

**STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
THIRD JUDICIAL DISTRICT**

FILED
3rd JUDICIAL DISTRICT COURT
Dona Ana County
6/22/2026 9:40 AM
BERNICE A. RAMOS
CLERK OF THE COURT
Rosie Stewart

**NEW MEXICO FOUNDATION
FOR OPEN GOVERNMENT,**

Plaintiff,

v.

No. D-307-CV-2026-01788

**DOÑA ANA COUNTY BOARD OF COMMISSIONERS
and the DOÑA ANA COUNTY RECORDS CUSTODIAN,**

Martin, James T.

Defendants.

COMPLAINT TO ENFORCE THE INSPECTION OF PUBLIC RECORDS ACT

Plaintiff New Mexico Foundation for Open Government (“NMFOG”), for its complaint against Defendants Doña Ana County Board of Commissioners and the Doña Ana County Records Custodian (collectively, “Defendant Doña Ana County”), states as follows:

Introduction

1. This case concerns a denial of the public’s right to inspect records of Doña Ana County under the New Mexico Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 – 12 (“IPRA”) (2025).
2. Defendant Doña Ana County unlawfully denied access to public records of emails pertaining to the construction of Project Jupiter, a \$165 billion Artificial Intelligence data center and energy project in Santa Teresa, New Mexico.
3. Defendant Doña Ana County further denied access to public records of communications to the County regarding alleged violations of the New Mexico Open Meetings Act that occurred at a county commissioner meeting on September 19, 2025, when Defendant Doña Ana County approved an ordinance authorizing \$165 billion worth of industrial revenue

bonds to support the development of Project Jupiter.

Parties

4. Plaintiff NMFOG is a New Mexico nonprofit, nonpartisan organization whose mission is to help individuals, businesses, students, educators, journalists, lawyers, and other engaged citizens understand, obtain, and exercise their rights under IPRA, the New Mexico Open Meetings Act (“OMA”), the Arrest Record Information Act, the First Amendment to the United States Constitution and Article II Section 17 of the New Mexico Constitution, as well as to help public officials understand and discharge their obligations under those statutes and constitutional provisions. NMFOG has its principal place of business in Bernalillo County, in the state of New Mexico.
5. Defendant Doña Ana County Board of Commissioners, the governing body of Doña Ana County, is headquartered in the state of New Mexico, is a political subdivision of the State, and a “public body” within the meaning of IPRA, NMSA 1978, Section 14-2-6(G)(2023).
6. Defendant Doña Ana County has not clearly designated a records custodian as required by Section 14-2-7 of IPRA. NMSA 1978, § 14-2-7 (2001). Pursuant to Rule 1-025(D)(2) NMRA, NMFOG names the Defendant Records Custodian by her/his official title. NMRA, Rule 1-025.

Jurisdiction and Venue

7. The Court has jurisdiction over the parties and subject matter of the action under NMSA 1978, Sections 38-3-2 (1998) and 14-2-12 (1993).
8. Venue is proper under NMSA 1978, Section 38-3-2 (1953).

General Allegations

9. 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.
10. Defendant Doña Ana County failed to comply with the Supreme Court’s mandate in *Republican Party* and its statutory obligations under IPRA when it refused to allow inspection of County emails relating to construction of the hyperscale data center, Project Jupiter, unlawfully claiming that the emails were confidential under IPRA’s exception that provides confidentiality for state-developed tactical response plans that if released, could “facilitate a terrorist attack.” NMSA 1978, § 14-2-1(I)(2025).
11. Additionally, Defendant Doña Ana County violated IPRA when it untruthfully told Plaintiff NMFOG that there were no responsive records to Plaintiff’s request for “all records of communication to the Doña Ana County Board of Commissioners regarding allegations of violations of the OMA at the Board’s September 19, 2025, meeting,” and wrongly deemed this request “excessively broad and burdensome.”
12. At a September 19, 2025, meeting of the Doña Ana County board of County Commissioners, the commission voted 4-1 to approve \$165 billion in industrial revenue bonds for the development of Project Jupiter, a data center planned to support artificial intelligence tech giants OpenAI and Oracle. The project has been the subject of significant public interest, with residents and state lawmakers reporting they learned of the project too

late to prepare for the county’s vote, and that “meaningful details about the project remain hard to come by.”¹

13. Doña Ana County residents have raised concerns over transparency around the project and potential environmental impacts.²

14. In addition, there has been recent public upset over Doña Ana County’s seeming lack of response to public concern around construction of the data center. Doña Ana County agreed to hold a town hall meeting to answer questions about Project Jupiter, but residents learned on June 9, 2026, that the meeting would instead be hosted by Project Jupiter and would be a career fair and open house, as opposed to an open forum on the data center.³

15. The New Mexico Environmental Law Center (“NMELC”) has filed two lawsuits against Doña Ana County aimed at stopping Project Jupiter. One suit alleges the county commissioners violated state law by approving the project when the application was incomplete, and the other alleges Doña Ana County violated the OMA during a commissioner meeting on September 19, 2025, when it unlawfully entered into a closed session and then voted to adopt the ordinance authorizing the County to issue \$165 billion in industrial revenue bonds to support Project Jupiter.

¹ Joshua Bowling, *Project Jupiter pits demand for data against New Mexico’s finite natural resources*, SOURCE NM (October 28, 2025), <https://sourcenm.com/2025/10/28/project-jupiter-pits-demand-for-data-against-new-mexicos-finite-natural-resources/>

² Leah Romero, *NM lawmakers voice concern over data center Project Jupiter*, SOURCE NM (Oct. 30, 2025), <https://sourcenm.com/2025/10/30/nm-lawmakers-voice-concerns-over-data-center-project-jupiter/>.

³ Bela Olague, *New tensions flare over massive data center ‘Project Jupiter’ in southern New Mexico*, KRQE (June 10, 2026), <https://www.krqe.com/news/new-mexico/new-tensions-flare-over-massive-data-center-project-jupiter-in-southern-new-mexico/>.

Plaintiff's November 24, 2025, IPRA Request for
Communications regarding Defendant County's Violations of the OMA

16. The NMELC sent a letter to Defendant Doña Ana County on October 3, 2025, notifying the county commissioners of the OMA violation at the September 19, 2025, meeting.
17. After receiving complaints from journalists and the public about the county commissioners' violation of the OMA at its September 19, 2025, meeting, on November 14, 2025, Plaintiff NMFOG sent a letter notifying Defendant of the OMA violation.
18. A journalist with the *Albuquerque Journal* submitted an IPRA request for a copy of NMFOG's November 14, 2025, OMA Violation letter to the County. In response, the county told the journalist it had no responsive records, and failed to provide NMFOG's November 14, 2025, letter for inspection.
19. On November 24, 2025, Plaintiff NMFOG submitted an IPRA request to Defendant requesting "all records of communication to the Doña Ana County Board of Commissioners regarding allegations of violations of the Open Meetings Act ("OMA") at the Board's September 19, 2025, meeting. This includes letters, emails, or other correspondence putting the Board on notice of violations of the OMA."
20. In response to NMFOG's November 24, 2025, public records request, Defendant Doña Ana County told Plaintiff on December 9, 2025, and again on December 19, 2025, that the request was "deemed burdensome" and would require additional time to fulfill.
21. On December 23, 2025, Defendant Doña Ana County told Plaintiff NMFOG that the IPRA request had been closed and that there were "no responsive documents to produce."
22. Defendant did not permit inspection of NMELC's OMA violation letter, NMFOG's OMA violation letter, or any other records responsive to NMFOG's request for communications

to the county about the OMA violations at the September 19, 2025, meeting.

June 3, 2026, IPRA Request for emails
withheld pursuant to the “terrorist attack” exception

23. On February 19, 2026, the NMELC submitted an IPRA request to Defendant Doña Ana County for construction drawings, inspection reports, and permits relating to Project Miner and Project Jupiter. Defendant Doña Ana County assigned the request number IPRA-2026-00527.
24. On April 16, 2026, Defendant Doña Ana County provided responsive records to NMELC, but withheld 29 emails wrongly relying on Section 14-2-1(I) of IPRA, which permits a public body to withhold from inspection

“tactical response plans or procedures prepared for or by the state or a political subdivision of the state, the publication of which could reveal specific vulnerabilities, risk assessments or tactical emergency security procedures that could be used to facilitate the planning or execution of a terrorist attack[.]”

NMSA 1978, § 14-2-1(I)(2025).
25. Following Defendant Doña Ana County’s response, NMELC and NMFOG contacted Doña Ana County and requested an explanation of how the county emails were shielded by Section 14-2-1(I), the “tactical response plan” exception. Despite multiple requests, Defendant did not provide any explanation.
26. On June 3, 2026, Plaintiff NMFOG submitted an IPRA request to Defendant Doña Ana County for the 29 emails responsive to NMELC’s IPRA request number IPRA-2026-00527 that were withheld pursuant to NMSA 1978, Section 14-2-1(I).
27. On June 8, 2026, Defendant Doña Ana County denied inspection of the emails, again citing Section 14-2-1(I) as grounds for withholding the emails.
28. Emails to and from Doña Ana County employees that relate to public business are public

records under IPRA. *See* NMSA 1978, § 14-2-6(H)(2023) (“‘public records’ 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[.]”).

29. The emails in question are public records and concern a subject of significant public interest: the construction of a major data center in Southern New Mexico, known as Project Jupiter.
30. Emails, by definition, are not “tactical response plans developed by the state” as contemplated by Section 14-2-1(I) of IPRA.
31. The New Mexico Department of Justice’s 2024 edition of the IPRA Compliance Guide provides the following guidance on application of Section 14-2-1(I):

“Since the September 11, 2001, terrorist attacks and recent tragic experiences with mass shootings at schools, state and local governments have focused on the development and refinement of plans and procedures for responding to emergencies, including potential terrorist attacks. This exception is intended to protect New Mexico state and local government tactical response plans or procedures that, if made public, could reveal such sensitive information. Information sought to be protected under the exception must be included in a governmental tactical response plan or procedure, and not simply just broadly related to public safety or security.”

N.M. Dept. of Justice, Inspection of Public Records Act Compliance Guide (Ninth Ed., 2024), <https://nmdoj.gov/wp-content/uploads/NMDOJ-IPRA-Guide-Ninth-Edition-25.03.21.pdf>.

32. There are other recent examples of public bodies in New Mexico wrongfully invoking the protections of Section 14-2-1(I) to shield public records from view that are not tactical response plans.
33. For example, in August of 2025, the Farmington Police Department withheld public records relating to information about the location of license plate readers around the city pursuant

to Section 14-2-1(I), claiming records sought were protected as “part of a tactical response plan.” After Plaintiff NMFOG complained to the city, the city reconsidered its position and properly released the public records regarding the location of the license plate readers.

34. In August of 2025, the University of New Mexico was ordered by the Second Judicial District Court to allow inspection of the university police weapon inventory that it unlawfully withheld from the public for almost two years. A student journalist had requested the records, and the University had denied the request, claiming the inventory was subject to the protections of Section 14-2-1(I) as part of the University’s “tactical response plans.” The University released the requested inventory records in full pursuant to the court order and ultimately paid \$195,000 in attorneys’ fees and damages for unlawfully withholding the records, in violation of IPRA.⁴

35. The emails requested here are not governmental tactical response plans or procedures; they are electronic communications relating to public business and maintained by a public body, and therefore subject to inspection under IPRA.

Violations of the Inspection of Public Records Act

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

37. 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

⁴ Cormac Dodd, *Former ‘Daily Lobo’ editor victorious after 2-year records battle with UNM*, SANTA FE NEW MEXICAN (Oct. 4, 2025), https://www.santafenewmexican.com/news/local_news/former-daily-lobo-editor-victorious-after-2-year-records-battle-with-unm/article_21452321-0571-4d20-9130-b36ff2bdf1f0.html

of this state, that to provide persons with such information is an essential function of a representative government and an integral part of the routine duties of public officers and employees.” NMSA 1978, § 14-2-5(1993).

38. 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.
39. The only public records that may be lawfully withheld from inspection are those subject to the limited exceptions outlined in Section 14-2-1(A)-(N) of IPRA.
40. Section 14-2-8 of IPRA requires a custodian receiving a written request to permit inspection of the requested public records immediately or as soon as practicable, but in any event, no later than fifteen days. NMSA 1978, § 14-2-8(D) (2009).
41. IPRA allows a custodian additional time beyond fifteen days to respond to a request only if the request is “excessively burdensome or broad.” NMSA 1978, § 14-2-10 (1993).
42. A person whose written public records request has been unlawfully denied may bring an action to enforce any provision of IPRA. NMSA 1978, § 14-2-12(A)(2) (1993).

Count I

Violation of NMSA 1978, Section 14-2-1
Plaintiff’s November 24, 2025, IPRA Request

43. Defendant Doña Ana County violated Plaintiff’s rights under Section 14-2-1 of IPRA when it unlawfully failed to permit inspection of “all records of communication to the Doña Ana County Board of Commissioners regarding allegations of violations of the OMA at the Board's September 19, 2025, meeting.”

44. There exist at least two letters responsive to Plaintiff's November 24, 2025, IPRA request that Defendant Doña Ana County failed to allow inspection of: Plaintiff's November 14, 2025, letter, and NMELC's October 3, 2025, letter.
45. Given Defendant Doña Ana County's inaccurate statement that it had no responsive records to produce, it is unknown whether additional public records responsive to this request exist.
46. The requested communications are public records as defined in Section 14-2-6(H) of IPRA.
47. Defendant Doña Ana County was required to produce the requested records under Section 14-2-1, and its failure to do so is a violation of IPRA.
48. Defendant Doña Ana County's violations of IPRA entitle Plaintiff to remedies under Sections 14-2-11(C) (1993) and 14-2-12(D) (1993).

Count II

Violation of NMSA 1978, Sections 14-2-8 and 14-2-10 Plaintiff's November 24, 2025, Request

49. Defendant Doña Ana County violated Plaintiff's rights under Section 14-2-8 of IPRA when it unlawfully failed to respond to Plaintiff's request within fifteen days.
50. Defendant Doña Ana County violated Section 14-2-10 when it claimed Plaintiff's November 24, 2025, request to inspect communications regarding the County's violation of the OMA was "burdensome."
51. Plaintiff's November 24, 2025, request was not "excessively broad or burdensome" as contemplated by Section 14-2-10.
52. The request asked for communications to Defendant Doña Ana County about violations of one meeting of the county commissioners. Moreover, Defendant failed to produce even one responsive record.
53. Defendant Doña Ana County violated IPRA when it claimed Plaintiff's simple,

straightforward, and time-limited request was burdensome, took one month to respond to Plaintiff, and did not turn over a single responsive record.

54. Defendant Doña Ana County's violations of IPRA entitle Plaintiff to remedies under Sections 14-2-11(C) (1993) and 14-2-12(D).

Count III

Violation of NMSA 1978, Section 14-2-1 Plaintiff's June 3, 2026, IPRA Request

55. Defendant Doña Ana County violated Plaintiff's rights under Section 14-2-1 of IPRA when it unlawfully withheld the requested emails under the terrorist plan exception (Section 14-2-1(I)).

56. The requested emails are public records as defined in Section 14-2-6(H) of IPRA.

57. The requested emails are not governmental tactical response plans that if released, would facilitate a terrorist attack, and therefore cannot be shielded from public view under Section 14-2-1(I) of IPRA.

58. Defendant Doña Ana County violated IPRA when it unlawfully withheld responsive public records of emails under 14-2-1(I).

59. Defendant's violations of IPRA entitle Plaintiff to remedies under Sections 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 Defendant Doña Ana County for the following relief:

- A. An order directing Defendant to satisfy the above-described IPRA requests in full;
- B. An award of damages, costs, and reasonable attorneys' fees under IPRA, NMSA 1978, Sections 14-2-11(C) and 14-2-12(D); and
- C. Such other relief as the Court deems just and proper.

Respectfully submitted,

NEW MEXICO FOUNDATION
FOR OPEN GOVERNMENT



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