



STATE OF NEW MEXICO

Educational Retirement Board

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June 5, 2009

Mr. Christopher G. Schatzman
General Counsel
New Mexico Educational Retirement Board
701 Camino de los Marquez
Santa Fe, NM 87505

Dear Chris:

I am writing as an individual board member to express my disagreement with the position you have taken to date on behalf of the New Mexico Educational Retirement Board ("ERB") regarding certain Inspection of Public Records Act ("IPRA") requests. My understanding is that you recently received a renewed request from the Albuquerque Journal regarding two federal grand jury subpoenas, and this letter will focus specifically on that pending request. However, my general observations about the Inspection of Public Records Act are intended to apply broadly to all past and future requests directed to the ERB.

IPRA is based on the fundamental principle that, in a democracy, sunlight is the best disinfectant. Consistent with this principle, the New Mexico Legislature has explicitly stated the purpose of the Act as follows:

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.

It is our Board's legal and ethical responsibility to respect this declaration of the public policy of our State. It also is absolutely essential to our mission that we provide as much disclosure as possible for our members, who are the beneficiaries of our fund. While I recognize there are limits both to IPRA's scope and to the ERB's available resources, I expect our staff to do its utmost to further the purposes of IPRA. Accordingly, when in doubt, I expect our staff to put its collective thumb on the scale in favor of disclosure, rather than nondisclosure. In addition, to the extent reasonably possible without compromising its ability to perform its responsibilities to our members, I expect our staff to do everything reasonably possible to devote the resources necessary to accomplish full and prompt disclosure under the law.

Regarding the IPRA requests for the grand jury subpoenas in particular, I assume it would place no burden on the staff to disclose these documents as requested. Accordingly, the only issue is whether the subpoenas fall outside of IPRA's scope. Of course, I am not a lawyer and I do not have the expertise to interpret the statute. But I do know that when Governor Richardson's Office was presented with an IPRA request for a grand jury subpoena, the Governor's Office complied and disclosed the subpoena. Therefore, I am assuming the Governor's counsel determined that, at least arguably, the subpoena fell within IPRA's scope. On that basis alone, I urge you to reconsider your decision and to disclose the subpoenas.

Alternatively, I would like to address the reasons that you previously provided for declining to disclose these subpoenas; that is, the exception for records compiled for law enforcement purposes. The ERB is not a law enforcement agency, however, and it seems to me that this exception should be asserted, if at all, by such an agency. Therefore, if federal law enforcement authorities have not requested that the ERB keep the subpoenas confidential, I disagree with your asserting this exception. In contrast, if the federal law enforcement authorities *have* requested that the ERB not disclose the subpoenas, I then request that you contact the appropriate federal official and ask them to reconsider in light of the concerns I have raised.

Finally, assuming the federal law enforcement authorities have requested the nondisclosure and those authorities persist in that request, then I agree it would be prudent for the ERB to honor the request, absent a Court Order. If that is the case then please tell me and let's talk about it further.

Please let me know if you will agree to reconsider your approach, and to proceed in the manner I have suggested. If you are not willing to do so, please schedule a special board meeting at the earliest available date after my return from ERB continuing education during the week of June 8.

Thank you.

Yours truly,

A handwritten signature in black ink, appearing to read "Bruce F. Malott", with a long, sweeping flourish extending to the right.

Bruce F. Malott, CPA, CFP, CVA, CFF

cc: Jan Goodwin
Board Members