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Santa Fe County
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KATHLEEN VIGIL CLERK OF THE COURT
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STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

NEW MEXICO FOUNDATION FOR OPEN GOVERNMENT,

Plaintiff,

v. **No.** D-101-CV-2026-02661

NEW MEXICO GENERAL SERVICES DEPARTMENT and the RECORDS CUSTODIAN FOR NEW MEXICO GENERAL SERVICES DEPARTMENT,

Defendants.

COMPLAINT TO ENFORCE THE INSPECTION OF PUBLIC RECORDS ACT

Plaintiff New Mexico Foundation for Open Government ("NMFOG"), for its complaint against Defendants New Mexico General Services Department and the Records Custodian for the New Mexico General Services Department (collectively, "GSD"), states as follows:

Introduction

1. This case centers on Defendant GSD's unlawful refusal to allow inspection of public records as required by the New Mexico Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 – 12 (2025) ("IPRA").
2. GSD wrongfully denied access to an unfiled complaint that accuses the New Mexico Aging and Long-Term Services Department ("ALTSD") of violations of the New Mexico Civil Rights Act, the New Mexico Tort Claims Act, and other violations of law.
3. The allegations in the complaint resulted in a payout of $300,000 from GSD's Public Liability Fund, a pool of taxpayer generated money.

4. Risk Management, a division of GSD that provides coverage and legal representation to state agencies, authorized the $300,000 settlement.

5. When asked to produce the complaint for inspection under IPRA, even though GSD possessed the complaint, GSD unlawfully refused to permit its inspection and instead, directed ALTSD – a separate state agency – to respond to Plaintiff's IPRA request, so that ALTSD could unlawfully hide the complaint behind the confidentiality provisions of Section 27-7-29(A) of the Adult Protective Services Act, which shields ALTSD records "created or maintained" pursuant to Adult Protective Services investigations from public disclosure, NMSA 1978, § 27-7-29 (2007), but which has no application here.

6. ALTSD produced a heavily redacted version of the complaint, primarily citing Section 27-7-29 as grounds for the redactions.

7. To date, the allegations of the state's wrongdoing outlined in the complaint that resulted in a $300,000 payout of taxpayer money remain secret from the public.

Parties

8. Plaintiff NMFOG is a New Mexico nonprofit, nonpartisan organization whose mission is to help individuals, businesses, students, educators, journalists, lawyers, and other engaged citizens understand, obtain, and exercise their rights under IPRA, the New Mexico Open Meetings Act ("OMA"), the Arrest Record Information Act, the First Amendment to the United States Constitution and Article II Section 17 of the New Mexico Constitution, as well as to help public officials understand and discharge their obligations under those statutes and constitutional provisions. NMFOG has its principal place of business in Bernalillo County, in the state of New Mexico.

9. Defendant New Mexico General Services Department is a state agency and a "public body"

within the meaning of IPRA, NMSA 1978, Section 14-2-6(G)(2023).

10. Defendant GSD has not clearly designated a records custodian as required by Section 14-2-7 of IPRA. NMSA 1978, § 14-2-7 (2001). Pursuant to Rule l-025(D)(2) NMRA, NMFOG names the Defendant Records Custodian by her/his official title. NMRA, Rule 1-025.

Jurisdiction and Venue

11. The Court has jurisdiction over the parties and subject matter of the action under NMSA 1978, Sections 38-3-2 (1998) and 14-2-12 (1993).

12. Venue is proper under NMSA 1978, Section 38-3-2 (1953).

Background and General Allegations

13. After learning of a $300,000 settlement payout by ALTSD in May of 2026, via the New Mexico Sunshine Portal, reporter Daniel Chacon with the Santa Fe New Mexican submitted public records requests to ALTSD and GSD for a copy of the "complaint for damages or any other documentation, filed or unfiled, pertaining to a $300,000 settlement involving Jim Morris and Margaret Morris (also identified as J.M. & M.M.) vs. the state of New Mexico."

14. The settlement agreement in question references Plaintiffs/Releasors' "Complaint for the Damages for State Civil Rights Violations, Tort Claims and Other Constitutional Violations," that "could have been filed" on behalf of the releasors.

15. There appears to be no court case or filed complaint associated with the settlement agreement.

16. GSD denied Mr. Chacon's request for the complaint in full, stating, "I am referring you back to ALTSD since they are they holder of the statutory confidentiality interest in this matter," and "[r]est assured that GSD/RMD is not skirting its public record obligations as to its own or other agency's records[…] RMD has made disclosure on the Sunshine Portal of the

settlement agreement consistent with RMD's duties."

17. On July 20, 2026, Plaintiff NMFOG submitted an IPRA request to GSD for an electronic copy of the same complaint sought by Mr. Chacon, requesting:

> "Plaintiffs/Releasors' Complaint for the Damages for State Civil Rights Violations, Tort Claims and Other Constitutional Violations as referenced in the settlement agreement entered into on May 5, 2026, by Plaintiffs Jim Morris, on behalf of himself and Margaret Morris, and Defendants the State of New Mexico, Adult Protective Services, New Mexico Aging and Long Term Services Department, Gerrel Alastair Keith-Davis, Robert Vargas, Patrick Gomez, and Juanita Washington."

18. On July 21, 2026, GSD denied Plaintiff's request in full, stating,

> "GSD does not have custody or control of the records you requested because this agency is not responsible for maintaining those records. The records may be maintained by the New Mexico Aging and Long-Term Services Department (ALTSD), 2550 Cerrillos Road, Santa Fe, NM 87505. Their telephone number is 1-800-432-2080. The following link will take you directly to ALTSD's Public Record Request page: Public Records Request - New Mexico Aging and Long-Term Services Department - ALTSD. GSD is forwarding your request to that agency's records custodian for response, but it is recommended that you follow up directly to make certain your request is received and processed."

19. Plaintiff responded to GSD, reiterating its request for the complaint, explaining,

> "If New Mexico General Services 'used, created, received, maintained or held' the requested complaint, which I assume it would have had to in order to authorize paying out the $300,000 settlement through Risk Management, then your Department must provide a copy for inspection under IPRA. See IPRA's definition of a public record under NMSA 1978 Section 14-2-6(H). Please provide a copy of the complaint as requested."

20. GSD responded to Plaintiff on July 24, 2026, stating, "[a]s you know, your request was referred to the New Mexico Aging and Long-Term Services Department (ALTSD), the state agency that holds the confidentiality interest or interests in this matter. We are advised that ALTSD has provided you a copy of the complaint with the required statutory redactions per the ALTSD statute."

21. GSD has not denied it possessed a copy of the requested complaint.

22. To date, GSD has failed to provide Plaintiff with a copy of the requested complaint.

23. Also on July 20, 2026, Plaintiff submitted the same IPRA request for the same Complaint to ALTSD.

24. On July 23, 2026, ALTSD provided a heavily redacted version of the complaint to Plaintiff, citing NMSA 1978, Sections 27-7-14 through 27-7-29(A) as grounds for the "many redactions [ ] made pursuant to an Adult Protective Services investigation."

25. Section 27-7-29(A) provides that "all records of the department, the department's designee, including a multidisciplinary team, the court and state and local agencies that are created or maintained pursuant to investigations under the Adult Protective Services Act or for whom application has ever been made for protection shall be confidential and shall not be disclosed directly or indirectly to the public." NMSA 1978, § 27-7-29.

26. A written complaint against ALTSD is not "created or maintained pursuant to [an] investigation[ ] under the Adult Protective Services Act" within the meaning of Section 27-7-29(A). ALTSD has authority to investigate reports of abuse and neglect of vulnerable adults under Section 27-7-29(A)(3) but not claims of wrongdoing by ALTSD itself. Therefore, the requested complaint is not exempt under Section 27-7-29.

27. ALTSD also cited IPRA's exception for "records pertaining to physical or mental examinations and medical treatment of persons confined to any institution," Section 14-2-1(A), and "health information relating and identifying specific individuals as patients is strictly confidential and not a matter of public record," under Section 14-6-1, as grounds for some of the redactions.

28. Even in the unlikely event the complaint contained allegations to which Sections 14-2-1(A) and 14-6-1 did apply, only those discreet portions containing health information or medical

treatment of a person "confined to any institution," or that which would identify a person as a patient, could be redacted on these bases. These exceptions are not grounds to redact all allegations of ALTSD's wrongdoing.

29. If ALTSD had not settled the claims of Plaintiffs Jim Morris and Margaret Morris out of court, the complaint would have been filed in a District Court of New Mexico and been publicly available with no redactions.

30. The public deserves to know why the Risk Management Division of GSD paid $300,000 taxpayer money for the state's violations of the law. The fact the complaint was never filed in open court does not absolve the state's responsibility to make this public record available for inspection.

Violations of the Inspection of Public Records Act

31. Section 14-2-1 of IPRA guarantees the right of every person to inspect public records of this state. NMSA 1978, § 14-2-1(2025).

32. Section 14-2-5 of IPRA provides, "[...] 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." NMSA 1978, § 14-2-5(1993).

33. The New Mexico Supreme Court has held that "[a] citizen has a fundamental right to have access to public records. The citizen's right to know is the rule, and secrecy is the exception. 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*, 1977-NMSC-076, ¶ 34,

568 P.2d 1236.

34. IPRA 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(H) (2023).

35. The only public records that may be lawfully withheld from inspection are those subject to the limited exceptions outlined in Section 14-2-1(A)-(N) of IPRA.

36. A person whose written public records request has been unlawfully denied may bring an action to enforce any provision of IPRA. NMSA 1978, § 14-2-12(A)(2) (1993).

Count I
Violation of NMSA 1978, Section 14-2-1
Plaintiff's July 20, 2026, IPRA Request

37. Defendant GSD used, received, maintained or held the complaint, as contemplated by IPRA.

38. Defendant GSD violated IPRA when it refused to permit inspection of the complaint.

39. The complaint is a public record as defined in Section 14-2-6(H) of IPRA.

40. Defendant GSD was required to produce the complaint under Section 14-2-1, and its failure to do so is a violation of IPRA.

41. Defendant GSD's violation of IPRA entitles Plaintiff to remedies under Sections 14-2-11(C) (1993) and 14-2-12(D) (1993).

Prayer for Relief

WHEREFORE, Plaintiff NMFOG prays that the Court enter judgment in Plaintiff's favor and against Defendant GSD for the following relief:

A. An order directing GSD to satisfy the above-described IPRA request in full;

B. An award of damages, costs, and reasonable attorneys' fees under IPRA, NMSA 1978, Sections 14-2-11(C) and 14-2-12(D); and

C. Such other relief as the Court deems just and proper.

Respectfully submitted,

NEW MEXICO FOUNDATION
FOR OPEN GOVERNMENT



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