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June 29, 2017

VIA FIRST CLASS MAIL AND E-MAIL

Kimberly Bell
Senior Deputy University Counsel
Office of University Counsel
1 University of New Mexico
MSC05 3440
Albuquerque, NM 87131-0001

Re: University Procedure for Responding to IPRA Requests

Dear Ms. Bell,

I am writing on behalf of my client Daniel Libit regarding an issue he has recently encountered with John Rodriguez, the University of New Mexico's custodian of records. Even though there is no active litigation regarding these issues, I am writing to you out of an abundance of caution because Mr. Libit and the University are currently engaged in litigation. If this letter is better suited to review by Mr. Rodriguez, please forward it to him.

On May 25, 2017, Mr. Rodriguez stated to the Journal that in his role as the records custodian, he passes on requests to those University employees that may have responsive documents and leaves the responsibility to produce, deny, or redact responsive documents to those employees. Because of this procedure, Mr. Rodriguez often is unaware of whether the records actually exist, why individual UNM employees are redacting documents, and the justification for denials of IPRA requests. *See* <https://www.abqjournal.com/1008648/attorney-general-informs-unm-he-is-now-looking-into-2015-golf-junket.html> (last accessed June 28, 2017). Unfortunately, in instances where Mr. Rodriguez delegates the responsibility to respond to a request to a University employee, Mr. Rodriguez still sends the response, depriving to requestor of a meaningful opportunity to ensure that a records request has been fulfilled, properly redacted, or properly denied. *See id.* (containing a statement by Mr. Rodriguez that "because the documents were provided by athletics and not through IPRA (his office), the redaction

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explanations weren't given." Mr. Rodriguez has had similar communications with Mr. Libit regarding the responses to many of his requests for public records.

It is my view that such a process violates IPRA's requirement that a records custodian, or employee responding on his behalf, "furnish public records for inspection or otherwise respond to requests to inspect public records." See Office of the Attorney General, *Inspection of Public Records Compliance Guide*, Sec. VI, p. 28. At minimum, delegating the response to an employee of the University without oversight by the IPRA office or the records custodian creates the opportunity for that employee, who may lack knowledge of IPRA's requirements, to improperly withhold or redact public records that are subject to disclosure.

Therefore, Mr. Libit respectfully requests a review of the following pending and closed IPRA Request Numbers 17-186, 17-243, 17-245, 17-252, 27-253, 17-254, 17-255, 17-256, 17-257, 17-41, 17-48, 17-114, 17-115, 17-116, 17-117, 17-189, 17-117, 17-189, 16-110, 16-111, 16-117, 16-118, 16-126, 16-127, 16-128, 16-129, 16-133, 16-149, 16-156, 16-157, 16-158, 16-159, 16-160, 16-161, 16-162, 16-170, 16-182, 16-184, 16-188, 17-154, 17-162, 17-182, 17-183, 17-187, 17-188, 17-213, 17-215, and 17-232. Mr. Libit has strong reasons to believe that all of these requests may not have been properly handled due to either the intentional or inadvertent withholding of responsive documents by University employees outside of the IPRA office and the records custodian. A review of these requests to ensure that Mr. Libit received copies of all documents responsive to requests is necessary to assure Mr. Libit, and the greater public, that University employees cannot simply withhold documents subject to disclosure by IPRA at their own discretion.

I look forward to receiving the University's response to these issues, which I believe directly contradict the letter and spirit of IPRA. It is my hope that these issues can be resolved without litigation, but Mr. Libit reserves the right to litigate this dispute if we are unable to come to a reasonable resolution of the University's IPRA office's failure to properly comply with IPRA.

Please contact me with any questions or concerns, or if you need further information.

Very truly yours,



NICHOLAS T. HART