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February 18, 2009

John E. Weckerle  
WeckTech  
[John@wecktech.com](mailto:John@wecktech.com)

**VIA E-MAIL ONLY**

**Re: Request to Inspect Public Records**

Dear Mr. Weckerle:

As you may know, I represent the Town of Edgewood as its Town Attorney. I have been asked to respond to your request for the letter from Chief Welch to the Mayor and Council.

The New Mexico Inspection of Public Records Act allows the public to inspect public records. However, no right to inspect exists for non-public records, such as settlement negotiations. This includes Chief of Police Paul Welch's letter to the Mayor and Council. Chief of Police Welch's letter was sent as part of settlement negotiations with the Town. The letter sets forth the terms of his settlement offer and was intended to settle Chief of Police Welch's threatened litigation against the Town. The purpose of Chief of Police Welch's letter was to negotiate the terms of a settlement, which included his resignation. Although the final terms of a settlement may be public record, preliminary negotiations in the settlement process are not. Since the letter from Chief of Police Welch was a settlement offer sent as part of settlement negotiation, it is not a public record and is not subject to inspection under the Act.

Although no statute directly exempts letters sent to a public body by an official of that entity from inspection, the New Mexico Supreme Court allows public entities to withhold non-public records, including documents related to employment contract negotiations *sent to and from* the entities employees. In Sanchez v. Bd. of Regents of E. N.M. Univ., members of a student newspaper sought to inspect a list of proposed faculty contracts and salary provisions. 82 N.M. 672, 674, 486 P.2d 608, 610. The Court denied the request, stating "[o]bviously, completed contracts would be public records and available to inspection under the provisions of the New Mexico statutes....[however,] [w]e believe that no useful purpose would be served by disclosing preliminary contractual negotiations between the board and its professional and other employees." Id. at 674-75, 486 P.2d at 610-11. The Court further acknowledged that the contract negotiations could include transmittals from both the entity itself and its employees. Id. at 674, 486 P.2d 610.

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The Court further stated, "[o]nly documents which present ultimate actions should be accessible to the public. Those which are merely part of the preliminary steps by which the conclusion was reached should become public, only in the discretion of the particular agency." Id. at 675, 486 P.2d at 611. In reaching its decision, the Court does not take away the right of the public to know about negotiations, but "merely suspend[s] or defer[s] the privilege of inquiry until the [public entity] reaches its final conclusion, i.e., the culmination of the contract between the board and the individual." Id. at 675-76, 486 P.2d 611-12.

Therefore, Chief of Police Paul Welch's letter to the Mayor and Council may properly be withheld as it was also sent as part of the negotiations for settlement of threatened litigation regarding an employment contract.

Please do not hesitate to contact me if you have any further questions in this matter. I would be glad to discuss this matter with you further.

Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Marcus J. Rael, Jr.", with a stylized, elongated loop at the end.

Marcus J. Rael, Jr., Esq.

MJR/rdt