

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

NEW MEXICO FOUNDATION
FOR OPEN GOVERNMENT,

Plaintiff,

v.

No. D-202-CV-2024-06008

BERNALILLO COUNTY BOARD OF
COMMISSIONERS, and
JENNIFER RODRIGUEZ, in her official capacity,

Defendants.

COMPLAINT TO ENFORCE THE INSPECTION OF PUBLIC RECORDS ACT

Plaintiff New Mexico Foundation for Open Government (“NMFOG”), for its complaint against Defendants Bernalillo County Board of Commissioners (“County”), and the County’s Records Custodian, Jennifer Rodriguez (“Rodriguez”), alleges and states as follows:

Introduction

1. This case concerns a denial of the public’s right to inspect records of the Bernalillo County Metropolitan Detention Center (“MDC”) under the Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 – 12 (“IPRA”).
2. The Defendants wrongfully denied access to records of the MDC pertaining to jail security video, complaints against the former warden of the jail, Jason Jones, and the county’s responses to other IPRA requests to inspect jail security video.

Parties

3. 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.

4. Defendant County, located in the state of New Mexico, is a branch of local government and political subdivision of the State of New Mexico and thus a “public body” within the meaning of IPRA, NMSA 1978, § 14-2-6(G). It operates the MDC, a jail located in Bernalillo County, in the state of New Mexico.
5. On information and belief, at all material times, Defendant Rodriguez has been the designated custodian of the County’s public records. On information and belief, Rodriguez is a resident of Bernalillo County.

Jurisdiction and Venue

6. The Court has jurisdiction over the parties and subject matter of the action under NMSA 1978, § 38-31.1 (1998) and § 14-2-12 (1998).
7. Venue is proper under NMSA 1978, § 38-3-1(A) (1998).

General Allegations

8. IPRA declares “all persons are entitled to the greatest possible information regarding the affairs of the government and the official acts of public officers and employees” and that “provid[ing] persons with such information is an essential function of a representative government.” NSMA 1978, 14-2-5. Under IPRA, “the citizen’s right to know is the rule and secrecy is the exception.” *Republican Party of N.M. v. N.M. Tax’n & Revenue Dep’t*, 2012-NMSC-026, ¶ 12, 283 P.3d 953.

9. This complaint alleges three distinct instances where Defendants have failed to comply with their statutory obligations under IPRA to allow inspection of public records of MDC.
10. First, Defendants unlawfully rely on § 14-2-1.2 of IPRA, or the law enforcement records exception, to restrict inspection of jail security video showing an alleged use of force by a corrections officer against an inmate who died of injuries resulting from the incident.
11. Second, Defendants have unlawfully refused to allow inspection of complaints filed against former MDC Warden Jason Jones, claiming the records are exempt from inspection under § 14-2-1(C) and *Hall v. City of Carlsbad*, 2023-NMCA-042, 531 P.3d 642.
12. Third, Defendants have unlawfully refused to allow inspection of Defendants' responses to IPRA requests for MDC video footage from other requesters since March 30, 2023.

I. Request for Jail Security Video Footage

13. Section 14-2-1.2(A)(4) of IPRA, or the law enforcement records exception, provides in relevant part that “law enforcement records are public records, except as provided by law and this subsection, and provided that the presence of nonpublic information may be redacted from a written record or digitally obscured in a visual or audio record, including,” a “visual depiction of great bodily harm, as defined in Section 30-1-12 NMSA 1978, or acts of severe violence resulting in great bodily harm, unless a law enforcement officer, acting in that capacity, caused or is reasonably alleged or suspected to have caused the great bodily harm or act of severe violence.” NMSA 1978 § 14-2-1.2.
14. A request to engage in an on-site inspection of a public body's video containing a “visual depiction of great bodily harm,” or “acts of severe violence resulting in great bodily harm,” is not subject to above-described restrictions, meaning that the unredacted or unobscured video can be shown in its entirety if viewed on-site. Copying or recording of the unredacted

video is prohibited. *Id.*

15. Subsection (D) of § 14-2-1.2 provides the following definition of a law enforcement record:
“law enforcement records includes evidence in any form received or compiled in connection with a criminal investigation or prosecution by a law enforcement or prosecuting agency[...].” *Id.*
16. A person wishing to inspect law enforcement video or audio must include certain specifications in the request: “[a] request for release of video or audio shall specify at least one of the following: (1) the computer-aided dispatch records number; (2) the police report number; (3) the date or date range with reasonable specificity and at least one of the following: (a) the name of the law enforcement officer or first responder; (b) the approximate time; or (c) the approximate location; or (4) other criteria established and published by a law enforcement agency to facilitate access to videos.” NMSA 1978 § 14-2-1.2(B).
17. In March 2023, the Legislative Finance Committee (“LFC”) issued a fiscal impact report regarding House Bill 232, the legislation behind § 14-2-1.2. The LFC report indicates that the intent behind expanding the categories of exempt law enforcement records with the enactment of House Bill 232 was to protect victims of certain crimes by shielding visual and audio depictions of harm, death, or body parts, and other records or depictions that could place a victim or their family members at risk of exploitation or further harm. The LFC report specified that the new exemptions “cover additional records and information that could interfere with the effectiveness of an investigation and provides additional protections to victims without exempting records pertaining to offenses committed by officers, such as

death or bodily harm, which can improve transparency regarding officer conduct.”¹

18. On June 12, 2023, former MDC Sergeant Stephen Gabaldon was escorting former inmate John Sanchez down a hallway with a group of other officers at the MDC. According to a Bernalillo County Sheriff’s investigation, the video shows Gabaldon performing a “leverage takedown” on Sanchez, which caused Sanchez to land “forcefully on his face and head.” Per reports, medical staff at the jail cleared Sanchez from injury following the incident, and guards returned him to his cell, where he was found 45 minutes later vomiting blood and having a seizure. Mr. Sanchez was transported to the University of New Mexico Hospital, where doctors diagnosed a “large brain bleed,” along with fractures to the neck and spine, and declared him brain dead. Sanchez was taken off life support on June 16, 2023.²

19. Following Mr. Sanchez’s death, his estate sued MDC and Defendant County for violations of the New Mexico Civil Rights Act, including excessive use of force resulting in Sanchez’s death, as well as other claims. The case, *Rachel Higgins, personal representative of the Estate of John Sanchez, v. Bernalillo County Board of Commissioners, et. al.*, 1:24-cv-00167-MIS-DLM, is pending in the U.S. District Court for the District of New Mexico.

20. Approximately one month after this incident at MDC, on July 14, 2023, reporter Matt Reisen with the *Albuquerque Journal* sent the following public records request to defendant MDC:

“I would like to request Metropolitan Detention Center video showing the confrontation between MDC officers and John Sanchez (DOB x/xx/xxxx) on June 12, 2023.”

¹ Microsoft Word - HB232.doc (unilegis.gov)

² https://www.abqjournal.com/news/records-detail-recent-jail-death-mdc-sergeant-slammed-handcuffed-man-on-his-head/article_591d6b7c-227b-11ee-835a-7f41fe23216e.html; https://www.abqjournal.com/news/man-taken-off-life-support-after-being-injured-in-alleged-fights-escape-attempt-at-mdc/article_641cae56-0ca1-11ee-a2e9-27d787aaa17b.html

21. On July 28, 2023, the MDC records custodian responded to Mr. Reisen's request, stating that his request was "broad and/or burdensome and we need additional time to respond, until August 12, 2023."
22. Finally, on September 1, 2023, the MDC records custodian informed Mr. Reisen:

"The UOF video for IPRA 23-2004 has been approved for you to come to our MDC facility to view ONLY. You will not be able to bring recording devices, a phone, cameras or bags. This also includes a pen and pad. A person needs to be identified that will be coming to the facility to review video. Appropriate approval will need to be approved by Administration prior to coming to the facility. You are not to come to the facility prior to the set time and date."
23. Mr. Reisen responded within a few hours to the custodian, inquiring as to the basis for MDC's refusal to provide him with a copy of the requested records, and specifically, requesting that the records custodian cite to an applicable exception under IPRA, which up until that point, it had not done.
24. On September 5, 2023, MDC responded to Mr. Reisen, stating, "[...] after the last legislative session IPRA was amended." The custodian cited § 14-2-1.2(A)(3), (A)(4), and (C), and stated, "[a]ccordingly, you are allowed to view the material on-site at MDC as they informed you. Please contact me with additional questions. Thank you."
25. Following MDC's refusal to provide a copy of the video, Mr. Reisen contacted Plaintiff for assistance. In September 2023, NMFOG Executive Director, Melanie Majors, referred the matter to the New Mexico Attorney General to investigate the Defendants' violation of IPRA; specifically, the county's improper reliance on the law enforcement records exception to withhold the requested video.
26. On December 27, 2023, the Government Counsel and Accountability Division of the New Mexico Attorney General's Office issued a disposition letter regarding NMFOG's complaint. It found that the Defendants had complied with IPRA, reasoning that a

“correctional facility may create and possess law enforcement records as an agent for the law enforcement agency,” and that the security video was properly withheld under § 14-2-1.2 and made available on-site at the jail for viewing only, in compliance with § 14-2-1.2.

27. On January 30, 2024, Plaintiff submitted a request to Defendant County and Defendant Rodriguez pursuant to IPRA for a copy “of video footage from the Bernalillo County Metropolitan Detention Center depicting the physical altercation between John Sanchez and MDC Corrections officers that occurred on June 12, 2022.”

28. Defendant Rodriguez responded to the request on January 30, 2024, stating that the expected “date of completion” for the request was February 14, 2024. On February 14, 2024, Defendant Rodriguez indicated that the request continued to be processed and stated, “we are still awaiting information and/or records from the Metropolitan Detention Center to complete this request.” Notably, Defendant Rodriguez did not claim that the request was excessively burdensome or broad as allowed by § 14-2-10. On February 28, 2024, approximately four weeks after the initial request, the records custodian responded to NMFOG’s request, stating,

“The UOF video has been approved for you to come to our MDC facility to view ONLY. No recording devices or phone will be allowed to bring in. Someone needs to be identified that will be coming to the facility to review the video. Appropriate approval will need to be approved by the Administration prior to coming to the facility, so you are not to come to the facility prior to the set time and date.”

29. Plaintiff requested that the records custodian explain what exception to IPRA MDC was relying on to deny the request for a copy of the video, as required by § 14-2-11. On March 11, 2024, the custodian responded,

“After the last legislative session IPRA was amended. Section 14-2-1.2 A provides:

A. Law enforcement records are public records, except as provided by law and this subsection, and provided that the presence of nonpublic information may be redacted

from a written record or digitally obscured in a visual or audio record, including:

(3) visual depiction of a dead body, unless a law enforcement officer, acting in that capacity, caused or is reasonably alleged or suspected to have caused the death;

(4) visual depiction of great bodily harm, as defined in Section 30-1-12 NMSA 1978, or acts of severe violence resulting in great bodily harm, unless a law enforcement officer, acting in that capacity, caused or is reasonably alleged or suspected to have caused the great bodily harm or act of severe violence;

C. Except for confidential sources, methods or information, a request to view video or hear audio on-site of a public body is not subject to the restrictions in Subsections A and B of this section. Any recording or copying of video or audio from such viewing or listening is subject to the restrictions in this section.

Accordingly, you are allowed to view the material on-site at MDC as they informed you. Please contact me with additional questions. Please advise how you would like to move forward with this request.”

30. On March 21, 2024, Plaintiff responded to Defendant Rodriguez with suggested dates and times for NMFOG staff to come view the video at MDC. Additionally, NMFOG asked the custodian the following, in response to the custodian’s invitation to reach out with additional questions:

1. Was the MDC Sergeant who performed the "leverage takedown" on Mr. Sanchez as depicted in the requested video, a certified law enforcement officer?
2. Which law enforcement agency compiled or received the requested video?
3. Is, or was there, a criminal investigation into this incident? By which law enforcement agency?
4. In what sense does the video contain “confidential information”; i.e., information the disclosure of which would jeopardize an existing or contemplated investigation?
5. What is the name and title of the person at your agency who determined this video is evidence collected as part of a criminal investigation or prosecution, and what is their authority to make this determination, as an employee of a non-law enforcement public body?

31. On March 22, 2024, John Grubestic, attorney for Defendant County, responded,

“The Inspection of Public Records Act provides access to inspect public records. You are asking questions. Accordingly, we will comply with the mandate of the statute. We will not provide answers to your questions. Thank you.”

32. On March 27, 2024, NMFOG staff traveled to MDC to view the unredacted video on site. MDC is located at 100 Deputy Dean Miera Dr. SW, in Albuquerque, New Mexico. It is approximately 16.5 miles west of downtown Albuquerque, or an approximately 25-minute drive. Upon arrival at MDC, MDC employees brought NMFOG staff to a conference room and provided access to a computer containing 32 files of security video. MDC staff indicated that there were only 24 minutes of video, and that the video had been redacted. When questioned as to what redactions to the video had been made, MDC staff indicated they did not know. The 32 files of video had file names containing the word “redacted.”
33. NMFOG staff spent approximately one and a half hours reviewing the 32 files. Many of the files showed footage of empty hallways, and guards and inmates who were not Sergeant Gabaldon or inmate John Sanchez. Much of the footage was unresponsive to Plaintiff’s request. During the time NMFOG staff were viewing the video, MDC staff interrupted them to say they would need the conference room for a meeting. On information and belief, at some point NMFOG staff did view video depicting the incident between Sergeant Gabaldon and inmate John Sanchez, but NMFOG staff were unable to determine what redactions to the video had been made.
34. Following the visit to MDC, Plaintiff sent a letter to John Grubestic, attorney for Defendant County, requesting an explanation of the redactions to the video. In response, Mr. Grubestic stated in an email on April 10, 2024, “It is my understanding that you were provided the video of the incident that occurred in the hallway. According to MDC this video was not redacted.” This was the only explanation Defendants provided as to the redactions made to the video NMFOG staff viewed.
35. On March 29, 2024, the New Mexico Department of Justice – formerly the New Mexico

Attorney General – issued an amended disposition letter regarding Plaintiff’s complaint of the IPRA violation as it related to Mr. Reisen’s request. The amended letter affirmed the earlier conclusion that the defendants had not violated IPRA, but it clarified that the earlier letter’s “expansive interpretation” of the law was not warranted.³ The new letter reasoned that the law enforcement exception “should not be read to apply in situations where a public body might theoretically or conceivably provide records to a law enforcement agency at some point in the future,” but that because MDC did provide the video footage in question to the Bernalillo County Sheriff’s Office in connection with their investigation into possible criminal charges, the record was compiled in connection with a criminal investigation by a law enforcement agency – the Sheriff’s Office – and therefore met the definition of a “law enforcement record” under NMSA 1978, § 14-2-1.2(D).

36. The newly created exceptions to disclosure of law enforcement records codified in § 14-2-1.2, are meant to protect victims of crime, while at the same time, guarantee public access to records depicting incidents where officers cause harm to people, thereby ensuring that those public officers remain accountable to the people they serve.
37. MDC is a correctional facility, not a law enforcement or prosecution agency. Clearly, the law enforcement record exception under § 14-2-1.2 does **not** apply to records held by MDC or any other agency that is not a law enforcement or prosecution agency.
38. The LFC report described above, and the procedures set forth in § 14-2-1(B) for requesting a law enforcement video, are a clear indication the legislature intended this exception to apply only to records requests made to a law enforcement agency for records held by that agency.

³ The March 29th letter indicated that the December 27th letter was withdrawn, and that the March 29th letter superseded all analysis in the December 27th letter.

39. Section 14-2-1(B) requires a person requesting a law enforcement video record – which is what defendants claim the video at issue here is – to include specific information in their request: either a dispatch record number, police report number, or the date or date range the video was recorded together with either the name of a law enforcement officer or first responder, the approximate time, or approximate location.
40. Obviously, none of the criteria for making a request for video under § 14-2-1(B) could be included in a request for a copy of jail security video, since the enumerated criteria are the types of information that specifically pertain to law enforcement operations; not those of a jail.
41. In fact, § 14-2-1.2 is replete with references to the type of material that is obviously a record that a police department, sheriff's office, prosecutor, or other law enforcement agency would possess. For example, the section lists exemptions to public records related to different types of criminal charges, witnesses to crimes, and to people accused but not charged with crimes. *See* NMSA 1978 § 14-2-1.2, generally. It is law enforcement agencies and prosecutors who decide what charges to file against a person or what witnesses to call; public records that relate to these subjects are clearly not the domain of non-law enforcement public bodies like a county jail.
42. The Defendants' invocation of the law enforcement exception to restrict access to jail security video undermines the legislative intent of the exception, which was to improve transparency and public access to information regarding the misconduct of public officials. Defendants exploit the exception to hide abuse perpetrated by MDC corrections officers.
43. Alternatively, even if § 14-2-1.2 may be interpreted to apply to records held by non-law enforcement agencies, full disclosure of the unredacted video at issue here is nonetheless

required, as the video depicts an “act of severe violence resulting in great bodily harm” that was caused or “reasonably alleged or suspected to have [been] caused” **by a law enforcement officer.**

44. Although IPRA does not provide a definition of a law enforcement officer, corrections officers like former MDC Sergeant Stephen Gabaldon are considered law enforcement officers under New Mexico law.
45. Under the Tort Claims Act, NMSA § 41-4-3(D), the definition of a “law enforcement officer” includes a full-time salaried public employee of a governmental entity whose principal duties under law are to hold in custody any person accused of a criminal offense.
46. Under the Corrections Act, NMSA § 33-3-28(A), jailers shall have the power of a peace officer with respect to arrests and enforcement of laws when on the premises of a local jail. Subsection (C) of the Act also provides that crimes against a jailer shall be deemed the same crimes and shall bear the same penalties as crimes against a peace officer.
47. Sergeant Gabaldon was a member of MDC’s “Corrections Emergency Response Team,” or “CERT,” a specialized unit of corrections officers at MDC who respond to various emergencies at the jail. Per MDC security policy 8.56, CERT Officers receive special training to be able to quickly be deployed and respond to disturbances at MDC.
48. Among other corrections trainings and certifications, in May of 2023, Sergeant Gabaldon was issued a certificate of completion by the Bernalillo County Sheriff’s Office Regional Law Enforcement Academy for successful completion of 80 hours of instruction in Intermediate Use of Force.
49. In June of 2023, Sergeant Gabaldon was employed by MDC and was a law enforcement officer as contemplated by the Tort Claims Act and Corrections Act and given his training

and responsibilities as a CERT officer. Because the requested video depicts Gabaldon perpetrating an act of severe violence that is reasonably believed to have caused Mr. Sanchez great bodily harm resulting in his death, § 14-2-1.2 requires disclosure of the unredacted video even if the video is a law enforcement record.

II. Request for Complaints against former Warden Jason Jones

50. On November 28, 2023, reporter Alaina Mencinger of the *Albuquerque Journal* submitted an IPRA request for “all complaints filed against Metropolitan Detention Center Warden Jason Jones from January 1, 2023 to Nov. 28, 2023.”

51. The MDC records custodian responded, stating:

“We cannot permit inspection of these records because they are excepted from disclosure for the following reason(s) described below:

The records requested are letters or memoranda are exempt from disclosure under Section 14-2-1(C) “‘letters or memoranda that are matters of opinion in personnel records.’”

See Hall v City of Carlsbad, 531 P.3d 642.”

52. On February 8, 2024, Plaintiff sent Defendant a request pursuant to IPRA for “all complaints filed against Warden Jason Jones between the dates of January 1, 2023, and November 28, 2023,” and for “all investigations into the June 12, 2023, death of inmate John Sanchez.”⁴

53. On February 23, 2024, the records custodian responded by stating that the request was “broad and/or burdensome and we need additional time to respond, until March 8, 2024.”

54. On March 8, 2024, the custodian responded to the request for complaints against the former warden, stating:

“We cannot permit inspection of the internal investigation records because they are excepted from disclosure for the following reason(s) described below:

The records requested are letters or memoranda that are exempt from disclosure under

⁴ Defendants provided responsive records to the request for investigations into the death of John Sanchez. The defendants’ compliance with IPRA as it relates to that request is not at issue here.

Section 14-2-1(C) “‘letters or memoranda that are matters of opinion in personnel records.’
See Hall v City of Carlsbad, 531 P.3d 642.”

55. In *Hall v. City of Carlsbad*, the Court of Appeals concluded that § 14-2-1(C) of IPRA applies to documents prepared as part of an internal affairs investigation regarding the employer/employee relationship and undertaken for the purpose of determining whether to take disciplinary action, but that the exemption does not apply to the entire internal affairs investigation file. The location of a document in a particular file is not dispositive; it is the nature of each document that determines whether the exemption applies. *Hall v. City of Carlsbad*, 2023-NMCA-042, ¶ 11, 531 P.3d 642, 646–47.

56. No holding or reasoning in the Court of Appeals’ *Hall* decision can be construed to abrogate the Court’s previous ruling in *Cox v. New Mexico Dep’t of Pub. Safety*, where it held that citizen complaints against state law enforcement officers were public records under IPRA, and not the type of “opinion” material the Legislature intended to exclude from public disclosure under the matters of opinion exception. 2010-NMCA-096, ¶ 27, 242 P.3d 501, 507–08. Unlike other materials in the personnel file, the officer does not have a reasonable expectation of privacy in a citizen complaint, and a complaint is not a personnel record generated by an employer or employee in support of the working relationship between them.
Id.

III. Request for Responses to other IPRA Requests

57. On March 18, 2024, Plaintiff made the following IPRA request to Defendant County:

“Please provide a record **of all requests** for video footage recorded at and kept by the Metropolitan Detention Center since the enactment of Section 14-2-1.2 NMSA 1978, entitled, ‘Law Enforcement Records’ (date of enactment is March 30, 2023). Please identify the requests by request number. **Please provide Bernalillo County’s responses to each request.** Thank you.” Emphases added.

58. On April 2, 2024, 15 days after Plaintiff's request, Defendant Rodriguez wrote to Plaintiff, stating, "Your request is currently being processed and we need additional time to complete this request. I will follow up again before April 16, 2024."

59. On April 16, 2024, Defendant Rodriguez wrote again to Plaintiff, stating, "We believe your request is broad and/or burdensome and we need additional time to respond, until April 30, 2024." That same day, Defendant Rodriguez released an Excel spreadsheet containing the requested IPRA requests. However, Defendant Rodriguez declined to release Defendants' responses to the requests, stating:

"We do not supply responses to other requests we have received. This would require the creation of a document. We would be creating a report that does not exist in our system. Under IPRA we have no obligation to create any records. Please let me know if you have additional questions. Thank you."

60. Defendants' refusal to provide the responses to the IPRA requests is unlawful. On information and belief, the County's responses exist on its NextRequest software, and disclosure of the responses would not require the County to create a new record.

Count I
Violations of the Inspection of Public Records Act

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

62. 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.

63. 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.
64. “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. “[A] written request for inspection of public records that has not been permitted within fifteen dates of receipt by the office of the custodian may be deemed denied. The person requesting the records may pursue the remedies provided in [IPRA].” NMSA 1978, § 14-2-11.
65. “[T]he custodian shall provide the requestor with a written explanation of the denial. The written denial shall: (1) describe the records sought; set forth the names and titles or positions of each person responsible for the denial; and be delivered or mailed to the person requesting the records within fifteen days after the request for inspection was received.” NMSA 1978 § 14-2-11.
66. “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.
67. Section 14-2-9 provides that “[a] custodian shall provide a copy of a public record in electronic format if the public record is available in electronic format and an electronic copy is specifically requested.”

68. By unlawfully claiming that the requested video is a “law enforcement record,” Defendants invoke the restrictions on inspection set forth in § 14-2-1.2 to justify withholding a copy of the video. Rather than comply with their statutory obligations to furnish an electronic copy of the requested video, Defendants required Plaintiff to travel to the jail – a secured facility with restricted access, permitted Plaintiff only limited time to review the responsive video, showed Plaintiff a video that had been redacted, did not provide an adequate explanation of the redactions, and prohibited Plaintiff from making a copy of the video. Even if the video may be classified as a law enforcement record, § 14-2-1.2 requires Defendants to provide a copy of the video, as former corrections officer Stephen Gabaldon is a law enforcement officer.
69. Defendants unlawfully withheld requested records of complaints against former Warden Jason Jones, invoking the exception to disclosure under § 14-2-1(C), “letters of memoranda that are matters of opinion in personnel files.” Under *Cox v. New Mexico Dep’t of Pub. Safety*, 2010-NMCA-096, 242 P.3d 501, complaints against public officials are public records and not subject to the exception under § 14-2-1(C).
70. Defendants unlawfully refused to allow inspection of responses it has provided to other IPRA requests for copies of its video records since March 30, 2023, as it claims that to comply with the request, it would need to create a public record, which IPRA does not require it to do. IPRA requests to Defendants are made through NextRequest software, and Defendants provide responses to requestors via the same. These responses are maintained in the software and meet the definition of a public record under IPRA. A “public record” “means 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.

71. For the reasons explained above, Defendants’ denials of Plaintiff’s IPRA requests are unlawful violations of IPRA.
72. Additionally, the Defendants’ failure to comply with the deadlines for responding to requests to inspect MDC records is an unlawful violation of IPRA.
73. Defendants did not allow inspection of the requested video until February 28, 2024, when Defendant Rodriguez told Plaintiff the video was available for viewing on-site only. This was approximately 29 days after Defendants received Plaintiff’s request for a copy of the video, and a clear violation of the time limits for disclosure under § 14-2-8(D) of IPRA.
74. At least one other nearly identical request for the same video had been made previously (by Mr. Reisen); therefore, the requested video had already been prepared and made available for viewing, and Defendants cannot be excused for failing to allow inspection of the requested video immediately, or at the very least, within 15 days.
75. Defendants withheld all records responsive to Plaintiff’s request for complaints against former Warden Jason Jones, yet indicated the request was “broad and/or burdensome,” and waited a month to communicate to Plaintiff that it would not be providing any responsive records for inspection.
76. Section 14-2-10 permits a custodian to determine that a written request is excessively burdensome or broad so that the custodian is afforded an “additional reasonable period time” to comply with the request. The statute does not define a “reasonable period of time.” NMSA 1978 § 14-2-10.

77. Because Defendants never intended to allow inspection of the requested complaints against the former jail warden, their reliance on § 14-2-10 to prolong responding to Plaintiff's request is unlawful. Defendants should have communicated within the time limits set forth in § 14-2-11 that they would not be allowing inspection of the requested records because they "cannot permit inspection of internal investigation records because they are excepted from disclosure."
78. Regarding Plaintiff's request for records of requests for video footage and Defendant County's responses to those requests, again, Defendants cannot justify their unlawful reliance on § 14-2-10 to excuse their untimely partial compliance with Plaintiff's request.
79. Fifteen days after Plaintiff's March 18, 2024 request, on April 2, 2024, Defendant Rodriguez wrote to Plaintiff, stating that the request was "currently being processed and we need additional time to complete the request. I will follow up again on or before April 16, 2024."
80. Defendants untimely provided the partially responsive Excel spreadsheet approximately one month after Plaintiff's request, on April 16, 2024. It was not until April 16, 2024, that Defendant Rodriguez wrote to Plaintiff, stating, "We believe your request is broad and/or burdensome and we need additional time to respond, until April 30, 2024." Approximately an hour after this message, Defendants provided the spreadsheet.
81. Public bodies should not be permitted to invoke § 14-2-10 to circumvent their statutory obligations to timely communicate regarding requests and permit timely inspection of public records. The Defendants' unlawful reliance on § 14-2-10 is a violation of IPRA, and a remedy is required.

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;
- B. An order prohibiting Defendants from claiming its records are "law enforcement records" as contemplated by § 14-2-1.2 (D) in response to any future IPRA request;
- C. An order providing relief for Defendants' failure to comply with the time limits for permitting inspection of public records under IPRA;
- D. An award of damages, costs, and reasonable attorneys' fees under IPRA, NMSA 1978, § 14-2-12(D); and
- E. Such other relief as the Court deems just and proper.

Respectfully submitted,

NEW MEXICO FOUNDATION
FOR OPEN GOVERNMENT



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