

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

SOUTHWEST PUBLIC POLICY
INSTITUTE,

Plaintiff,

v.

No. D-101-CV-2022-01747

NEW MEXICO TAXATION AND
REVENUE DEPARTMENT,

Defendant.

**DEFENDANT NEW MEXICO TAXATION AND REVENUE DEPARTMENT'S
RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION, AND REQUESTS FOR ADMISSIONS**

Defendant New Mexico Taxation and Revenue Department ("TRD") through counsel responds as follows to Plaintiff's First Set of Interrogatories, Requests for Production and Requests for Admissions:

INTERROGATORIES

1. Pursuant to *Schein v. Northern Rio Arriba Elec. Coop.*, 1997-NMSC-011, ¶ 20, 932 P.2d 490 ("[N]o privilege where date and general nature of legal services performed by [an] attorney is sought."), state the date Defendant retained counsel in this case, and identify any retention agreements.

ANSWER: Objection. The information sought is not reasonably calculated to lead to the discovery of admissible evidence about the Plaintiff's IPRA requests, defendant's responses or the claims and defenses in this lawsuit. The plaintiffs in *Schein v. Northern Rio Arriba Elec. Coop.*, 1997-NMSC-011, were shareholders of the defendant cooperative, and as such, they had a right to inspect the cooperative's proprietary business records. Notwithstanding the objection, undersigned counsel was retained shortly before entering an appearance in this matter by order dated August 4, 2023.

2. Please provide the full name, address, telephone number, e-mail address, employer, position and relation to Defendant for every person, firm, or entity who answered or assisted in answering these interrogatories.

ANSWER: TRD General Counsel Kelly Kitzman, with the assistance of defense counsel. Adam Diamond, Special Projects Manager, New Mexico Motor Vehicles Division, Tammy Gordon, Paralegal, Legal Service Bureau, TRD.

3. For the past five (5) years, identify all individual(s) responsible for receiving and processing public records requests on behalf of Defendant, including the names, titles, contact information, and the dates each individual listed served in this role.

ANSWER: Objection. The interrogatory is overly broad and not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding this objection, at the time of the Plaintiff's IPRA request at issue in August 2022, the Records Custodian of the TRD was Sharon Kirkpatrick, Paralegal/IPRA Records Custodian, Legal Service Bureau, TRD. Ms. Kirkpatrick is no longer employed by TRD.

4. Provide the date of receipt and the name, title and contact information of the individual(s) who received the IPRA Request subject to this action.

ANSWER: See answer to No. 3 above.

5. Describe the actions taken by the Defendant to respond to the Plaintiff's IPRA Request, including any correspondence or communications regarding the IPRA Request.

ANSWER: Plaintiff's Request was entered into a portal for logging IPRA requests, and requests were made to the appropriate division to ascertain if any responsive public records existed, in light of the explanation plaintiff provided in the IPRA request about seeking cylinder counts. *See* Exh. 1 (also attached as Exh. A to plaintiff's Amended Complaint).

The referenced URL, https://eservices.mvd.newmexico.gov/eTapestry/_/#1, is a link to access MVD Eservices where customers may complete transactions online so that they can do so from home or other remote locations. "Tapestry" is a commercial software application that many states use as the system to access records for their vehicles and drivers. MVD transitioned to using the Tapestry application in 2015 and 2016. Tapestry is not a database per se, but the Tapestry application accesses datasets or tables where driver and vehicle data is stored.

There is no single electronic file that can be provided, let alone accessed by members general public. Tapestry is a secure application. To provide information from these datasets, a qualified IT specialist with the agency must create a query to pull data from the fields in the various datasets or tables. In addition, the dataset and tables often contain fields of information that are confidential as a matter of state statute.

Presently, New Mexico has approximately 2.6 million registered vehicles, each of which has multiple data fields in the Tapestry datasets. Accordingly, there are many millions of data fields, a good deal of which are confidential by statute and subject to agency security. There is no way to ‘view’ these registered vehicles in aggregate. In Tapestry, a user, with appropriate credentials or authorization, may view one vehicle record at a time by searching on various data, such as a license plate or VIN. There are also built-in reports that internal agency users can run by different parameters like dates or vehicle types. There is no built-in report for cylinder counts such as the plaintiff was seeking here.

Although the IPRA does not require an agency to create a public record, in response to the follow-up August 29, 2022 IPRA Request at issue in the plaintiff’s amended complaint, the defendant attempted to provide plaintiff the information plaintiff sought in the original August 16 IPRA request by providing cylinder count information derived by using queries to different data tables and then creating a new table to provide to plaintiff. *See* Exh 2. This data was originally compiled after the agency transitioned to the Tapestry system. Adam Diamond oversaw this effort. Srini Vallabhaneni, MVD/IVD, assisting in making the queries. Dodda Venkata, MVD/IVD, also assisted in assessing feasibility of the attempt to get information. These events occurred in September and October of 2022.

After providing Exh. 2, Defendant attempted to gather additional information predating 2016 but determined that the older information was unreliable and that it could not respond further except by creating more records, based on data that was compiled before the agency transitioned to the Tapestry system, which was the subject of the plaintiff’s second IPRA request. *See* Exh. 1. Accordingly, Shannon Kirkpatrick treated the matter as closed as of early 2023.

Email messages and so forth reflecting communications about these events are attached. Defendant objects to producing communications between legal counsel related to plaintiff’s IPRA requests as well as this lawsuit as protected by the attorney-client privilege as well as trial preparation material. Defendant also objects to producing electronic communications between counsel and TRD employees concerning these IPRA requests as well as those made within the last several weeks to respond to these discovery requests, Interrogatory No 5 in particular. Such communications constitute defendant and counsel’s trial

preparation material and are also subject to the attorney client privilege. See documents with Bates # NMTRD-1-5.

6. Please state the principal and material facts supporting any exemptions that Defendant believes apply to the IPRA Request.

ANSWER: See Answer to Interrogatory No. 5. Plaintiff's IPRA request was based on incorrect assumptions about the Tapestry system. There is not a single file that can be accessed by the general public, and the IPRA request otherwise lacks sufficient particularity. As indicated in the Answer to Interrogatory No. 5, NMSA 1978, Section 66-2-7.1 defines confidential personal information in MVD records as not a public record.

7. Describe the current status of Defendants efforts to comply with the IPRA Request, including a timeline for completion.

ANSWER: The Defendants consider that its response to the IPRA request was completed by providing the cylinder counter information compiled following the transition to the Tapestry system in 2016 as per plaintiff's August 29, 2022 IPRA request. Defendant assessed whether it could provide any older information predating Tapestry and determined it was unreliable and that it would have to create more new records which IPRA does not require.

8. State the principal and material facts explaining the reason for Defendant's delay in providing a complete and final response to the IPRA Request.

ANSWER: Objection. There was no delay. Given the breadth and vagueness of the plaintiff's request, defendant responded within a reasonable time. See responses to Nos. 5 and 7 above.

9. State the principal and material facts describing the actions taken by Defendant to locate, produce and/or make available for inspection the database of registered vehicles requested in the IPRA Request.

ANSWER: See responses to Nos. 3 and 5 above.

10. State whether Defendant intends to grant, deny, partially deny, or otherwise response to the IPRA Request; if the response is a denial or partial denial, please also state the principal and material facts supporting said denial or partial denial.

ANSWER: The agency has responded to the request to the extent that it was reasonably able to do so, without resorting to creating further records, which is not required by the IPRA. See response to Nos. 3, 5 and 7 above.

REQUESTS FOR PRODUCTION

1. Produce all non-privileged or protected documents you relied on or referred to in answering the interrogatories above. For any documents withheld as privileged or protected as trial preparation materials, please provide the information required by Rule 1-026(B)(a) in a privilege/document log in response to this request.

RESPONSE: Objection. Rule 1-026(B)(a) does not require the creation of privilege log. It merely requires that a party claiming privilege or protection to describe the items not produced to enable the other parties to assess the applicability of the privilege or protection. Here, Defendant has stated that its counsel made email inquiries with certain agency managers and employees within the last several weeks for the specific purpose of providing answers to these discovery responses, specifically Interrogatory No. 5. In addition, Defendant objects to providing communications consisting of legal advice by counsel to TRD employees or communications between counsel concerning the IPRA requests. See answer and objections to Interrogatory No. 5. These communications are plainly trial preparation material Rule 1-026(B)(5) as well as attorney client communications.

2. Produce copies of all documents and communications, including but not limited to emails, letters, memoranda, and reports, related to the Plaintiff's IPRA Request.

RESPONSE: See email strings and document attached as Bates# NMTRD-6-24. See response and objection to RFP No. 1.

3. Produce the complete database of registered vehicles maintained by the New Mexico Motor Vehicle Division within the New Mexico Taxation and Revenue Department, as requested by the Plaintiff in the IPRA Request.

RESPONSE: Objection. The Request for Production is overly broad, unduly burdensome, lacks reasonable particularity and is not reasonably calculated to lead to the discovery of admissible evidence about plaintiff's IPRA claim. The burden of the requested discovery also outweighs any potential benefit under the factors outline in Rule 1-026(B)(2). There are also less burdensome means of conducting discovery about plaintiff's IPRA request and defendant's response. Further, the plaintiff already has information about the requested vehicle cylinder counts. The request also assumes facts not in evidence about the nature of the electronic data. *See Answer to Interrogatory No. 5.* There is no single "complete database of registered vehicles maintained by the New Mexico Motor Vehicle Division within the New Mexico Taxation and Revenue Department" that can be accessed by the general public. In addition, there are likely millions of data fields that contain information that is deemed confidential as a matter of statute. *See id.*

4. Produce any records, logs, or other documents that evidence the receipt and processing of public records requests by the Defendant over the last five (5) years, including any records related to the IPRA Request.

RESPONSE: Objection. The Request for Production is overly broad, unduly burdensome, lacks reasonable particularity and is not reasonably calculated to lead to the discovery of admissible evidence. Information concerning IPRA requests to Defendant and Defendant's responses to IPRA requests other than the IPRA requests which are the subject of Plaintiff's Complaint have little to do with the circumstances involved with plaintiff's IPRA request as outlined in the Answer to Interrogatory No. 5.

5. Produce any policies, guidelines, or procedures followed by Defendant in responding to public records requests, including any specific procedures regarding the inspection and production of the database subject to the IPRA Request.

RESPONSE: To assist its compliance with public records requests, Defendant's staff refers to the New Mexico Department of Justice IPRA Compliance Guide. 00

6. Produce any records, logs, or other documents that evidence Defendant's efforts to locate and produce the complete and responsive records subject to the IPRA Request.

RESPONSE: See response and objections to RFP Nos. 1 & 2 above.

7. Produce any records, logs, or other documents relating to the allegations in the Amended Complaint not otherwise called for by this document production request.

RESPONSE: Objection. This request for production lacks reasonable particularity as required by Rule 34(B). The request also may seek counsel's thoughts and mental impressions about tangible information that may or not be material to the claims and defenses in the case. Notwithstanding this objection, Defendant has not identified any exhibits it may seek to introduce at trial of this matter. Defendant anticipates that the Plaintiff's IPRA request may be introduced along with other responsive documents by the Plaintiff and Defendant in discovery. See attached.

8. Produce any documents, materials, or physical evidence that you contend are relevant or intend to introduce at the trial of this action.

RESPONSE: Objection. This request for production lacks reasonable particularity as required by Rule 34(B). The request also may seek counsel's thoughts and mental impressions about tangible information that may or not be material to the claims and defenses in the case. Notwithstanding this objection, Defendant has not identified any exhibits it may seek to introduce at trial of this matter. Defendant anticipates that the Plaintiff's IPRA request may be introduced along with other responsive documents by the Plaintiff and Defendant. See attached.

9. Produce a complete copy of your organizational chart.

RESPONSE: Information about the Defendant's organizational chart is available on its website, tax.newmexico.gov under About Us: Taxation and Revenue New Mexico.

10. Produce any documents, records, logs, or communications relating to trainings, workshops, seminars, or educational sessions conducted by or for the Defendant concerning its policies, guidelines, or procedures for responding to public records requests. This includes, but is not limited to, training materials, presentation slides, handouts, attendance records, meeting minutes, and any correspondence related to the scheduling or content of such trainings.

RESPONSE: This Request for Production is not reasonably calculated to lead to the discovery of admissible evidence. See also response to RFP No. 5.

REQUESTS FOR ADMISSIONS

1. Admit that Defendant has not provided a complete and final response to the IPRA Request.

RESPONSE: Admit _____ Deny X

2. Admit that the database subject to the IPRA Request exists.

RESPONSE: Admit _____ Deny X

See Answer to Interrogatory No. 5. Plaintiff's assumptions concerning Tapestry system are not accurate.

3. Admit that Defendant has access to the database subject to the IPRA Request.

RESPONSE: Admit _____ Deny X

Objection. The Request assumes facts not in evidence. Defendant admits that it has access to data that the Motor Vehicle Division maintains about vehicle owners, titles and registrations and related information in New Mexico.

4. Admit that Defendant maintains the database subject to the IPRA Request.

RESPONSE: Admit _____ Deny X

See Answer to Interrogatory No. 5. Plaintiff's assumptions concerning Tapestry system are not accurate.

5. Admit that Defendant notates or otherwise records cylinder counts on registered vehicles.

RESPONSE: Admit X Deny _____

Respectfully Submitted,

LONG, KOMER & ASSOCIATES, P.A.

/s/ Mark E. Komer

Mark E. Komer

P. O. Box 5098

Santa Fe, NM 87502-5098

505-982-8405

mark@longkomer.com

email@longkomer.com

*Attorneys for Defendant Taxation &
Revenue Department*

From: **Patrick Brenner** <pbrenner@southwestpolicy.com>
Date: Mon, Aug 29, 2022 at 4:37 PM
Subject: Request to Inspect Records
To: <TRD.IPRA@state.nm.us>

Good afternoon,

My name is Patrick Brenner. My address is 6841 Nacelle Road Northeast, Rio Rancho, NM 87144. My phone number is 505-750-1821 and my email address is pbrenner@southwestpolicy.com

I am submitting this request to inspect records in accordance with the New Mexico Inspection of Public Records Act.

The New Mexico Motor Vehicle Division maintains a database of registered vehicles. I am seeking an opportunity to inspect the entire database.

On or about August 16, 2022, I requested an opportunity to inspect the following documents.

The New Mexico Motor Vehicle Division notates cylinder counts on vehicles registered with the department. I am seeking to inspect aggregate reports, annual reports, periodic reporting, or other documentation identifying the total number of vehicles registered with cylinder counts of "0" and the total number of vehicles registered with cylinder counts greater than "0" annually for the years 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021.

Essentially, I just want to know how many vehicles in the two cylinder count categories for each

1/2

EXHIBIT A

9/16/22, 2:47 PM

of those years. I am not compelling the creation of a public document, but aggregate figures would be sufficient to satisfy this request.

On August 29th, 2022, the New Mexico Taxation and Revenue Department determined there are no responsive documents to the August 16, 2022 request.

At the following website, vehicle registrants are allowed to renew vehicle registration online. Registrants *can* use this link: <https://eservices.mvd.newmexico.gov/eTapestry/#1>

This form connects to a database of registered vehicles. I am seeking to inspect this database of registered vehicles and all information contained therein.

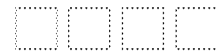
Thanks so much!

--Patrick

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Patrick M. Brenner
President, Southwest Public Policy Institute

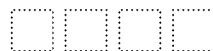
505-750-1821
505-386-1139
southwestpolicy.com
pbrenner@southwestpolicy.com



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Patrick M. Brenner
President,
Southwest Public Policy Institute

505-750-1821
505-386-1139
southwestpolicy.com
pbrenner@southwestpolicy.com



Year	Cylinders	Registration Numbers
2016	0	38670
2016	1	4931
2016	2	5961
2016	3	407
2016	4	61884
2016	5	1111
2016	6	65683
2016	7	3
2016	8	47443
2016	9	5
2016	10	864
2016	11	1
2016	12	63
2016	67	1
2016	80	2
2017	0	41728
2017	1	5248
2017	2	6330
2017	3	496
2017	4	64218
2017	5	1234
2017	6	64574
2017	8	47596
2017	9	3
2017	10	882
2017	11	1
2017	12	40
2018	0	42530
2018	1	5242
2018	2	6705
2018	3	624
2018	4	66658
2018	5	1280
2018	6	66534
2018	7	4
2018	8	50766
2018	9	1
2018	10	998
2018	12	60
2018	14	1
2018	599	1
2018	600	1
2019	0	49038
2019	1	5636
2019	2	7611
2019	3	735
2019	4	73692
2019	5	1392

2019	6	74291
2019	7	2
2019	8	57764
2019	9	5
2019	10	1138
2019	11	1
2019	12	65
2019	14	1
2019	150	1
2019	1000	1
2020	0	53997
2020	1	8922
2020	2	11457
2020	3	1238
2020	4	97571
2020	5	1825
2020	6	95803
2020	7	2
2020	8	77360
2020	9	3
2020	10	1654
2020	11	1
2020	12	67
2020	15	1
2020	20	1
2020	49	1
2020	88	1
2020	150	1
2021	0	113565
2021	1	18275
2021	2	28672
2021	3	4262
2021	4	283730
2021	5	4843
2021	6	269411
2021	7	2
2021	8	222477
2021	9	6
2021	10	4607
2021	11	3
2021	12	185
2021	13	1
2021	16	2
2021	80	2
2021	399	1
2021	599	1
2021	900	1
2021	980	1
2021	1000	1

2022	0	122813
2022	1	16730
2022	2	33675
2022	3	7534
2022	4	420163
2022	5	6528
2022	6	388131
2022	7	6
2022	8	320169
2022	9	17
2022	10	6478
2022	11	2
2022	12	185
2022	13	1
2022	18	1
2022	149	1
2022	150	2
2022	890	1
2022	1000	1