

**STATE OF NEW MEXICO  
COUNTY OF SANDOVAL  
THIRTEENTH JUDICIAL DISTRICT**

**SOUTHWEST PUBLIC POLICY  
INSTITUTE,**

**Plaintiff,**

**No.**

**v.**

**MAGGIE TOULOUSE OLIVER,  
in her official capacity as the  
NEW MEXICO SECRETARY  
OF STATE,**

**Defendant.**

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

Plaintiff, Southwest Public Policy Institute, by and through its counsel, ARAGON MOSS GEORGE JENKINS, LLP (Jordon P. George), 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 the unreasonable failure by Defendant, Maggie Toulouse Oliver, in her official capacity as the New Mexico Secretary of State (*hereinafter referred to as* “SOS”), to provide a complete and timely response to Plaintiff’s public records request, dated January 5, 2024.

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 office is located in Sandoval County, New Mexico.

4. Defendant SOS is a government official and member of the executive department of the State of New Mexico.

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 pursuant to NMSA 1978, § 38-3-1(G) because Plaintiff's principal office is located in Sandoval County, which is also where the cause of action originated.

### FACTUAL ALLEGATIONS

8. On January 5, 2024, Plaintiff, through its agent, Patrick Brenner, submitted a written IPRA request to Defendant SOS seeking certain public records in the possession of SOS ("Request").

9. The Request seeks all logs created, maintained or held by or on behalf of Defendant SOS related to her e-nomination petition software between November 1, 2023 and January 5, 2024.

10. On January 11, 2024, Defendant SOS's Elections Operation and Systems Analyst, Amy Baca-Padilla, responded to Plaintiff's Request—approximately three (3) days late—stating that her office was "continuing to work on fulfilling" it, but that "[d]ue to the nature and timing of [the Request] . . . we have determined that [it] is excessively burdensome and broad . . . and will need more time to search for records and to respond." Ms. Baca-Padilla committed to providing "an updated response" by January 19, 2024. *See* letter from Ms. Baca-Padilla to Patrick Brenner, dated January 11, 2024, and attached hereto as **Exhibit A**.

11. However, Defendant SOS failed to provide an updated response or otherwise produce responsive records by the self-imposed January 11, 2024 deadline.

12. There were no further communications from Defendant SOS until March 1, 2024, when Ms. Baca-Padilla provided a response identical to her first, except for committing to “provide an updated response on or before March 15, 2024.” *See* letter from Ms. Baca-Padilla to Patrick Brenner, dated March 1, 2024, and attached hereto as **Exhibit B**.

13. Defendant SOS has failed to provide any further response to Plaintiff’s Request as of the date of the filing of this Complaint.

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

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

15. 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 Request.

16. “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).

17. “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.*

18. “[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.

19. “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.

20. 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.

21. Damages shall “be awarded if the failure to provide a timely explanation of denial is determined to be unreasonable.” § 14-2-11(C).

22. 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.*

23. The Request was made by Plaintiff on January 5, 2024.

24. Defendant SOS has been in noncompliance with Section 14-2-11 since at least January 20, 2024.

25. Defendant SOS’s noncompliance with Section 14-2-11 is unreasonable, and due to the failure of her office to diligently respond to the Request and fulfill its obligation under IPRA to provide “the greatest information possible” to Plaintiff.

26. Plaintiff is entitled to statutory damages for Defendant SOS’s unreasonable failure to either: (a) timely permit inspection of records responsive to the Request; or (b) provide Plaintiff with a conforming written explanation of denial of the Request.

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

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

28. When a custodian provides a conforming notification that a request is “excessively burdensome or broad” and that additional time will be needed to respond, “the requester may deem the request denied and may pursue the remedies available pursuant to [IPRA] if the custodian does not permit the records to be inspected in a reasonable period of time.” NMSA 1978, § 14-2-10.

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

30. “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).

31. “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).

32. Plaintiff is entitled to an injunction requiring Defendant SOS to completely and adequately respond to its Request, by either: (a) producing all non-exempt public records subject to the Request; or (b) providing Plaintiff with a conforming written explanation of denial of the Request.

33. Plaintiff is entitled to actual damages, in addition to its litigation costs and reasonable attorneys’ fees in bringing this action to enforce the provisions of IPRA and compel Defendant’s compliance therewith.

### **PRAYER FOR RELIEF**

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

A. An Order requiring Defendant SOS to immediately permit inspection of all non-exempt public records subject to the Request;

B. An award of statutory damages of \$100 per day from January 20, 2024, until Defendant SOS permits inspection of all responsive records or provides a conforming written explanation of denial;

- C. An award of actual damages resulting from Defendant SOS's incomplete and inadequate response to the Request and 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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