

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

NEW MEXICO FOUNDATION
FOR OPEN GOVERNMENT,

Plaintiff,

Case assigned to Biedscheid, Bryan

v.

No. D-101-CV-2025-00796

NEW MEXICO CORRECTIONS DEPARTMENT, and
RECORDS CUSTODIAN FOR THE NEW MEXICO
CORRECTIONS 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 Corrections Department (“NMCD”) and the NMCD Records Custodian, alleges and states as follows:

Introduction

1. This case concerns an unlawful denial of Plaintiff’s right to inspect records of the NMCD under the Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 – 12 (“IPRA”).
2. The Defendants unlawfully denied access to NMCD public records pertaining to payment to counsel who have represented NMCD in litigation to enforce IPRA and records reflecting settlement or court awards paid by NMCD for IPRA violations.
3. Additionally, Defendant NMCD unlawfully refused to adequately explain what records it withheld pursuant to a request to inspect records related to seizure of contraband and unlawfully relied on its own policies and other inapplicable provisions of law as a basis to prohibit inspection of its public records under the “as otherwise provided by law” exception under IPRA.

4. Defendant NMCD has a history, practice and pattern of failing to comply with its statutory obligations under IPRA. Despite the many successful lawsuits aggrieved IPRA requestors have brought to correct Defendant's numerous and repeated violations of IPRA, Defendant continues to violate the law. Litigation to enforce individual instances of Defendant NMCD's violations of IPRA has not deterred Defendant from violating the law; therefore, in addition to bringing this enforcement action against NMCD and its records custodian to vindicate Plaintiff's rights to inspect the requested records under IPRA, Plaintiff also seeks prospective injunctive relief against Defendant to ensure Defendant's future compliance with IPRA.

Parties

5. 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 Open Meetings Act, 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.

6. Plaintiff submits requests to inspect public records under IPRA as part of its mission to advocate for government transparency. Plaintiff expects to file IPRA requests with Defendant NMCD in the future.

7. Defendant NMCD is a department of the State of New Mexico charged with operating prison facilities in the state. It is an entity of the state of New Mexico and a “public body” within the meaning of IPRA, NMSA 1978, § 14-2-6(G).
8. The Records Custodian of NMCD is the individual designated by NMCD to receive and respond to requests to inspect public records under IPRA. On information and belief, at all times relevant to Plaintiff’s IPRA requests, the acting Records Custodian was General Counsel for Defendant NMCD, David Pardo.

Jurisdiction and Venue

9. The Court has jurisdiction over the parties and subject matter of the action under NMSA 1978, § 14-2-12 and § 38-3-1.1 (1988).
10. Venue is proper under NMSA 1978, § 38-3-1(A) (1988).

Factual Allegations

11. Plaintiff brings this IPRA enforcement action against Defendants to enforce two instances of Defendant NMCD’s failure to comply with its statutory obligations under IPRA, and to request prospective injunctive relief against Defendant NMCD and its records custodian to ensure future compliance with IPRA.
12. First, Defendants have unlawfully refused to allow inspection of public records of legal costs for defense of IPRA lawsuits, as well as records of settlement and award amounts paid for IPRA violations from 2021 through 2024, in violation of NMSA 1978, § 14-2-1.
13. Second, Defendants have unlawfully withheld responsive records and failed to provide an adequate explanation of their decision to withhold records pertaining to seizure of contraband in prison facilities, in violation of NMSA 1978, § 14-2-11.

14. Last, Defendant NMCD has a pattern and practice of failing to comply with its statutory obligations under IPRA, which numerous successful IPRA lawsuits against the agency have failed to correct. Intervention from the courts is necessary to ensure Defendant NMCD's future compliance with IPRA.

I. Request for Records of Legal Costs and Settlement Amounts (Request No. 24-230)

15. On April 3, 2024, Plaintiff submitted the following request to inspect public records, pursuant to § 14-2-8 of IPRA:

1. *Please provide all records reflecting payment to outside counsel who have represented or are currently representing the New Mexico Department of Corrections (NMCD) in court actions regarding NMCD's failure or alleged failure to comply with its obligations under IPRA, from January 1, 2021, through today's date, April 3, 2024.*
2. *Please provide all records reflecting settlement money or awards for damages, fees, and costs, paid by NMCD as a result of lawsuits regarding IPRA from January 1, 2021, through today's date, April 3, 2024.*

16. On April 4, 2024, Defendant custodian acknowledged Plaintiff's request. Defendant assigned number 24-230 to the request and indicated it would respond within 15 days.

17. On April 18, 2024, David Pardo, General Counsel and acting records custodian at the time for Defendant NMCD, indicated that Defendant would not be providing any responsive records, and responded with the following email:

With regards to this request, we have no records reflecting payments to outside counsel. You may wish to make your request for such records to the General Services Department, which can be contacted here: [GSD RecordsNextRequest - Modern FOIA & Public Records Request Software](#)

With regards to records reflecting settlements or monetary awards, we have no such records. To the extent that we have any responsive records, your request is not reasonably particular because it does not identify the case(s) involved or the attorney(s) assigned since we do not keep lists or logs of such information. You may also wish to make this request to the General Services Department at the link above.

This request is now considered closed. I am the official responsible for any denial of your request.

18. Plaintiff responded to Defendant custodian, clarifying that it was not seeking to inspect a list or log of the requested public records, but instead sought to inspect the requested records as they exist in any format. Plaintiff further clarified that it was not seeking records pertaining to any one individual lawsuit.

19. Defendant sent Plaintiff the following response:

Our response has not changed. Your request for any record showing settlement or monetary award due to any IPRA lawsuit is not reasonably particular in light of the fact that we do not store such information in a log or list that would allow us to locate the records with reasonable ease. Given the staff turnover at the Office of General Counsel over the last few years, without more specificity from you we would need to unearth the entirety of all PST inboxes for all such attorneys or paralegals, index them, and then search them for settlement, settlement amounts, attorneys fees, etc., which does not guarantee that we would capture all responsive records. This also does not account for outside counsel acting on behalf of the Department, which presents even more problems from a particularity standpoint.

Accordingly, at present your requests are not reasonably particular.

20. To date, Defendant has refused to allow inspection of the records requested by Plaintiff as described in Request No. 24-30.

II. Request for Records Related to Seizure of Contraband (Request No. 24-229)

21. On April 3, 2024, Plaintiff submitted the following request to inspect public records, pursuant to § 14-2-8 of IPRA:

*Please provide **all records** (e.g. evidence logs, photographs, disciplinary investigations or reports, law enforcement reports, contraband disposal logs, or other records) reflecting the seizure of contraband drugs (e.g. suboxone, heroin, spice, fentanyl) and drug paraphernalia (e.g. needles, syringes, foil) in all New Mexico Corrections Department facilities from November 1, 2022 through April 28, 2023.*

22. On April 4, 2024, Defendant custodian acknowledged Plaintiff's request. Defendant assigned number 24-229 to the request and indicated it would respond within 15 days.

23. On April 18, 2024, Mr. Pardo responded to the request via email. The email contained a link to redacted responsive records as well as the following written response:

Please note that the following categories of information were redacted or withheld:

- *Personal identifier information, consistent with NMSA 14-2-1.1*
- *Medical information, consistent with NMSA 14-2-1(A)*
- *Strategic Threat Information Communications, consistent with NMSA 14-2-1(L) and CD-131502(N)(3) and (O)*
- *MVD information, consistent with NMSA 14-2-1(L) and NMSA 66-2-7.1*
- *Visitor addresses and phone numbers which are not public business, consistent with NMSA 14-2-5*

Your request is excessively burdensome or broad at this time due to the need to process additional records. I will have more information for you no later than May 9, 2024.

24. On April 29, 2024, Plaintiff responded to Defendant custodian requesting clarification on the numerous redactions throughout the responsive records. Other than the list of “categories of information” Mr. Pardo cited as redacted or withheld in his April 18, 2024, email, Defendant did not provide a written explanation describing the denied records sought by Plaintiff. It is impossible to discern what public records Defendant withheld in its redactions, and it is impossible to know which exception under IPRA Defendant relies on to justify each redaction. Plaintiff requested that Defendants provide an adequate explanation of the denied records in conformance with §14-2-11(B) and that Defendants explain the basis for withholding public records under the cited exceptions of “Strategic Threat Information Communications ‘CD-131502(N)(3) and (O)’” and NMSA § 66-2-7.1, identified by Mr. Pardo.

25. On April 29, 2024, Mr. Pardo responded with the following:

NMSA 1978,14-2-11(B)(1) requires a description of the records sought, not the records withheld. A privilege log is not required to be created either. NMSA 1978, 14-2-8(B).

The STIU policy is confidential and has been published pursuant to the Secretary's rulemaking authority. NMSA 1978, 9-3-5(E) and be 33-1-6(B).

Visitor addresses and phone numbers are not public business. NMSA 1978, 14-2-6 (G) (Record must relate to public business to be defined as a public record) and the Attorney General's Inspection of Public Records Act Compliance Guide, Eighth Edition, pages 25-27 (Agency can deny a request for personal contact information because the record does not relate to public business, as it does not reveal anything about the official acts of the employees or the operations or activities of the agency).

MVD information such as driver's licenses cannot be disclosed under penalty of a misdemeanor and its release is strictly controlled.

26. On May 9, 2024, Defendant provided an additional 11 pages of unredacted responsive records via email and indicated that it would provide additional information regarding Request No. 24-229 no later than May 30, 2024.

27. On May 30, 2024, Mr. Pardo provided a link to responsive redacted material, together with the following response:

Please note that the following categories of information were redacted or withheld:

- *Personal identifier information, consistent with NMSA 14-2-1.1*
- *Medical information, consistent with NMSA 14-2-1(A)*
- *Strategic Threat Information Communications, consistent with NMSA 14-2-1(L) and CD-131502(N)(3) and (O)*
- *Escape flyers, consistent with NMSA 14-2-1(L) and NMCD Policy CD-0400100(C)(g)(3)*

Your request is now considered closed. I am the official responsible for any denial of your request.

28. Defendant refused to provide any explanation as to what redacted information corresponded to which cited exception to IPRA.

III. NMCD's Repeated Failure to Comply with IPRA

29. Defendants have a pattern and practice of failure to comply with their statutory obligations under IPRA and of unlawfully denying access to public records of NMCD.

a. Defendants unlawfully prohibit inspection of their public records when they perceive a request to be overly broad and insufficiently particular.

30. Defendants refused to allow inspection of records requested in Plaintiff's request no. 24-230, claiming Plaintiff's request was not "reasonably particular." Defendant has a practice of refusing to allow inspection of its public records on this basis.

31. For example, another requestor submitted the following request on October 4, 2024, identified as request number 24-616, to inspect public records of NMCD:

"All communications from January 1, 2024, through present with county correctional facility employees or other county officials or agents regarding county inmates sentenced to NMCD who are on buprenorphine/suboxone or methadone. NMCD is in the best position to identify what words to search and what files and computers to access. Possible word searches include: buprenorphine, suboxone, naltrexone, methadone, MOUD, MAT, HSD, withdrawal, detox, county, Roosevelt County, McKinley County, Bernalillo County, Dona Ana County."

32. Despite the sufficient specificity of this request, and even after the requestor further clarified her search with the NMCD records custodian, NMCD General Counsel Mr. Pardo refused to fulfill the request, and provided the following explanation:

"Your request [...] is not reasonably particular as it does not adequately identify the specific county correctional officials or employees or agents whose communications you seek. You claim that 'NMCD is in the best position to identify what words to search and what files and computers to access' and that '*Possible* word searches *include*: buprenorphine, suboxone, naltrexone, methadone, MOUD, MAT, HSD, withdrawal, detox, county, Roosevelt County, McKinley County, Bernalillo County, Dona Ana County,' but implied in this message is that additional counties might be applicable. It is not up to NMCD to scour its vast systems to identify applicable, unnamed counties for you out of New Mexico's 33 counties, an unreasonably broad number. Secondly, a public body is not required to permit inspection or engage in a search if the request is not reasonably particular in the first place. See, e.g., *Wagman v. San Miguel County*, fn. 2, Memorandum Opinion, A-1-CA-40564 (issued Oct. 2, 2024) ('Because we conclude that Plaintiff's request was not reasonably particular . . ., we are precluded from determining whether the documents produced by Defendant are responsive.')."

33. On February 24, 2025, a requestor submitted a request to NMCD to inspect records of "[...]" all communications between NMCD employees and its agents regarding [an inmate's]

parole planning, release eligible dates, and application of LSAs (lump sum awards) to his sentence from January 1, 2024 through present.”

34. Defendants refused to permit inspection of at least some of these requested records, telling the requestor, “[p]lease note that the use of NMCD's ‘agents’ is not reasonably particular. NMCD employs many contractors. Without specification as to which vendor/contractor/agency you are referring to, we will not process this aspect of your request. NMSA 1978, 14-2-1(C).” Defendants also stated, “the court has no jurisdiction to review a request that is not reasonably particular.”

35. On or around January 22, 2025, another requestor asked for the “institutional file” of an NMCD inmate and provided the inmate's name and offender number. Mr. Pardo asked the requestor to further clarify what records the requestor sought. The requestor specified she sought “all of the records” on the inmate, to which Mr. Pardo responded, “[w]e cannot comply with your request for ‘all of the records you have on [inmate]’ as this request is not reasonably particular,” and instructed the requestor to visit NMCD’s webpage of institutional policies so the requestor could familiarize herself with the “types of records we hold,” and indicated he would not process the request until the requestor provided “adequate clarification.”

36. Having no way to know every single class of record Defendants possess regarding the inmate, the requestor attempted to comply with Pardo's request nonetheless and sent an enumerated list of types of records and information to Defendant, including a request for “any other documents” regarding the inmate. Although Defendants eventually provided some records in response to this request, the requestor has no way of knowing whether Defendants complied with IPRA by providing “all records” regarding the inmate.

37. On information and belief, there are many more instances where Defendants have refused to permit inspection of NMCD's public records or have made access to NMCD's public records extremely difficult, by claiming that request is not particular enough, even when a requestor specifies exactly what records they seek to inspect.

b. Defendants have a pattern and practice of failing to comply with their obligation to permit inspection of public records despite multiple successful actions to enforce IPRA brought against them. Among the various ways in which Defendants violate IPRA, Defendants have a pattern and practice of ignoring IPRA requests until they are sued, and a pattern and practice of unlawfully asserting their internal policies as exemptions to IPRA.

38. In the past three years alone, the American Civil Liberties Union (ACLU) of New Mexico, one of many plaintiffs who have sued Defendants for IPRA violations, has settled at least seven lawsuits against Defendants for their violations of IPRA. Defendants have paid nearly \$200,000 to settle these seven IPRA enforcement actions.¹

39. For example, in cause number D-101-CV-2023-01891, Plaintiff ACLU requested to inspect public records of Defendant NMCD for over three months before filing an action to enforce IPRA. During those three months, Plaintiff ACLU repeatedly asked for the records. Defendant NMCD did not provide the records for inspection or issue a denial. Defendant NMCD only permitted inspection of the requested records after Plaintiff ACLU filed their lawsuit. Defendant ultimately paid \$38,000 for these violations of IPRA.

¹ 1) *American Civil Liberties Union of New Mexico v. Management & Training Corporation and New Mexico Corrections Department*, D-1215-CV-2020-00232, settled for \$11,125; (2) *Snooky Riley v. New Mexico Corrections Department*, D-101-CV-2022-01953, settled for \$23,750; (3) *American Civil Liberties Union of New Mexico v. Brian Fitzgerald, records custodian*, D-101-CV-2020-00724, settled for \$37,500; (4) *American Civil Liberties Union of New Mexico v. New Mexico Corrections Department*, D-101-CV-2023-00204, settled for \$24,500; (5) *American Civil Liberties Union of New Mexico v. Leslie Garcia et al.*, D-101-CV-2023-02894, settled for \$30,000; (6) *American Civil Liberties Union of New Mexico v. New Mexico Corrections Department and New Mexico Corrections Department Records Custodian, Leslie Garcia, in her official capacity as records custodian for the New Mexico Corrections Department*, D-101-CV-2023-01891, settled for \$38,000; and (7) *American Civil Liberties Union of New Mexico Corrections Department Records Custodian*, D-101-CV-2023-00514, settled for \$25,000.

40. Similarly, in cause number D-101-CV-2023-01646, Defendant paid \$70,000 for its failure to respond to requests by Plaintiff Disability Rights New Mexico (DRNM) to inspect public records. Plaintiff DRNM sought to inspect public records from Defendant NMCD for approximately four months – from April 2023 to July 2023 – during which time Defendant failed to permit inspection of the records or issue a denial. It was only after DRNM filed suit against Defendant NMCD in July 2023 that Defendant provided responsive records.
41. Defendant NMCD paid again for its failure to comply with IPRA in *Apolinario Gonzales v. NMCD*, D-101-CV-2020-01888, when it unlawfully withheld records it internally classified as confidential.
42. Plaintiff Gonzales sought to inspect records related to an assault he suffered while incarcerated at an NMCD facility, including investigative records and video retention policies. Defendant withheld responsive records on the unlawful basis that its internal policies prohibited release of the requested records. The district court ordered Defendant to make the requested records available for inspection and ordered Defendant to pay a total of \$68,133.38 in fees, damages, and costs, for its failure to comply with IPRA.
43. This ruling from the district court in D-101-CV-2020-01888 did not deter Defendant NMCD from continuing to unlawfully prohibit inspection of its public records it has internally designated as confidential, as evidenced by Defendants’ response to Plaintiff’s request number 24-229.
44. Likewise, the Court of Appeals’ May 31, 2024, ruling in *American Civil Liberties Union of New Mexico v. New Mexico Corrections Department*, 2024-NMCA-071, which affirmed that Defendant’s policies or regulations cannot be used to exempt public records from

inspection under IPRA, has also failed to deter Defendant NMCD from persisting in hiding behind its internal rules to unlawfully shield public records.

45. On November 25, 2024, Defendant NMCD denied a request to inspect NMCD's public records of use of force policies and records related to a use of force incident on the basis the records are confidential under NMCD's internal policies, "STIU information," NMCD Policy CD-131502(N)(3) and (O), and "Escape flyer information," NMCD Policy 040100(C)(1)(g)(8).
46. On information and belief, there are other instances of Defendant NMCD's failure to comply with IPRA by unlawfully invoking its internal policies as a basis to shield public records from inspection.
47. The successful IPRA enforcement actions against Defendant described above are the tip of the iceberg of the actual number of successful IPRA enforcement actions against Defendants, and the actual incidents of Defendants' violations of IPRA.
48. Defendants' approach to compliance with IPRA has not meaningfully improved, despite many successful IPRA lawsuits, despite paying hundreds of thousands of dollars for its violations of IPRA, and despite the Court of Appeals ruling that Defendant cannot shield its public records from inspection merely because NMCD has internally designated certain records as confidential, as those internal designations do not carry the force of law necessary to serve as an exemption to IPRA.
49. The ruling in *American Civil Liberties Union of New Mexico v. New Mexico Corrections Department*, 2024-NMCA-071 is binding on Defendants, even though the Supreme Court granted certiorari review of the Court of Appeals' decision. *American Civil Liberties Union of New Mexico v. New Mexico Corrections Department*, 2024-NMCA-071, cert. granted,

No. S-1-SC-40473 (N.M. Sept. 6, 2024). An order from the Supreme Court granting the petition does not affect the precedential value of an opinion of the Court of Appeals, unless otherwise ordered by the Court. NMRA, Rule 12-405(C).

50. Injunctive relief is appropriate to bring Defendants into compliance with IPRA: (1) the character of the interest to be protected is the important statutory right to inspect public records; (2) an injunction is the only adequate remedy, as imposing statutory damages and requiring payment of attorney's fees and costs for Defendants' violations of IPRA will not sufficient deter Defendants from committing future violations of IPRA; (3) Plaintiff has not delayed in bringing suit; (4) Plaintiff has committed no misconduct; (5) the third-party interests of the right of all people to inspect Defendant NMCD's public records will be harmed if Defendants continue to violate IPRA; (6) the court may grant and enforce an injunction against Defendants under § 14-2-12 (B) ; and (7) no hardship will befall Defendants in ordering them to comply with state law they are already obligated to follow, and Plaintiff will continue to experience a violation of its rights under IPRA if the injunction is denied. *Aragon v. Brown*, 2003-NMCA-126, ¶ 20.

COUNTS I – III
Violations of the Inspection of Public Records Act

51. Plaintiff incorporates the foregoing allegations of its complaint as if the same were fully set forth herein.

52. Section 14-2-5 of IPRA provides 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.” NMSA 1978, § 14-2-5.

53. 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.
54. “A custodian receiving a written request shall permit the inspection immediately or as soon as is practicable under the circumstances, but not later than fifteen days after receiving a written request.” NMSA 1978, § 14-2-8(D). “[A] written request for inspection of public records that has not been permitted within fifteen days of receipt by the office of the custodian may be deemed denied. The person requesting the records may pursue the remedies provide in [IPRA].” NMSA 1978, § 14-2-11.
55. “If a custodian determines that a written request is excessively burdensome or broad, an additional reasonable period of time shall be allowed to comply with the request.” NMSA 1978, § 14-2-10.
56. The requested records are public records.
57. The Defendants unlawfully prohibited inspection of the requested records and unlawfully failed to adequately explain their reasons for redacting the records they did provide or what records they may have withheld altogether.

COUNT I

Violation of the Inspection of Public Records Act
Request for Records of Legal Costs and Settlement Amounts (Request No. 24-230)

58. Plaintiff incorporates each paragraph above as if fully stated herein.

59. Defendants acknowledge they possess records responsive to Plaintiff's request 24-230 for public records of settlement agreements, awards, and legal costs related to defense of IPRA lawsuits. Defendants contend, however, that it would be too difficult to search for the responsive records and have refused to allow inspection of these records. No provision of IPRA allows an agency to prohibit inspection of public records simply because the records are burdensome to locate. *See Britton v. Office of Attorney Gen.*, 2019-NMCA-002, ¶ 31, 433 P.3d 320 ("The only basis IPRA provides for a public body to deny a person the right to inspect a public record is the body's reasonable, good-faith belief that the record falls within one of IPRA's enumerated exceptions.").
60. These records requested by Plaintiff related to lawsuits in which Defendant NMCD was a party; thus, it is inconceivable that Defendants would not possess these records. Records of settlement agreements, for example, are drafted and exchanged by the parties, and ultimately would have been approved by NMCD as the client of any outside counsel hired to defend the lawsuit. However, to the extent Defendants believe that the General Services Department – another New Mexico state agency – held any responsive records, it should have forwarded Plaintiff's request to that agency to respond as to those records which Defendant NMCD does not possess. Section 14-2-8(E) provides that "[i]n the event that a written request is not made to the custodian having possession of or responsibility for the public records requested, the person receiving the request shall promptly forward the request to the custodian of the requested public records, if known, and notify the requester. The notification to the requester shall state the reason for the absence of the records from that person's custody or control, the records' location and the name and address of the

custodian.” NMSA 1978, § 14-2-8(E). Defendant did not forward Plaintiff’s request, in violation of § 14-2-8(E).

61. While IPRA requires the requestor to “identify the records sought with reasonable particularity,” there is no precedent to justify Defendants’ assertions that because Plaintiff’s request does not identify the individual cases or attorneys – information in Defendant NMCD’s possession – the requested records cannot be provided for inspection.

62. Plaintiff’s request number 24-230 for records of money paid to outside counsel to defend IPRA enforcement actions and records of settlements and awards paid to settle IPRA lawsuits is sufficiently particular. The request puts NMCD on notice of the class of records it seeks, provides a limited date range of January 1, 2021, through April 3, 2024, and seeks only lawsuits related to IPRA violations. Defendants’ excuses that NMCD does not keep a log or list of such records, or that staff turnover makes records difficult to find, are not lawful reasons to refuse to make the requested records available for inspection.

63. Defendants’ refusal to allow inspection of the requested records is a violation of § 14-2-1 of IPRA.

COUNT II

Violation of the Inspection of Public Records Act

Request for Records Related to Seizure of Contraband (Request No. 24-229)

64. Plaintiff incorporates each paragraph above as if fully stated herein.

65. Defendants unlawfully failed to provide a written explanation of the redactions in the records they provided in response to Plaintiff’s request to inspect records related to seizure of contraband at NMCD facilities, in violation of § 14-2-11(B). “If a written request has been denied, the custodian shall provide the requester with a written explanation of the denial.” NMSA 1978, § 14-2-11(B). “Denials are valuable information-gathering tools.

With respect to any given record request, the absence of either (1) production of responsive records or (2) a conforming denial based upon a valid IPRA exception sends a strong message to the requester that no responsive public record exists.” *Am. Civil Liberties Union of N.M. v. Duran*, 2016-NMCA-063, ¶ 38, 392 P.3d 181, 190.

66. Defendants’ failure to explain what responsive records it withheld, and failure to explain which exception they relied on to justify each denial of responsive material, is a violation of NMSA 1978, § 14-2-11.

67. Notably, Defendants appear to misunderstand their obligation to provide an explanation in their denial of a request to inspect public records. Mr. Pardo refused to describe what records NMCD withheld from inspection, interpreting § 14-2-11(B)(1) as requiring the custodian to merely repeat back to the requestor what records the requestor has asked for, as opposed to adequately explaining to the requestor what records the agency has withheld. Section 14-2-11 of IPRA, entitled “Procedure for denied requests,” provides in relevant part that if a written request has been denied, the custodian shall provide the requester with a written explanation of the denial containing a description of the records sought and the names and titles or positions of each person responsible for the denial. NMSA 1978, § 14-2-11(B).

68. Defendants’ interpretation of § 14-2-11(B) is incongruous with the statute’s purpose of requiring the custodian to adequately explain why it has denied a request to inspect records. A written explanation of the denial necessarily implies that the custodian must explain to the requestor what records it withheld records from inspection and why. The statute clearly states that this explanation must describe what records the requestor “sought” that are being

denied. Defendants' refusal to comply with this mandate is further evidence of its disregard for transparency.

69. As Defendants have failed to adequately explain what responsive records were withheld and why, it is impossible for Plaintiff to evaluate whether each relied-upon exception justifies Defendants' refusal to produce the requested records and to bring suit to enforce IPRA accordingly. "New Mexico's policy of open government is intended to protect the public from having to rely solely on the representations of public officials that they have acted appropriately." *Am. Civil Liberties Union*, 2016-NMCA-063, ¶ 44.
70. Regardless, it is clear that at least two exceptions Defendants rely on to justify withholding its public records are not valid exceptions under IPRA.
71. First, Defendant NMCD's internal policies enacted through its enabling statutes do not have the power to put public records beyond the reach of IPRA, as neither statute granting the Secretary of Corrections its rule-making authority – the Corrections Department Act NMSA 1978, § 9-3-5(E), or the Corrections Act, NMSA 1978, §33-1-6(B) – address IPRA, the confidentiality of records or information, or the Secretary's ability to declare records or information as confidential. *Am. Civil Liberties Union of N.M. v. N.M. Corr. Dep't*, 2024-NMCA-071, ¶ 13, *cert. granted*, No. S-1-SC-40473 (N.M. Sept. 6, 2024).
72. Consistent with *Am. Civil Liberties Union of N.M. v. N.M. Corr. Dep't*, Defendant NMCD's policies identified in the responses to Plaintiff's IPRA request number 24-229, "*Strategic Threat Information Communications, consistent with NMSA 14-2-1(L) and CD-131502(N)(3) and (O); Escape flyers, consistent with NMSA 14-2-1(L) and NMCD Policy CD-0400100(C)(g)(3)*," do not carry the force of law necessary to exempt Defendant NMCD's public records from inspection, cannot be incorporated by IPRA's catchall

exception, § 14-2-1(L), and cannot justify Defendants' withholding of the records requested by Plaintiff.

73. Second, Defendant NMCD's refusal to allow inspection of its public records based on NMSA 1978, § 66-2-7.1, a section of the Motor Vehicle Code, is unlawful. Section 66-2-7.1 applies only to records of departments charged with administration and enforcement of the Motor Vehicle Code. The New Mexico Corrections Department is not a department charged with administration or enforcement of the Motor Vehicle Code, nor does it employ or contract with anyone who would be subject to the confidentiality mandates of § 66-2-7.1, which provides,

“It is unlawful for any department or bureau employee or contractor or for any former department or bureau employee or contractor to disclose to any person other than another employee of the department or bureau any personal information about an individual obtained by the department or bureau in connection with a driver's license or permit, the titling or registration of a vehicle, the administration of the Ignition Interlock Licensing Act [66-5-501 to 66-5-504 NMSA 1978] and the interlock device fund or an identification card issued by the department pursuant to the Motor Vehicle Code [...]”.

NMSA 1978, § 66-2-7.1.

74. Defendants cannot withhold records of NMCD based on the Motor Vehicle Code confidentiality provisions. These provisions provide for confidentiality of information (obtained by a department or bureau charged with the administration and enforcement of the Motor Vehicle Code) in connection with a driver's license or permit, the titling or registration of a vehicle, the administration of the interlock device fund or an identification card issued by the department pursuant to the Motor Vehicle Code. Defendants' reliance on this provision of law to withhold prison records is unlawful.

Defendant NMCD's Systemic Failure to Comply with IPRA

75. Defendants' persistent failure to comply with their statutory obligations to permit inspection of NMCD's public records requires a remedy beyond fees, costs and fines ordinarily assessed in individual IPRA enforcement actions, as repeat successful litigation against Defendants has failed to sufficiently motivate Defendant NMCD to comply with the law.
76. Defendants' response to Plaintiff's request number 24-230 for records of money paid to outside counsel to defend IPRA enforcement actions and records of settlements and awards paid to settle IPRA lawsuits is telling. Defendants acknowledge they possess the requested records, but insist that they cannot permit inspection because it would be too difficult to locate the records: "we would need to unearth the entirety of all PST inboxes for all such attorneys or paralegals, index them, and then search them for settlement, settlement amounts, attorneys fees, etc., which does not guarantee that we would capture all responsive records."
77. If it is true that Defendants are not keeping track of the amount of taxpayer money spent paying their attorneys and settling lawsuits when they fail to comply with IPRA, the public interest in the records they are shielding from inspection is of utmost concern; not only do Defendants violate IPRA in violation of the public's right to know the affairs of its government, but also in apparent total disregard of the financial cost to the State of New Mexico and the taxpayers.
78. On information and belief, Defendants do not permit inspection of their public records – in violation of IPRA – because they fail to maintain records in an organized manner.
79. Defendants have a pattern and practice of unlawfully refusing to comply with their obligation to permit inspection of records when they perceive a request is not sufficiently

“particular,” is “unreasonably broad,” or in other words, would require too much effort to fulfill.

80. No provision of IPRA permits a records custodian to deny a request to inspect public records because the request is “unreasonably broad.” In fact, in those rare circumstances where an agency can substantiate that a request is “excessively broad and burdensome,” § 14-2-10 specifically allows more time for a public body to respond to such a request. While Plaintiff’s request number 24-230 is not an excessively broad or burdensome request, IPRA clearly contemplates and allows for broad or burdensome requests. NMSA 1978, § 14-2-10.
81. Defendants have a pattern and practice of failure to comply with their obligations under IPRA by unlawfully asserting their internal policies are valid exceptions to inspection of their public records, despite the Court of Appeals’ ruling that Defendants’ internal rules and policies do not carry the force of law necessary to exempt their records from public disclosure.
82. Defendants also have a pattern and practice of failure to comply with their obligations under IPRA by unlawfully ignoring requests to inspect public records and only permitting inspection of records after an action to enforce IPRA has been brought against them.
83. For the foregoing reasons, Defendants’ persistent violations of IPRA require prospective injunctive relief from the court in order to ensure future compliance with the law and to uphold the public policy of New Mexico “that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees,” and that the people of New Mexico should be provided “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.

Prayer for Relief

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

- A. An order directing Defendants to satisfy the above-described IPRA requests in full, including providing an adequate explanation of withheld and redacted records;
- B. An award of per diem and other statutory damages, costs, and reasonable attorneys' fees under IPRA, NMSA 1978, §§ 14-2-11(C) and 14-2-12(D);
- C. An injunction to ensure Defendants' future compliance with IPRA; and
- D. Such other relief as the Court deems just and proper.

Respectfully submitted,

NEW MEXICO FOUNDATION
FOR OPEN GOVERNMENT



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