

**October 5, 2010 Advisory Letter---County Jail Inmate Addresses and Inspections
of Public Records Act**

June 22, 2010

Representative Elias Barela
New Mexico House of Representatives
1191 John Road
Belén, NM 87002

Re: Opinion Request – County Jail Inmate Addresses and Inspections of Public
Records Act

Dear Representative Barela:

You have requested our opinion regarding whether the home addresses of inmates who are in the custody of a county jail are considered public records subject to disclosure under the Inspection of Public Records Act (“IPRA” or “Act”), NMSA 1978, Sections 14-2-1 to -12. Requests for this information have been and are being made to Valencia County.

Based upon our examination of the relevant New Mexico statutes, opinions and case law authorities, and on the information available to us at this time, we conclude that the home addresses of inmates who are in the custody of a county jail are public records subject to disclosure under the IPRA.

Under the IPRA, “Every person has a right to inspect any public records of this state...” NMSA 1978, § 14-2-1(A) (1947 as amended through 2005). The Act defines a “public record” as:

all documents, papers, letters, books, maps, tapes, photographs, recordings, and other materials, regardless of physical form or characteristics, that are used, created, received, maintained or held by or on behalf of any public body and relate to public business, whether or not the records are required by law to be created or maintained.

NMSA 1978, § 14-2-6(E) (1993).

As a preliminary matter, each inquiry regarding the IPRA “starts with the presumption that public policy favors the right of inspection. To overcome this presumption, a public entity seeking to withhold public records bears the burden of proving why their disclosure would be prejudicial to the public interest.” See Board of Com’rs of Doña Ana County v. Las Cruces Sun-News, 2003-NMCA-102, ¶ 11, 134 N.M. 283, 76 P.3d 36. In addition, “Where there is no contrary statute or countervailing public policy, the right to inspect public records must be freely allowed.” State ex rel. Newsome v. Alarid, 90 N.M. 790, 797, 568 P.2d 1243 (1977).

There are several statutes and regulations that demonstrate the legislature and local public bodies' commitment to record individuals' home addresses during the detention process. Under NMSA 1978, Section 29-10-7 (1977, as amended through 1993), "original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or long-standing custom to be made public" shall be available for public inspection. Under NMSA 1978, Section 33-3-7 (1865, as amended through 1984), the sheriff or jail administrator is required to "keep a faithful and true statement of all the prisoners detained and under their charge." The statement includes, among other things, "the name of each person committed to jail stating his place of residence ..." According to the local government records retention and disposition schedule for the Office of the County Sheriff, County Sheriffs are required to retain criminal history records of "subjects arrested for a crime by the sheriff's department" for a period of five years after the final court disposition for adults and five years after the final court disposition or until the subject reaches twenty-two years of age for juveniles. 1.19.5.50 NMAC (04/24/2006). These files "may include name of suspect, DOB, social security number, physical description, federal bureau of investigation number, address, employment, marital status, education, date of arrests or releases, mug shots, fingerprints, facts surrounding investigation, final court disposition, etc." Id. (emphasis added). These records are kept in written and electronic form. See id.

From the foregoing analysis, it is clear that the home addresses of inmates in the custody of the county jail are documents that are used, received and maintained by a public body, i.e. the county jail. See NMSA 1978, § 14-2-6(E). The addresses relate to public business because they document the inmates in the charge of the county jails. In the absence of a contrary statute or countervailing public policy, the home addresses of inmates in the custody of a county jail are subject to disclosure. While there are statutes that protect confidential sources and methods and the identities of those accused of but not charged with a crime, there is no New Mexico statute which explicitly exempts the home addresses of inmates in the custody of a county jail from disclosure under the IPRA.[1] There appears to be no recognized countervailing policy at this time that protects inmate home addresses from disclosure. Therefore, we conclude that the home addresses of inmates in the custody of a county jail are public records subject to disclosure under the IPRA.

Your request to us was for a formal Attorney General's Opinion on the matter discussed above. Such an opinion would be a public document available to the general public. Although we are providing you our legal advice in the form of a letter instead of an Attorney General's Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the public.

Very truly yours,

STEPHEN A. VIGIL
Assistant Attorney General

cc: Albert J. Lama, Chief Deputy Attorney G

[1] Law enforcement records that “reveal confidential sources, methods, information or individuals accused but not charged with a crime” are exempt from disclosure under the IPRA. NMSA 1978, § 14-2-1(A)(4). The Arrest Record Information Act protects the confidentiality of information concerning the identity of a person who has been accused but not charged with a crime. NMSA 1978, § 29-10-4.