May 20, 2020

Lissa Herrera  liherrera@las-cruces.org
Records Custodian
City of Las Cruces
PO Box 20000
Las Cruces, NM 88004

RE: Documents related to RE: Denial of Discipline Records/Matter of Opinion

Dear Ms. Herrera,

The New Mexico Foundation for Open Government (FOG) is dedicated to ensuring access to public information in New Mexico, which includes assisting both records requestors and public entities regarding compliance with the New Mexico Inspection of Public Records Act (“IPRA”) and assisting those who have concerns about compliance with the Open Meetings Act (OMA).

FOG has received a complaint from Bethany Freudenthal in regards to a response she filed to inspect Las Cruces City Police disciplinary documents. Your most recent reply states the documents are withheld as they are matters of opinion.

The limited personnel exception to IPRA is very narrow. It does not protect all records in a personnel file, nor all records related to discipline of employees. It applies only to “letters or memorandums which are matters of opinion in personnel files.” All other records relating to public employees, including records of discipline, are open to public inspection. Under IPRA, the fact that specific employees may have been disciplined would not be considered exempt under IPRA. If discipline has been imposed that is an objective fact not "matter of opinion."

The Attorney General’s Compliance Guide to IPRA makes clear that “factual information or other public information is not protected merely because it is kept in employee files.” The guide also explains that requested documents which contain significant factual information in addition to opinion remarks should be provided with the opinion information blocked out or otherwise redacted.

As such, please provide Ms. Freudenthal with all of the requested documents immediately as the request is more than two months old. For further reference, the AG issued guidelines in March stating IPRA was in full force during the current health emergency, including the 15 days timeframe in which to produce the records.

Sincerely,

Melanie J. Majors
Executive Director
NM Foundation for Open Government

Cc: John Kreienkamp, assistant attorney general, Office of Attorney General,  jkreienkamp@nmag.gov
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