

**STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT**

**SOUTHWEST PUBLIC POLICY  
INSTITUTE,**

**Plaintiff,**

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

**v.**

**CITY OF ALBUQUERQUE, and  
ETHAN WATSON, in his official  
capacity,**

**Defendants.**

**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 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 in connection with Defendants’ wrongful denial of Plaintiff’s public records request, dated January 10, 2023.

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

3. Defendant, City of Albuquerque, is a public body in the State of New Mexico.

4. Defendant, Ethan Watson, is the City Clerk for the City of Albuquerque and is named in his official capacity as the designated custodian of records for the City of Albuquerque at all times relevant to the allegations in this Complaint.

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 January 10, 2023, Plaintiff, through its authorized agent, Patrick Brenner, submitted a written IPRA request to the City of Albuquerque (“City”) seeking certain public records in the possession of the City. *See* Request 23-308 from Patrick Brenner to the City, dated January 10, 2023, *attached hereto as part of Exhibit A* (“IPRA Request”).

9. The IPRA Request specifically pertains to Plaintiff’s request to inspect a database maintained by NOVOAGLOBAL on behalf of the City of Albuquerque for the City’s “Automated Speed Enforcement” program, including management of the citations generated therefrom and the fine collection process (“Database”). *Id.*

10. Upon information and belief, the information collected in accordance with the contract between the City and NOVOAGLOBAL is compiled in an electronic format, exhibited by the existence of an online citation payment portal *Id.*

11. Upon information and belief, the Database contains information about each citation, including vehicle information of the citation recipient as well as email address, name, address, phone number, cookies, and usage data. *Id.*

12. The IPRA Request seeks to inspect the Database in its entirety, in its original electronic format, for the entire period of the contract dates between the City and

NOVOAGLOBAL; a copy of the contract export obtained from the City's ERP Contract List was included with the IPRA request for vendor clarification and ease of reference. *Id.*

13. Accordingly, the IPRA Request seeks to inspect each and every citation issued or otherwise associated with the "Automated Speed Enforcement" program contract between the City and NOVOAGLOBAL, which are held and maintained within the Database. *Id.*

14. On the same day the IPRA Request was submitted to the City, Plaintiff received an automated response from Defendant Ethan Watson acknowledging receipt of the IPRA Request. *See Exhibit A*, message from Ethan Watson, dated January 10, 2023.

15. On January 25, 2023, Plaintiff received the following response to the IPRA Request:

Please be advised: the City does not own or maintain the database built and maintained by NOVOAGLOBAL, therefore, the City does not have responsive records for that portion of your request. As for the second part of your request, 30,000 plus citations have been issued since the start of the Automated Speed Enforcement program, we can provide the citations on an inspection schedule, unless you would like to narrow your request to particular citations.

*See Exhibit A*, message from Yvette Gurule, dated January 25, 2023.

16. Plaintiff replied to the initial response and again requested the records specified in the IPRA Request. *See Exhibit A*, message from Mr. Brenner, dated February 2, 2023.

17. Mr. Watson then reiterated that the City can only "provide the citations on an inspection schedule, unless you would like to narrow your request to particular citations." *See Exhibit A*, message from Mr. Watson, dated March 2, 2023.

18. Mr. Brenner again replied that he has "already identified the records [he is] seeking with reasonable particularity as required," and requested that the City produce the requested records immediately. *See Exhibit A*, message from Mr. Brenner, dated June 14, 2023.

19. On July 20, 2023, the City produced a list of all citations generated during the time period subject to the IPRA request, and asked Mr. Brenner if there is “a specific citation(s) that you are interested in.” See **Exhibit A**, message from Ashley Martinez, dated July 20, 2023; **Exhibit B**, list of citations produced by City.

20. Mr. Brenner promptly replied that he was interested in all of the listed citations, and again requested that the City “produce all responsive records immediately.” See **Exhibit A**, message from Mr. Brenner, dated July 20, 2023.

21. As of the date of the filing of this Complaint, Plaintiff has received no further response from the City regarding the IPRA Request.

22. Defendants’ response to the IPRA request constitutes a wrongful denial of Plaintiff’s IPRA Request due to Defendants’ unreasonable failure to make the requested records available for inspection or copying.

23. Under IPRA, public records are “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.” § 14-2-6(H) (emphasis added); see *Toomey v. City of Truth or Consequences*, 2012-NMCA-104, ¶ 25, 287 P.3d 364 (holding that private company contracting with a city to manage the city’s public access cable TV channel was acting on the city’s behalf and, therefore, video recordings of the city commission meetings held by the contractor were public records covered by IPRA’s disclosure requirements); see also, *N.M. Found. v. Corizon Health*, 460 P.3d 43, 51 (N.M. Ct. App. 2019) (holding that third-party settlement agreements resulting from medical care provided under a contract with the state are public documents subject to disclosure under IPRA); see also, *Dunn v. N.M. Dep’t of Game &*

*Fish*, 2020-NMCA-026, ¶ 11, 464 P.3d 129 (holding that “as a general matter, information collected from the public by a governmental agency in connection with the administration of its public duties falls within the meaning of ‘public records’”).

24. Pursuant to NMSA 1978, Section 14-3-8(C), “[e]xcept as provided by federal or state law, information contained in a computer database shall be a public record and shall be subject to disclosure in printed or typed format by a county or municipality that has inserted that information into the database, in accordance with [IPRA].”

25. A municipality such as the City “that has inserted data in a computer database shall authorize an electronic copy to be made of the computer database of a public record on a currently available electronic medium for a person if the person agrees to pay a reasonable fee . . .” § 14-3-8(E).

26. Further, if the City “has the capability,” it may “permit access or use of its computer and network system to search, manipulate or retrieve information from a computer database and charge reasonable fees based on the cost of materials, personnel time, access time and the use of the county or municipality’s computer network.” § 14-3-8(G).

27. Defendants’ response to the IPRA request states, with regard to Plaintiff’s request to inspect the Database, that it “does not own or maintain the database built and maintained by NOVOAGLOBAL, therefore, the City does not have responsive records for that portion of your request.”

28. However, Defendants may not deny Plaintiff’s otherwise proper IPRA Request to inspect the Database based on the premise that the City does not own or maintain it, as the information contained within the Database is public record which is maintained and held by NOVOAGLOBAL on behalf of the City in connection with the administration of City’s public

duties, namely, its “Automated Speed Enforcement” program and management of the corresponding citations and fine collection process.

29. Defendants acknowledge that the Database exists but notably fail to claim that Database, or the information contained therein, is subject to a specific exemption under IPRA.

30. Defendants’ claim that it does not have access to the Database maintained on the City’s behalf does not take the public records contained therein out of the public realm or otherwise relieve Defendants of the duty to timely produce the responsive records.

31. Additionally, Defendants wrongfully and unreasonably denied Plaintiff’s IPRA Request by only offering to provide the responsive records on an inspection schedule, ostensibly based solely on the premise that there is a large number of citations responsive to the IPRA Request.

32. IPRA permits Defendants to claim that a request is excessively burdensome and to take a reasonable amount of time to adequately respond, while charging a reasonable copying fee not to exceed \$1.00 per page; however, IPRA prohibits Defendants from denying a request based solely on the scope or number of responsive documents.

33. The IPRA Request properly includes the name, address and telephone number of Mr. Brenner, Plaintiff’s authorized agent, and identifies the records sought with reasonable particularity; therefore, Defendants are required to produce or otherwise make available for inspection all records responsive to the IPRA Request.

34. Accordingly, Defendants wrongfully denied Plaintiff’s IPRA Request, thus entitling Plaintiff to a judgment awarding actual damages, statutory damages, injunctive relief, costs and attorneys’ fees, pursuant to Sections 14-2-11 and -12.

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

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

36. Plaintiff is entitled to statutory damages pursuant to IPRA Section 14-2-11 for Defendant's unreasonable failure to provide a complete and adequate response to Plaintiff's IPRA Request.

37. "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." *Faber v. King*, 2015-NMSC-015, ¶ 31, 348 P.3d 173.

38. 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.

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

40. 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.*

41. Plaintiff's IPRA Request was made on January 10, 2023.

42. Defendants have been in noncompliance with Section 14-2-11 since on or about January 25, 2023.

43. Defendants unreasonably failed to comply with Section 14-2-11 by providing an incomplete and inadequate response to Plaintiff's IPRA Request, entitling Plaintiff to statutory damages.

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

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

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

46. “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).

47. “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).

48. Plaintiff is entitled to an injunction requiring Defendants to completely and adequately responds to its IPRA Request by producing or making available for inspection all non-exempt public records subject to the IPRA Request.

49. Plaintiff is entitled to its litigation costs and reasonable attorney’s fees in bringing this action to compel Defendants’ compliance with IPRA.

50. Plaintiff is also entitled to actual damages as a result of Defendants’ non-compliance with IPRA.

**PRAYER FOR RELIEF**

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

A. An Order requiring Defendants to permit inspection of all non-exempt public records subject to Plaintiff’s IPRA Request;



B. An award of statutory damages of \$100 per day from January 25, 2023, until Defendants permits inspection of all non-exempt public records subject to Plaintiff's IPRA Request;

C. An award of actual damages resulting from Defendant's non-compliance with IPRA;

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

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

Respectfully submitted,

**ARAGON MOSS  
GEORGE JENKINS, LLP**

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