

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

**SOUTHWEST PUBLIC POLICY  
INSTITUTE,**

**Plaintiff,**

**No.** \_\_\_\_\_

**v.**

**NEW MEXICO TAXATION AND  
REVENUE DEPARTMENT**

**COMPLAINT FOR VIOLATION  
OF THE INSPECTION OF PUBLIC RECORDS ACT**

**COMES NOW**, Plaintiff, Southwest Public Policy Institute, by and through its counsel, ARAGON MOSS GEORGE JENKINS, LLP (Jordon P. George), and hereby states the following for its Complaint for Violation of the Inspection of Public Records Act:

**PARTIES, JURISDICTION AND VENUE**

1. This action relates to Defendant, New Mexico Taxation and Revenue Department's ("TRD"), willful or deliberately indifferent failure to provide a complete and timely response to Plaintiff's public records request, dated August 29, 2022.

2. This action is brought pursuant to NMSA 1978, §§ 14-2-11 and -12, for actual damages, statutory damages, costs, attorneys' fees, and to enforce the provisions of the Inspection of Public Records Act ("IPRA").

3. Plaintiff, Southwest Public Policy Institute, is a 501(c)(3) nonprofit entity whose principal place of business is in the State of New Mexico.

4. Plaintiff is a proper entity to enforce the provisions of IPRA.

5. This Court has jurisdiction over this matter.

6. Venue is proper in this district.

### **FACTUAL ALLEGATIONS**

7. On August 29, 2022, Plaintiff, through its agent, Patrick Brenner, submitted a written IPRA request to Defendant TRD seeking certain public records in the possession of TRD. See e-mail from Patrick Brenner to TRD, dated August 29, 2022, and attached hereto as Exhibit A.

8. The records sought by Plaintiff pertain to a database of registered vehicles maintained by the New Mexico Motor Vehicle Division within TRD.

9. Plaintiff is requesting an opportunity to inspect the entire database.

10. As of the date of the filing of this Complaint, Defendant has failed to confirm receipt of Plaintiff's August 29, 2022 request.

11. As of the date of the filing of this Complaint, Defendant has failed to provide a response denying Plaintiff's August 29, 2022 request, nor has it claimed any exception to public inspection.

### **COUNT I: STATUTORY DAMAGES PURSUANT TO SECTION 14-2-11**

12. All of the foregoing allegations are incorporated herein.

13. This Count alleges statutory damages pursuant to NMSA 1978, Section 14-2-11 for Defendants failure to comply with IPRA's procedural requirements, which are designed to ensure prompt compliance with the Act.

14. When no exemption is claimed by a public body, "[e]very person has a right to inspect public records of this state[.]" NMSA 1978, § 14-2-1 (2011).

15. “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.” § 14-2-8(D) (2009).

16. “If the inspection is not permitted within three business days, the custodian shall explain in writing when the records will be available for inspection or when the public body will respond to the request.” *Id.*

17. “[W]hen the custodian fails to respond to a request or deliver a written explanation of [a] denial ... the public entity is subject to Section 14-2-11 damages.” *Faber v. King*, 2011-NMSC-015, ¶ 16, 348 P.3d 173.

18. “Section 14-2-11 ensures prompt compliance by allowing for statutory damages of up to \$100 per day if a public body fails to timely respond to a records request.” *Id.*, ¶ 31.

19. Section 14-2-11 damages are also applicable “when a public body provides an incomplete or inadequate response to a request to inspect public records[.]” *Britton v. Office of Attorney General*, 2019-NMCA-002, ¶ 33, 433 P.3d 320.

20. Damages shall “be awarded if the failure to provide a timely explanation of denial is determined to be unreasonable.” § 14-2-1 I(C).

21. Damages for untimely compliance shall “not exceed \$100 per day” and shall accrue from the day the public body is in noncompliance until a written denial is issued. *Id.*

22. The request subject to this Complaint was made by Plaintiff on August 29, 2022.

23. To date, Defendants have been in noncompliance with Section 14-2-11 for at least fourteen (14) days.

24. Defendants have willfully failed to comply with Section 14-2-11.

25. Plaintiff is entitled to statutory damages for Defendant's unreasonable failure to provide prompt access to public records or any formal denial letter as required by Section 14-2-11.

**COUNT II:**  
**INJUNCTIVE RELIEF, DAMAGES, COSTS AND ATTORNEY'S FEES**  
**PURSUANT TO SECTION 14-2-12**

26. All of the foregoing allegations are incorporated herein.

27. When a written request for public records "has not been permitted within fifteen days of receipt by the office of the custodian[,]" the request "may be deemed denied[,]" permitting a requestor to pursue all remedies provided in IPRA. § 14-2-11(A).

28. "[A] person whose written request has been denied[,]" may bring an action to enforce the Act. § 14-2-12(A).

29. "A district court may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of [IPRA]." § 14-2-12(B).

30. "The court shall award damages, costs and reasonable attorneys' fees to any person whose written request has been denied and is successful in a court action to enforce the provisions of [IPRA]." § 14-2-12(D).

31. Plaintiff is entitled to an injunction requiring Defendants to fully respond to its August 29, 2022 request.

32. The records sought by Plaintiff are public records, not exempt by statute and must be timely produced.

33. Plaintiff is entitled to its litigation costs and reasonable attorneys' fees in bringing this action to force Defendant's compliance with IPRA.

34. Plaintiff is also entitled to actual damages as a result of Defendant's non-compliance with IPRA.

35. Damages pursuant to IPRA are not capped.

**PRAYER FOR RELIEF**

**WHEREFORE**, based on the foregoing, Plaintiff respectfully requests the following relief:

A. An Order requiring Defendant to produce all information, documents, reports and other materials responsive to Plaintiff's August 29, 2022 records request.

B. An award of statutory damages of \$100 per day from September 2, 2022, until Defendant provides the requested records or formally denies Plaintiff's request in compliance with Sections 14-2-1 I(B) and (C).

C. An award of actual damages resulting from Defendant's nonproduction and untimely production of public records.

D. An award of Plaintiff's costs and reasonable attorneys' fees.

E. Any other relief the Court deems proper.

Respectfully submitted,

**ARAGON MOSS  
GEORGE JENKINS, LLP**

By: /s/ Jordon P. George  
Jordon P. George  
2201 Menaul Blvd NE  
Albuquerque, NM 87107  
(505) 872-3022  
(505) 214-5317 (facsimile)  
[jordon@amgilaw.com](mailto:jordon@amgilaw.com)

*Attorneys for Plaintiff*