

Our View: Break the law? Pay the price

Posted: Saturday, September 12, 2015 7:00 am

The New Mexican

A district judge's decision to award \$14,071 in attorney fees over a stalled open records request should put all public officials on notice. The decision came as a result of state Public Education Department officials failing to respond to a public records request over statewide teacher evaluations. District Court Judge Sarah Singleton made the right call.

The people do have a right to know and to examine records and documents. Elected, appointed or other officials who don't answer Inspection of Public Records Act requests should not be let off lightly. And those rights are for all citizens. That's why the judge's decision sends a warning to bumbling bureaucrats everywhere.

In this case, the state chapter of the National Education Association had filed several requests for public records with the Public Education Department back in 2014. The union wanted proof that a previous teacher evaluation — claimed to be inadequate — actually did rate 99 percent of all public school teachers as "effective." That claim has been looked at skeptically by many.

The documentation mattered because this allegedly lousy evaluation tool was given as the reason New Mexico needed a new teacher evaluation system — and fast. The new system, which ties performance to standardized test scores by students, was instituted administratively rather than by statute. That's because, according to education officials, the previous system was in shambles.

State officials say the 99 percent figure was calculated by examining evaluation dossiers from 7,000 educators. There is no official report, or "record," to turn over to interested citizens.

The department could not respond to the records request, at least that's the claim. There might have been no single or official report, but we doubt that there isn't a record — somewhere — on state computers to show how the 99 percent figure was determined.

The alternative is that there are no documents at all. That could lead some to conclude that education department bosses made up the 99 percent number. They could have admitted that when the records request was submitted, thus answering the request in a timely fashion and avoiding both fine and fees for attorneys. That admission, of course, would have prompted an uncomfortable question — why the rush on new evaluations if the 99 percent figure is fake?

The department's response after the judge's decision is to accuse the teachers union of preferring to spend money on — gasp! — those awful lawyers than on deserving schoolchildren. We agree that taxpayer dollars aren't best spent paying attorneys, especially when children need books and teachers need raises. And the fees in this case are hefty, even though the judge only granted 85 percent of what the lawyers wanted. The Public Education Department also has been fined \$485 for withholding records.

However, the way to put tax dollars to their highest use is for bureaucrats of all stripes — from the highest Cabinet officer to a clerk at the county level — to answer public records requests in a timely fashion. That way, there will be no fines or fees ordered. Just follow the law.

What's more, if lawyers are paid a fair market fee, as the law requires and this judge ordered, more attorneys will take cases to represent the public interest. Then maybe, just maybe, the petty bureaucrats who stall and don't turn over records will stop breaking the law.

It's even possible that some day, state employees — elected or simply hired folks — who don't answer records requests in a timely fashion or who purposely stonewall, could face individual fines, or even criminal penalties. The Legislature can toughen public records laws and should, when it becomes clear that they're being ignored.

Until that happens, Judge Singleton's decision adds teeth to the law — by hitting government in the pocketbook, where the blow can sting.