STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

NEW MEXICO FOUNDATION
FOR OPEN GOVERNMENT,

Plaintiff,

v. No. D-202-CV-2025-08282

UNIVERSITY OF NEW MEXICO BOARD OF REGENTS
and ROBERT M. TAFOYA, its records custodian,

Defendants.

COMPLAINT TO ENFORCE THE INSPECTION OF PUBLIC RECORDS ACT

Plaintiff New Mexico Foundation for Open Government ("NMFOG"), for its complaint against Defendants University of New Mexico Board of Regents and its records custodian, Robert Tafoya (collectively, "UNM") states as follows:

Introduction

1. This case concerns a denial of the public's right under the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 – 12 ("IPRA"), to inspect records of the University of New Mexico, a public university.
2. UNM has announced that it will pay up to $20.5 million to student-athletes in accordance with the terms of a settlement agreement in a federal class action suit, *House v. NCAA* (the "*House* settlement"). *See In re College Athlete NIL Litigation*, No. 4:20-cv-03919-CW (N.D. Cal.). However, UNM is refusing to make its contracts with the student-athletes public. These contracts are records of expenditures of public money, and UNM's refusal to disclose them, along with other records related to UNM's obligations under the *House* settlement, violates IPRA.

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 University of New Mexico Board of Regents is the governing body of the University of New Mexico, a state university with its principal office in Bernalillo County, New Mexico. It is operated with public money and is a "public body" within the meaning of IPRA, NMSA 1978, Section 14-2-6(G) (2023).
5. At all material times, Robert Tafoya has been the designated custodian of UNM's public records.

Jurisdiction and Venue

6. The Court has jurisdiction over the parties and subject matter of the action under NMSA 1978, Sections 38-3-1.1 (1988) and 14-2-12 (1993).
7. Venue is proper under NMSA 1978, Section 38-3-1(A) (1988).

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." NMSA 1978, § 14-2-5 (1993). Under IPRA, "the citizen's right to know is

the rule and secrecy is the exception." *Republican Party of N.M. v. N.M. Taxation & Revenue Department*, 2012-NMSC-026, ¶ 12.

9. UNM failed to comply with its statutory obligations under IPRA to allow inspection of UNM's public records related to expenditures of public money to athletes.

10. A settlement agreement reached in a federal class action lawsuit, *House v. NCAA,* changes the way universities under the authority of the National Collegiate Athletic Association ("NCAA") may make payments to student-athletes. Specifically, the *House* settlement allows Division I institutions like UNM to provide significant new financial benefits to student-athletes, including backpay for missed NIL ("Name, Image, and Likeness") opportunities dating back to 2016. It also establishes a revenue-sharing model beginning as early as the current 2025-26 academic year.

11. Pursuant to the *House* settlement, schools may choose to share revenues with student-athletes up to a cap, which is estimated at approximately $20.5 million per institution for the 2025-26 academic year.

12. UNM opted to participate in this revenue sharing, beginning July 1, 2025.

13. Prior to the *House* settlement, UNM student-athletes were allowed to receive payments only through NIL agreements via third-party collectives such as 505 Sports Venture Foundation or from private companies (*e.g*., Nike). Following the *House* settlement, UNM's athletic fundraising arm, the Lobo Club, through its Lobo Alliance initiative, has taken full responsibility for all fundraising efforts related to NIL and current and future revenue sharing. The Lobo Alliance is an initiative created to support UNM athletes through revenue sharing, and, according to UNM, highlights the full alignment between 505 Sports Venture Foundation, the Lobo Club, and Lobo Athletics.

14. Upon information and belief, UNM assumed contracts previously entered into between 505

Sports Venture Foundation and student-athletes.

15. According to university leadership, the UNM revenue used to compensate student-athletes will be sourced from multi-media rights (money generated from televising games), licensing agreements, sponsorships (such as advertisements at arenas), fundraising and ticket sales. UNM has also stated that it will employ targeted reductions in other spending to manage these new financial responsibilities.

16. In a June 9, 2025, statement regarding implementation of the terms of the *House* settlement, UNM Athletics Director Fernando Lovo stated that UNM's revenue sharing plan will be "sustainable, competitive, and aligned with our peers in the Mountain West and the programs we recruit against […]."

17. Public money will be used to fund the increased financial investment in UNM athletics and to pay student-athletes.

18. In 2025, the New Mexico Legislature approved a $3.2 million increase in its annual appropriation for UNM Athletics.

19. The Board of Regents of UNM also approved a student fee increase of $45 more per semester for the 2025-26 school year and an additional $60 for the following academic year – a total jump of $105 per semester for undergraduates in two years – going directly to athletics, as part of a broad push by university leadership to increase financial investment in UNM athletics in order to fund increased costs related to revenue sharing.

20. During the 2025 legislative session, UNM and New Mexico State University jointly sought an appropriation of $2.5 million dollars from the legislature to "fund student athletes." This effort, Senate Bill 268, did not pass; however, since the legislative session earlier this year, UNM has made additional requests to the legislature for increased public funding to cover expenses related to NIL compensation.

21. On August 20, 2025, UNM Athletic Director Fernando Lovo presented to the New Mexico State Legislative Finance Committee ("LFC") seeking additional public funds to cover costs related to the *House* settlement, including paying back damages to athletes. UNM and New Mexico State University told the LFC they will be looking for ways to cover revenue they'll share with current athletes as part of the settlement. Nick Coppola, *NMSU, NMSU ADs united in asking legislature for more financial support in athletics,* LAS CRUCES SUN NEWS (Aug. 21, 2025), https://www.lcsun-news.com/story/sports/college/nmsu/2025/08/21/NMSU-new-mexico-nmsu-lovo-burdge-appeal-to-legislature-together-for-more-financial-support-athletics/85744229007/.

22. The College Sports Commission was established as part of the *House* settlement to ensure compliance with the settlement rules, including new rules around revenue sharing, roster limits, and student-athlete third-party NIL agreements.

23. The College Sports Commission utilizes a reporting system known as the College Athlete Payment System (CAPS). Under the *House* settlement, UNM is required to use CAPS to report its revenue sharing payments to student-athletes.

24. UNM must also report all NIL agreements between student-athletes and third parties with a value of $600 or more to the College Sports Commission's CAPS system to ensure third party NIL agreements are "fair market value."

25. As part of the *House* settlement, UNM must implement roster limits for its athletic teams. UNM may offer partial or full scholarships to every student-athlete on a team's roster, as long as the total number of student-athletes stays within the sport's specific roster limit, as required by the settlement.

26. To comply with the new roster limits, UNM must "designate" student-athletes who were

either removed or would have been removed from the school's roster due to the implementation of roster limits and report this list to the College Sports Commission.

27. UNM was required to report the list of "designated student-athletes" to the CAPS system by July 6, 2025.

28. The new rules contained in the *House* settlement are meant to ensure student-athletes are compensated at fair market value. The terms are also meant to ensure student-athletes are treated fairly and compensated adequately for universities' use of and profit from athletes' Name, Image and Likeness.

29. Historically, student-athletes in New Mexico have been eligible to receive NIL compensation from third parties since 2021, when Governor Michelle Lujan Grisham signed into law the "Student Athlete Endorsement Act." NMSA 1978, §§ 21-31-1 – 4 (2023).

30. The Student Athlete Endorsement Act prohibits post-secondary institutions in New Mexico from penalizing student-athletes from earning compensation from a third-party's use of athletes' "name, image, likeness or athletic reputation." NMSA 1978, § 21-31-3(A).

31. In enacting this legislation, the New Mexico Legislature and the Governor sought to provide student-athletes with access to as many benefits as possible for their participation in university athletics.

32. Student-athletes enjoy freedom of contract in their licensing agreements for the profit by others of their Name, Image, and Likeness.

33. Under New Mexico law, contracts may be invalidated if the agreement is unreasonably favorable to one party and prevents one party from having a meaningful opportunity to negotiate the terms of the contract.

34. In short, for a contract to be enforceable, one party may not take advantage of the other party's lack of knowledge, ability, or experience that would result in a gross disparity

between the value received and the price paid.

35. UNM's concealment of its contracts with student-athletes prevents the public and student-athletes themselves from knowing whether the terms of the agreements are fair and enforceable.

36. The public has a substantial interest in UNM's agreements with student-athletes, and with the content of other records related to the *House* settlement. The agreements involve the expenditure of millions of dollars of public money and student fees, and the public should know the details of these agreements.

37. Significantly, by keeping its records related to compensation of student-athletes hidden from the public, there is no way to know whether UNM's payments are compliant with Title IX of the 1972 Education Amendments, a federal civil rights law requiring schools that receive federal funding to distribute equitable opportunities to participate in sports between genders, and provide equitable treatment to men and women athletes.

38. UNM receives federal funding and is subject to Title IX's prohibitions against sex discrimination.

39. Without transparency, no one – including female student-athletes themselves – has any idea whether UNM's distribution of revenue-sharing payments provides female student-athletes equitable opportunities or equitable treatment between genders as required under Title IX.

40. Furthermore, at least one university's new revenue sharing contract, obtained by CBS Sports, has come under scrutiny for its one-sided terms. Florida State University's revenue sharing contract includes a provision that the university can extend its agreements with athletes without renegotiating the terms, even if a player has improved. Another provision in the contract allows the university to reduce a player's NIL value due to injury. Peter Holland, *Is Florida State's Revenue-Sharing Contract Excessive? Some Experts Seem To*

Think So, TALLAHASSEE DEMOCRAT (June 18, 2025), https://www.tallahassee.com/story/sports/college/fsu/2025/06/28/florida-state-nil-revenue-sharing-contract-ncaa-house-settlment-nil/84398982007/.

41. Also, some revenue-sharing contracts contain non-disclosure agreements ("NDAs"), binding athletes to complete secrecy around the terms of compensation. For example, South Carolina's women's basketball players have been required to sign nondisclosure agreements regarding compensation they receive from revenue sharing. The NDA prohibits the players from sharing their compensation from the university with anyone, even their own teammates. Trent Wood, *It Doesn't Look Like Revenue Sharing Will Lead To More Transparency Regarding Player Compensation*, DESERET NEWS (August 14, 2025). https://www.deseret.com/sports/2025/08/14/revenue-sharing-nil-non-disclosure-agreements-south-carolina//.

42. Payments by public universities to anyone; whether to faculty, staff, student-workers or student-athletes, are public record and should be available for anyone to see. New Mexico's Sunshine Portal Transparency Act was enacted to provide the public with access to exactly this type of information concerning government budget and expenditures.

43. UNM's secrecy around the terms of its revenue sharing contracts prevents accountability. The public, and likely the athletes themselves, have no way to know whether the terms of their contracts are lawful and fair.

44. As set forth below, Plaintiff has requested the agreements between UNM and student-athletes and other public records related to compliance with the terms of the *House* settlement, but UNM has refused to disclose them.

45. UNM wrongly claims that the records are subject to protection under the Family Educational Rights and Privacy Act, or "FERPA," 20 U.S.C. Section 1232(g), which protects student

educational records from public disclosure, and under New Mexico's Uniform Trade Secret Act, which permits a public body to withhold or redact public records that contain trade secrets, defined as "[…]information, including a formula, pattern, compilation, program, device, method, technique or process, that (1) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." NMSA 1978, § 14-2-1(F) (2025) and NMSA 1978, § 57-3A-2(D) (1989).

46. In fact, the public records requested by Plaintiff are not educational records or trade secrets, and UNM has violated IPRA by not producing them.

47. The public records requested by Plaintiff relate to expenditures of large amounts of public money and relate to contracts with student-athletes that should not be kept secret from the public.

The Law that Applies to Plaintiff's Inspection of Public Records Act Requests

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

49. 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.

50. 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.

51. UNM unlawfully denied Plaintiff's requests on the basis that some of the requested records are protected from disclosure under 20 U.S.C.A. Section 1232g, or FERPA, which protects against public disclosure of "education records."

52. An "education record" is a record, file, document, or other material which (i) contains information directly related to a student; and (ii) is maintained by an educational agency or institution or by a person acting for such agency or institution. 20 U.S.C.A. § 1232g(a)(4)(A).

53. The records requested by Plaintiff relate to contracts and licenses between UNM, a public institution, payments to athletes, and lists of designated athletes required to be reported to the College Sports Commission to ensure compliance with the *House* agreement. The requested records are therefore not protected "education records" as contemplated by FERPA.

54. To the extent any of the requested records are protected by FERPA, information in the records that identifies a student could have been redacted in accordance with NMSA 1978, Section 14-2-9(A) (2013) and been provided for inspection.

55. UNM further unlawfully denied the records requested by Plaintiff on the basis the records are protected "trade secrets," as contemplated by NMSA 1978, Sections 14-2-1(F) and 57-3A-2(D).

56. The requested public records do not contain formulas, patterns, compilations, programs, devices, methods, techniques, or processes that derive economic value from not being generally known by others who could obtain economic value from disclosure of the records.

Therefore, the requested records are not "trade secrets" under IPRA and as defined in the Uniform Trade Secrets Act.

57. To the extent any of the requested records contain information that is a protected Trade Secret, such information could have been redacted in accordance with NMSA 1978, Section 14-2-9(A) (2013) and been provided for inspection.

Count I:
Request No. 25-593
"Name Image and Likeness" and "Revenue Sharing" contracts

58. On July 18, 2025, Plaintiff requested that UNM produce:

> "[…] electronic copies of all "Name Image and Likeness" and "Revenue Sharing" contracts between the University of New Mexico (UNM), or contracts assumed by UNM from 505 Sports Venture Foundation, and any current student athletes, in effect for the 2025-26 academic year."

59. On August 5, 2025, Defendant Tafoya denied Plaintiff's request in full, stating,

> "Please be advised that your request is seeking records that identify specific individuals as students. The Office of the Custodian of Public Records is prohibited from releasing personally identifying information from education records, as these records are specifically exempt from public disclosure pursuant to IPRA §14-2-1(L) ("as otherwise provided by law"), specifically 34 C.F.R. § 99.3 of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g (FERPA). In addition, the requested items are considered proprietary and confidential trade secrets, which are exempt from public disclosure pursuant to NMSA 1978 § 14-2-1(F). As such, the University of New Mexico will be closing your request."

60. Defendant Tafoya unlawfully failed to set forth the names and titles or positions of each person responsible for the denial, in violation of NMSA 1978, Section 14-2-11(B)(2) (1993).

61. The requested public records are public records as defined in NMSA 1978, Section 14-2-6(H) (2023), and are not subject to any exception to disclosure in IPRA.

62. Specifically, the requested public records are not exempt from disclosure under 20 U.S.C. Section 1232g, because they are not education records as defined by FERPA, nor as Trade Secrets, because they do not meet the definition of a trade secret in the Uniform Trade Secrets Act, NMSA 1978, Section 57-3A-2.

63. The requested public records are contractual agreements involving UNM, a public

institution, that reflect the terms of payments of public money.

64. The requested records should have been provided for inspection as requested by Plaintiff and in accordance with the provisions in IPRA.

65. UNM's violations of IPRA require a remedy under NMSA 1978, Sections 14-2-11(C) and 14-2-12(D) (1993).

Count II:
Request No. 25-594
Templates of "Name Image and Likeness" and "Revenue Sharing" contracts

66. On July 18, 2025, Plaintiff requested that UNM produce:

> "[…] copies of any templates of 'Name Image and Likeness,' or 'Revenue Sharing' contracts between the University of New Mexico and student athletes."

67. On August 5, 2025, Defendant Tafoya provided a 13-page document, redacted in its entirety, and explained,

> "The Office of the Custodian of Public Records has redacted information that is considered proprietary and confidential trade secrets, which are exempt from public disclosure pursuant to NMSA 1978 § 14-2-1(F)."

68. Defendant Tafoya unlawfully failed to set forth the names and titles or positions of each person responsible for the denial, in violation of Section 14-2-11(B)(2).

69. The requested public records are public records as defined in Section 14-2-6(H) and are not subject to any exception to disclosure under IPRA.

70. The requested public records are template contracts between UNM, a public institution, reflecting terms of payments of public money, and are not exempt from disclosure as trade secrets because they do not meet the definition of a trade secret in the Uniform Trade Secrets Act, NMSA 1978, Section 57-3A-2.

71. Even if the template contracts contain trade secret information, or other information exempt under IPRA, it is inconceivable that every single provision in the template contract would be exempt from public inspection.

72. The requested records should have been provided for inspection as requested by Plaintiff and in accordance with the provisions in IPRA.

73. UNM's violations of IPRA require a remedy under Sections 14-2-11(C) and 14-2-12(D).

Count III:
Request No. 25-596
Designated Student-Athlete lists

74. On July 21, 2025, Plaintiff requested that UNM produce:

> "[…] all Designated Student-Athlete lists submitted by the University of New Mexico to the cap management system/College Athlete Payment System (CAPS), overseen by the College Sports Commission, as required by the settlement in House v. NCAA."

75. On August 5, 2025, Defendant Tafoya denied the request in full, explaining,

> "The Office of the Custodian of Public Records is prohibited from releasing personally identifying information from education records, as these records are specifically exempt from public disclosure pursuant to IPRA §14-2-1(L) ("as otherwise provided by law"), specifically 34 C.F.R. § 99.3 of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g (FERPA). As such, the University of New Mexico will be closing your request."

76. Defendant Tafoya unlawfully failed to set forth the names and titles or positions of each person responsible for the denial, in violation of Section 14-2-11(B)(2).

77. The requested public records are public records as defined in Section 14-2-6(H) and are not exempt from disclosure under 20 U.S.C. Section 1232g, or any other exception to IPRA.

78. The requested records are lists UNM was required to report to the College Sports Commission under the terms of the *House* settlement.

79. The requested records should have been provided for inspection as requested by Plaintiff and in accordance with the provisions in IPRA.

80. UNM's violations of IPRA require a remedy under Sections 14-2-11(C) and 14-2-12(D).

Count IV:
Request No. 25-5967
Licenses between the University of New Mexico and student-athletes for name, image and likeness

81. On July 18, 2025, Plaintiff requested that UNM produce:

"[…] electronic copies of reports submitted to the College Sports Commission of all licenses between the University of New Mexico and its student-athletes for name, image and likeness."

82. On August 5, 2025, Defendant Tafoya denied Plaintiff's request in full, stating,

"The Office of the Custodian of Public Records is prohibited from releasing personally identifying information from education records, as these records are specifically exempt from public disclosure pursuant to IPRA §14-2-1(L) ("as otherwise provided by law"), specifically 34 C.F.R. § 99.3 of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g (FERPA). In addition, the requested items are considered proprietary and confidential trade secrets, which are exempt from public disclosure pursuant to NMSA 1978 § 14-2-1(F). As such, the University of New Mexico will be closing your request."

83. Defendant Tafoya unlawfully failed to set forth the names and titles or positions of each person responsible for the denial, as required by Section 14-2-11(B)(2).

84. The requested public records are public records as defined in Section 14-2-6(H) and not subject to any exception to disclosure under IPRA.

85. Specifically, the requested public records are not exempt from disclosure under 20 U.S.C. Section 1232g, nor are they exempt as trade secrets as defined in the Uniform Trade Secrets Act, NMSA 1978, Section 57-3A-2.

86. The requested public records are reports UNM was required to submit to the College Sports Commission to comply with the terms of the *House* settlement.

87. The requested records should have been provided for inspection as requested by Plaintiff and in accordance with the provisions in IPRA.

88. UNM's violations of IPRA require a remedy under Sections 14-2-11(C) and 14-2-12(D).

Count V:
Pre-emptive denial of public records requests

89. In violation of the public's right to inspect public records of UNM under § 14-2-1, UNM has created an online public records request portal or system that deters the public from exercising the statutory right to request certain public records.

90. When Plaintiff typed its request into UNM's IPRA portal, the portal generated the following

automated message in response to the terms "name, image and likeness" or "revenue sharing": "This is not a public record, please contact UNM Registrar at https://registrar.unm.edu."

91. The automated message appeared as Plaintiff typed the request for revenue sharing agreements and was highlighted in yellow.

92. The automated message deters and discourages the public from requesting to inspect UNM's public records.

93. UNM's message deterring requestors from seeking to inspect public records is a pre-emptive denial of the request in violation of UNM's statutory obligations under IPRA, and in violation of IPRA's purpose to provide all persons with the greatest possible information regarding the affairs of UNM and to provide access to such information. It is also contrary to IPRA's mandate that providing access to UNM's public records is an "essential function integral part of the routine duties" of UNM and its records custodian. NMSA 1978, Section 14-2-5.

94. UNM's violation of IPRA requires a remedy under Section 14-2-11(C) and 14-2-12(D).

Prayer for Relief

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

A. An order directing UNM to satisfy the above-described IPRA requests in full;

B. An order for equitable relief to cure UNM's violations of IPRA;

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

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

Respectfully submitted,

NEW MEXICO FOUNDATION
FOR OPEN GOVERNMENT

Amanda R. Lavin
NMFOG Legal Director
amandalavin@nmfog.org
7777 Jefferson St. NE
Albuquerque, NM 87109