we have all been working from home. We are now closing more requests than we receive in a month and anticipate further increases in productivity in the coming weeks.

Second, your letter and Mr. Brenner's correspondence both address production of emails through disc. As a general matter, we are working to adopt new technologies to facilitate access to public records and open government. The COVID-19 Pandemic has accelerated our efforts to find technological solutions for open government issues. For example, we have assisted City Boards and Commissions in using Zoom to conduct meetings. This broadens the pool of potential attendees and makes access to these public meetings easier than ever. In the area of public records, we are scanning classes of popularly requested records to make them publicly available online. In response to requesters who are frustrated with paying for records by cash or check, we are also working to find and

PO Box 1293

Albuquerque

NM 87103

www.cabq.gov

implement a method for individuals to pay for records online. I have detailed our efforts to implement electronic payment in prior correspondence with FOG.

Production of electronic documents is another challenge we are addressing. While NextRequest—the City’s online public records portal—allows for online document production, when we use it for large scale production, it becomes unreliable and extremely cumbersome. Due to the large number of requests the City receives each year for email, it is also not feasible to use our city email system for production of large numbers of emails. I have looked into software akin to Dropbox that could be used to accomplish file transfers with requesters. However, the City’s IT department is dealing with a number of technology issues stemming from the COVID-19 pandemic and we have not found time to explore this technology. Additionally, given the uncertainty in the City’s budget, we do not know whether we will be able to purchase additional software this year.

As mentioned, however, NextRequest or email can be used for transfers of small numbers of emails and upon reviewing the details of this request, we may be able to resolve this request through such means. Mr. Brenner’s request asked for the following items:

1. All records concerning the decision to use the city website and city resources to advocate for the passage of Proposition 1, Proposition 2 and the bond questions that appeared on the November 5, 2019 ballot;
2. The directions to the person or persons responsible from placing this bond and proposition information on the city website;
3. All emails or texts sent by or received by Isaac Padilla and Sarita Nair and Alan Packman from August 1, 2019 to November 6, 2019;
4. All emails or texts concerning Proposition 1, Proposition 2, the city bonds or the decision to use the city website to advocate for passage of these bonds and questions on any private cell phone or private device owned or used by Mark Leach, Sarita Nair, Isaac Padilla and Alan Packman from August 1, 2019 to November 6, 2019.

We have identified only two emails responsive to parts 1 and 2. We are partially denying the inspection of these emails pursuant to NMSA 1978, Section 14-2-1(H), because they are protected by the attorney-client privilege. These two emails are produced attached in redacted form. With regard to part 4, the City has no responsive records.

Part 3 of the request seeks “All emails or texts sent by or received by Isaac Padilla and Sarita Nair and Alan Packman from August 1, 2019 to November 6, 2019.” This office sought clarification regarding this part of the request earlier this spring to determine if this section of the request—like the other parts of the request—was also focused on proposition 1, proposition 2, and city bonds. Mr. Brenner responded that he wants “All emails or texts sent by or received by Isaac Padilla and Sarita Nair and Alan Packman from August 1, 2019 to November 6, 2019.” This encompasses numerous emails and it is simply not feasible to produce numerous emails other than on disc or a flash drive for the reasons outlined above. In an effort to resolve this matter, however, we have identified ten emails that appear related to bonds from the emails collected in relation to part three. Because

this is a minimal amount of material, we have attached it with this correspondence.¹ If this does not resolve the request, we can continue to process the remaining emails. Going forward we can process 100 emails every other week, but may need to revise this production schedule. Please note that Ms. Nair is the Chief Administrative Officer and many of her emails contain attorney-client privileged communications, or other material which is exempt under IPRA. This necessitates detailed review of these records.

We can make these items available on disc as each production is ready and can mail them to Mr. Brenner.² We have received Mr. Brenner's check and can mail the initial batch once we have direction on how he would like to proceed. If Mr. Brenner does not want to purchase copies of the productions and instead wants to inspect the records in person after the pandemic has passed, we can alternatively make the records available for inspection at the City Clerk's Office in batches on the schedule outlined above. Finally, if the emails produced with this letter satisfy this request, and he is no longer interested in other emails, we can refund the check initially provided for the disk.

Thank you for contacting us regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ethan Watson', with a long horizontal line extending to the right.

Ethan Watson

City Clerk

¹ Please note that the emails printed under the header of Ms. Yvette Gurule because she printed the emails.

² There appears to be some confusion about the cost of the disc containing copies of the records: the charge for a disc is \$6.75 not \$675.00.

Gurule, Yvette M.

From: Bhakta, Sanjay M.
Sent: Thursday, October 31, 2019 1:25 PM
To: Rael, Lawrence; Nair, Sarita; Keller, Tim
Subject: FW: \$29 M Lodgers' Tax Bond Expenditure Recommendations
Attachments: Recommendations \$29 M Bond Package.docx

FYI.

From: Rebecca Plutino <gm@riograndeinn.com>
Sent: Thursday, October 31, 2019 12:04 PM
To: Bhakta, Sanjay M. <sbhakta@cabq.gov>
Subject: \$29 M Lodgers' Tax Bond Expenditure Recommendations

Good Morning Mr. Bhakta,

The Greater Albuquerque Hotel & Lodging Association (GAHLA) is submitting here a list of our board recommendations for the expenditures of the new lodgers' tax bond. We appreciate your consideration, and hope to have renewed communication with you regarding lodgers' tax expenditures. Please do not hesitate to contact us should you have any questions.

Rebecca Plutino
General Manager
Rio Grande Inn
Direct Line (505) 217-1607

Stay Culturally Centered



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Recommendations for The Mayor's Sports Tourism Bond Expenditures

The Greater Albuquerque Hotel & Lodging Association (GAHLA) does not support this bond proposal. We have asked for business cases for each project to outline how overnight stays will be increased with the planned infrastructure or improvement. We have not been provided with this information. While we understand the individual projects have merit in each district, we do not find the case for funding the community improvements via Lodgers' Tax. The ill devised proposal has made its way through City Council with a do pass, albeit with some minor amendments to provide the Albuquerque Convention Center with \$1.5 million additional dollars for improvements. GAHLA is not satisfied with the amended Resolution for the expenditures of the bond for \$29 million and offers the following recommendations for consideration.

- Delete \$1 M for Isotopes Park because the netting, field improvements and concession stands at the Park will not contribute to attracting new room nights into the city. In a discussion at the Lodgers' Tax Advisory Board with Mr. Rael and Mr. Bhakta representing the city, it was stated that semi-trucks could not get into the park, preventing use for concerts which had the potential to bring overnight stays. Our understanding is that this improvement has already been completed. In addition, the following items have *already* been paid for with Lodger's Tax: 7 invoices at about \$30K each for NM United Games; \$4,500K for a mesh tarp with NM United logo; \$2,600 for locker covers; \$1,100 per game for clay for the field.
- Convention Center improvements must be increased from \$4.5 M to \$6.5 M, as per the list of needed repairs that was provided by the Convention Center management, and recommended by the Lodgers' Tax Advisory Board to the Administration and to City Council.
- Los Altos Park improvements should be reduced to \$8.5 M. We are not convinced that all of the improvements are related to bringing in new overnight stays. We do support the recommendation of the new soft ball fields. We ask that the marketing agencies for the city be given first right to booking the field for events that will bring overnight stays. This means the city will not book the fields more than 90 days in advance.
- Balloon Landing Sites is important to preserving the city's premier event. We agree with the \$2.5 M allotment.

- We do not agree with the reasoning for the multi-use soccer field and cannot support this project.
- The improvements at the Jennifer Riordan Spark Kindness Complex as stated are not relevant to increasing overnight stays in the city. We do not support this project.
- Downtown Innovation District Connection is not a project we will recommend at this time. There are too many unknown facets to the project. At this time we do not see how the project will help to increase bookings at the convention center. There exist pathways to walk to the Convention Center from Broadway and Central at this time, without having to go under the Central Avenue rail overpass.
- The indoor track is in need of being replaced. We support the \$2.5M for this expenditure. We do ask that a new home be found for the track because it is a deterrent to booking business at the Convention Center during need months of Jan, Feb and March.
- The Westside Visitor Center as presented appears to be a great community center. We do not see this has the potential to bring in overnight stays to the city. We do not support this project.
- The Northwest Mesa Gateway is not a project we can support because it is not related to producing new room nights for the city.

In conclusion, we recommend the following expenditures for the \$29 M bond package:

1. Improvements at the Albuquerque Convention Center	\$6.5 M
2. Los Altos Park improvements, including new softball fields	\$8.5 M
3. Acquisition of new Balloon Landing Sites	\$2.5 M
4. Replacement of Indoor Track and a new home	\$2.5 M
5. \$9 M to pay off existing Convention Center bond	\$9 M

>> -----Original Message-----

>> From: Contreras, Russell N. <RContreras@ap.org>

>> Sent: Monday, November 4, 2019 11:05 AM

>> To: Ross, Matthew <mross@cabq.gov>

>> Subject: Ethics complaint against the city

>>

>> Matt,

>>

>> Russell Contreras from the Associated Press here. I am writing because the Rio Grande Foundation is filing an ethics complaint against the city for using tax payer money to push a bond. Specifically, Mayor Tim Keller on the city's website is urging voters to vote "Yes" on the G.O. Bond.

>>

>> Keller wrote: "Let's come together on November 5 as One Albuquerque to make our community safer, more innovative, and more inclusive by voting "YES" on the G.O. Bonds..."

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>>

>> The Rio Grande Foundation says its against the law for the city to use its tax payer-funded website to promote a stance in the election. Any reaction or statement to this?

>>

>>

>> Russell Contreras

>> Associated Press

>> (505) 822-9022

>> (917) 520-9210 cell

>> rcontreras@ap.org

>> Twitter: @russcontreras

>>

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Gurule, Yvette M.

From: Nair, Sarita
Sent: Wednesday, November 6, 2019 12:30 PM
To: Huval, Lisa L.
Subject: RE: Voters approve bond funds for new shelter - next steps

Nice! Thanks!

From: Huval, Lisa L.
Sent: Wednesday, November 6, 2019 10:25 AM
To: Huval, Lisa L. <lisahuval@cabq.gov>
Subject: Voters approve bond funds for new shelter - next steps

Good morning Homeless Advisory Council members,
Yesterday, voters approved GO bond funding for new community facilities, including \$14 million for the design and construction of a new 24/7, centrally located emergency shelter!

We will continue our community engagement process as we proceed with the development of a centrally located shelter, and the resources to operate it. This will include an analysis of how to assess and mitigate the impacts of any facility on the surrounding neighborhoods and the community at large. It will also include a discussion of the resources needed to move people through the shelter, into housing and supportive services. Any process will need to balance the practicalities of financial resources and the landscape of existing facilities and programs to support the new shelter.

The Homeless Advisory Council will be a critical part of our community engagement process over the coming months. I will be sharing more details with you about next steps at our next Homeless Advisory Council meeting, which will be November 21st from 3pm – 5pm at the Los Duranes Community Center.

I look forward to working with all of you as we continue planning for this much needed resource in our community.

Sincerely,
Lisa Huval



LISA HUVAL
Deputy Director of Housing & Homelessness
O 505.768.2877
cabq.gov/family

Gurule, Yvette M.

From: Ross, Matthew
Sent: Tuesday, November 5, 2019 9:30 PM
To: Ross, Matthew
Subject: STATEMENT: Mayor Keller on Passage of City Bond Measures



FOR IMMEDIATE RELEASE
Contact: Matt Ross | 505.762.3111

Mayor Keller on Passage of City Bond Measures

ALBUQUERQUE, N.M.—Following the close of polls in municipal elections, Mayor Tim Keller released the following statement on the apparent results:

"Today, Albuquerque reaffirmed our top priorities, approving by wide margins the City bond initiatives to fight crime, address homelessness, and rebuild infrastructure. Albuquerque voters gave us another clear mandate to continue moving our city forward with investments to tackle our biggest challenges head on."

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Gurule, Yvette M.

From: Ross, Matthew
Sent: Tuesday, November 5, 2019 9:35 PM
To: Ross, Matthew
Subject: STATEMENT: Mayor Keller on Passage of Proposition One



FOR IMMEDIATE RELEASE
Contact: Matt Ross | 505.763.1111

Mayor Keller on Passage of Proposition One

ALBUQUERQUE, N.M.—Following the close of polls in municipal elections, Mayor Tim Keller released the following statement on the apparent results:

“With Proposition One, we are finally updating the Open and Ethical Elections Code with new rules to close loopholes, improve public financing, and increase transparency in City elections.”

###

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From: Ross, Matthew
Sent: Tuesday, November 5, 2019 9:35 PM
To: Ross, Matthew
Subject: STATEMENT: Mayor Keller on Passage of Proposition One



FOR IMMEDIATE
Contact: Matt Ross | 505.762.2000

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