

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

**SOUTHWEST PUBLIC POLICY
INSTITUTE,**

Plaintiff,

No. D-101-CV-2022-01994

v.

Case assigned to Wilson, Matthew Justin

NEW MEXICO SECRETARY OF STATE,

Defendant.

**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's, the New Mexico Secretary of State (*hereinafter*, "SOS"), unreasonable failure to provide a complete and timely response to Plaintiff's public records request, dated August 5, 2022.

2. This action is brought pursuant to NMSA 1978, Sections 14-2-11 and -12 of the Inspection of Public Records Act ("IPRA"), for actual damages, statutory damages, injunctive relief, costs, attorneys' fees, and to otherwise enforce the provisions of 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. Defendant SOS is a state agency located in Santa Fe, New Mexico; Maggie Toulouse Oliver is the elected Secretary thereof.

5. Plaintiff is a proper entity to enforce the provisions of IPRA.
6. This Court has jurisdiction over this matter.
7. Venue is proper in this district.

FACTUAL ALLEGATIONS

8. On October 28, 2021, Plaintiff, through its agent, Patrick Brenner, submitted a written IPRA request to Defendant SOS seeking certain public records in the possession of SOS.

9. The records sought by Plaintiff pertained to a database of email addresses maintained by SOS.

10. On November 4, 2021, Plaintiff's request was updated to include all first names, last names, and email addresses provided to SOS through an online voter registration portal.

11. On November 9, 2021, SOS responded to Plaintiff's request, stating that the "request constitutes a request for voter data and will be governed by NMSA 1978, Section 1-4-5.5," and directing Plaintiff to an online portal maintained by SOS for voter data information requests. *See* letter from the records custodian for SOS, Patrick Rostock, to Patrick Brenner, dated November 9, 2021 and attached hereto as **Exhibit 1**.

12. The letter further advised that, pursuant to Section 1-5-14(D), "any response to a voter data file request will not include email addresses." *Id.*

13. With the November 9, 2021 response, SOS considered Plaintiff's request fulfilled. *Id.*

14. On August 5, 2022, Plaintiff, through its agent, Patrick Brenner, submitted a second written IPRA request to SOS stating, in part, the following:

In light of a recent ruling from Judge James Browning, New Mexico state law "does not prohibit Voter Reference — or any organization — from posting voter data online."

(<https://lasvegassun.com/news/2022/jul/25/us-judge-oks-online-publication-of-new-mexico-vote/>)

I am reviving this request.

See e-mail from Patrick Brenner to Patrick Rostock, dated August 5, 2022 and attached hereto as **Exhibit 2** (*hereinafter*, “Second Request”).

15. The Second Request from Mr. Brenner then re-stated Plaintiff’s previous request “to inspect the entire database of email addresses maintained by [SOS]. . .”, and was submitted directly to Mr. Rostock’s e-mail address with four (4) additional SOS officials copied thereto. *Id.*

16. As of the date of the filing of this Complaint, Defendant has failed to confirm receipt, provide a written denial, or otherwise claim any exemption regarding Plaintiff’s Second Request.

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

17. All of the foregoing allegations are incorporated herein by reference.

18. Plaintiff is entitled to statutory damages pursuant to IPRA Section 14-2-11 for Defendant’s unreasonable failure to respond to Plaintiff’s Second Request.

19. “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).

20. “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.*

21. “[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*, 2015-NMSC-015, ¶ 16, 348 P.3d 173.

22. “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.

23. 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.

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

25. 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.*

26. The Second Request was made by Plaintiff on August 5, 2022.

27. Defendant has been in noncompliance with Section 14-2-11 since on or about August 21, 2022.

28. Defendant has unreasonably failed to comply with Section 14-2-11 by failing to respond to Plaintiff’s Second Request.

29. 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 regarding Plaintiff’s Second Request.

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

30. All of the foregoing allegations are incorporated herein by reference.

31. 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. § 14-2-1 l(A).

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

33. “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).

34. “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).

35. Plaintiff is entitled to an injunction requiring Defendants to fully respond to its Second Request, by either producing all non-exempt public records subject to the Second Request, or by providing formal denial letter as required by Section 14-2-11.

36. Plaintiff is entitled to its litigation costs and reasonable attorneys’ fees in bringing this action to compel Defendant’s compliance with IPRA.

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

PRAYER FOR RELIEF

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

A. An Order requiring Defendant to either permit inspection of all non-exempt public records subject to the Second Request, or provide a formal denial letter concerning the Second Request, as required by Section 14-2-11;

B. An award of statutory damages of \$100 per day from August 21, 2022, until Defendant provides the requested records or formally denies Plaintiff’s request in compliance with Sections 14-2-1 l(B) and (C);

C. An award of actual damages resulting from Defendant's non-compliance with Section 14-2-11;

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

E. Any other relief this Court deems just and proper.

Respectfully submitted,

**ARAGON MOSS
GEORGE JENKINS, LLP**

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