



## 1. How did the Department of Insurance violate the Public Records Act (“PRA”)?

After significantly narrowing Consumer Watchdog’s PRA requests at the Department of Insurance’s request, the negotiated language sought communications and meetings with **not only** certain named individuals whom Consumer Watchdog had identified as relevant to the pay-to-play scandal, **but also** “any individuals **employed by or representing** Applied Underwriters . . . .” At the time of the PRA Requests, there was no way for Consumer Watchdog to know all the individuals or lobbying firms representing Applied, but the Department knew because staff were scheduling the meetings and receiving the communications. However, the Department did nothing to determine who beyond the specifically identified people that Lara and/or Department staff might have met with or communicated with—for example, former Assembly Speaker and now lobbyist Fabian Nunez and former New Mexico Superintendent of Insurance Eric Serna. This failure violates the Department’s duty under the PRA law.

The Department has a duty under the PRA to establish search protocols and adopt search terms adequate to identify public records. “[A] requester, having no access to agency files, may be unable to precisely identify the documents sought. Thus, writings may be described by their content . . . . An agency is thus obligated to search for records based on criteria set forth in the search request.” (*Cal. First Amendt. Coal. v. Sup. Ct.* (1998) 67 Cal.App.4th 159, 165–66; see also *ACLU v. Sup. Ct.* (2011) 202 Cal.App.4th 55, 85 [“[g]overnment agencies—particularly those with an incentive not to assist in the dissemination of their files . . . may demand an unreasonable level of specificity.”].)

## 2. How has the Department responded?

Denials and obfuscations. The Department has repeatedly made the non-response to these allegations that ‘all records were produced.’ But this claim is belied by the facts. Following Consumer Watchdog’s win on a recent discovery motion, the Department was required to describe “everything that [the Department] did to search for records responsive to the PRA Requests.” The Department’s [Further Response to Interrogatory No. 10](#) (pages 19-23) shows that the Department did **absolutely nothing** to try to determine what other individuals were “representing Applied.” The **only** search terms used by the Department is the list of names from Consumer Watchdog’s PRA requests. Nothing was done to determine who else Lara or Department staff might have communicated with regarding Applied. For example, neither Commissioner Lara nor Department staff were asked who else they might have communicated with. Such interviews are commonplace and the lack of such questioning is deafening and is evidence of the Department’s strategic avoidance of identifying records the Department did not want to produce.

## 3. What’s next in Consumer Watchdog’s PRA case?

On March 4, 2022, the Court will hear a motion brought by Consumer Watchdog to depose Department of Insurance Scheduling Director Rebecca Potter. Ms. Potter received email communications from individuals setting up meetings between Insurance Commissioner Lara and Applied Underwriters. However, those individuals’ names did not appear among the search terms used to identify other responsive documents.