

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

SOUTHWEST PUBLIC POLICY INSTITUTE,

Plaintiff,

No. D-202-CV-2024-07328

v.

**CITY OF ALBUQUERQUE, and
ETHAN WATSON (in his official capacity as Record Custodian),**

Defendants.

**DEFENDANTS CITY OF ALBUQUERQUE AND ETHAN WATSON'S
MOTION TO QUASH PLAINTIFF'S SUBPOENA TO
CIVIC PLUS AND/OR NEXTREQUEST**

Plaintiff Southwest Public Policy Institute (hereinafter "SPPI") seeks to circumvent the redactions and exemptions provided for in the Inspection of Public Records Act (§§ 14-2-1 through 14-2-12) by sending a subpoena to the parent company of the software the City uses to manage IPRA requests—NextRequest. Plaintiff's subpoena seeks the identical information it sought in its IPRA Request 22-10933, which is the subject of this suit. This is improper and could result in the disclosure of privileged or other protected information, including protected personal data. Defendants ask that this Court quash the subpoena because an improper attempt to subvert the IPRA statute.

The subpoena stems from a case brought by SPPI pursuant to IPRA seeking what they identify as the "PostgreSQL" database. Patrick Brenner, SPPI's client, placed IPRA Request 22-10933 on December 27, 2022 seeking the PostgreSQL database in order to obtain all requests submitted between January 1, 2019 and December 1, 2022. *See Complaint for Damages Pursuant*

to the *New Mexico Inspection of Public Records Act* at p. 3 (“Complaint”). The request goes on to state that if the materials are not available in full from the PostgreSQL database, then he requests that the City IPRA staff provide those documents. *Id.* As a preliminary matter, this request seeks over 37,000 requests with conservatively anywhere between two and forty pages of data per request. *See* Exhibit “A” (Requests Graph). It would take literally years to produce all of the requested material and have an unimaginable amount of personal protected data, redactions, and exemptions that would need to be applied. In addition, the City has no access to the PostgreSQL database. Exhibit “B” (Affidavit of General Counsel Jennifer Dasenbrock) at ¶ 5. PostgreSQL database is part of the NextRequest system that the City uses to process public records requests. *Id.* at ¶ 4. The company under which the systems function—Civic Plus—has indicated that the material that would be produced in response to such a request would contain information that would need to be redacted and privileged information that is properly withheld under the provisions of IPRA. *Id.* at ¶ 8. In addition, Civil Plus is a data custodian of the materials provided by the City, and therefore is subject to the same limitations on production as the City. *Id.* at ¶ 6, 9. Even if the materials were produced from Civic Plus, in other words, it would be subject to the same redactions and exclusions.

Under Rule 1-045(C)(3)(a)(iii) NMRA, “the court by which a subpoena was issued shall quash or modify the subpoena if it: (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies.” This case similar to the facts at issue in the case of *Henry v. Gauman*, D-202-CV-2019-07309 (upheld in *Henry v. Gauman*, A-1-CA-39549). In *Henry*, the plaintiff sought an investigative report that has been deemed exempt from disclosure under 14-2-1(C). Ms. Henry issued a subpoena to the entity hired to do the investigation as a way to evade

the restrictions provided in IPRA. The Court granted Defendant's Motion to Quash the subpoena to the third-party investigator. *Henry v. Gauman*, A-1-39549, at ¶8). The Court reasoned that because the report was exempt under IPRA, and the report contained potential disciplinary action, there was a sufficient basis to shield the report from disclosure. *See* January 22, 2021 Order, *Henry v. Gauman*, D-202-CV-2019-07309, at p. 4, para. H, K.

Here, as in *Gauman*, Plaintiff issued his subpoena to attempt an end run around the restrictions embedded in the IPRA statute by sending a subpoena to the third-party corporation in control of the NextRequest software and its related PostgreSQL database for the same materials sought from the City Clerk. In *State ex rel. Toomey v. City of Truth or Consequences*, a third-party entity with an agreement with the City was found subject to IPRA because the Court found it "was acting on behalf of the City in its role." *Toomey* at ¶25. Here, Civic Plus/NextRequest is a third-party administrator of the NextRequest system and its related databases so, as was found in *Toomey*, it is subject to IPRA including its exemptions and privileges. As such, Defendants' Motion to Quash should be granted.

Were Plaintiff's subpoena fulfilled he would effectively evade all of the redactions and exclusions that are part of the IPRA statute while still obtaining the materials through a public records request. It appears that Plaintiff wants to avail himself of the public records access provided by the IPRA statute yet refuses to abide by the limitations the legislature explicitly included in that statute. Such an action would effectively render the statute without legal effect. For these reasons the subpoena should be quashed.

WHEREFORE, Defendants respectfully request the Court grant its Motion to Quash Defendant's subpoena to Civic Plus and/or NextRequest as set forth above.

Respectfully submitted,

CITY OF ALBUQUERQUE

Lauren Keefe, City Attorney

/s/ Laura R. Callanan

Laura R. Callanan

Assistant City Attorney

P.O. Box 2248

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*Attorney for Defendants City of Albuquerque
and Ethan Watson*

I HEREBY CERTIFY that a true copy
of the foregoing pleading was submitted for
e-filing and service to:

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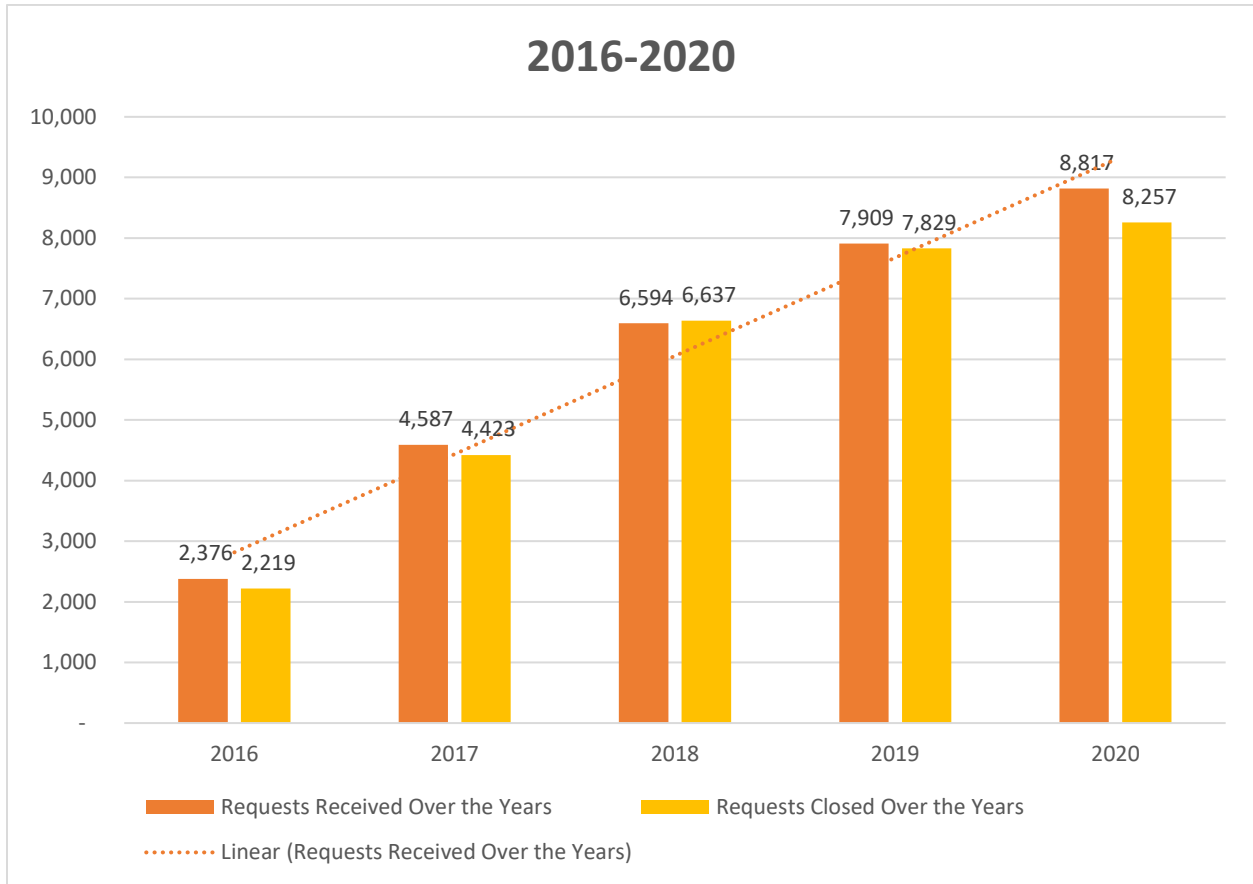
Attorney for Plaintiff

on this 12th day of November, 2024.

/s/ Laura R. Callanan

Laura R. Callanan, Assistant City Attorney

Data Presented at the 2024 NMFOG gathering by City Clerk Ethan Watson, November 1, 2024.



DEFENDANTS'
EXHIBIT
A

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**DEFENDANTS'
EXHIBIT
B**

AFFIDAVIT OF JENNIFER DASENBROCK

1. My name is Jennifer Dasenbrock and I am General Counsel for CivicPlus, LLC (“CivicPlus”).
2. I am over 18 years old.
3. The City of Albuquerque has an engagement with CivicPlus for provision of the NextRequest public records request workflow management software as a service solution.
4. The PostgreSQL database holding data for nextrequest.cabq.gov is part of the NextRequest system (the “Database”).
5. The City of Albuquerque has no access to the Database.
6. CivicPlus is the data custodian of the City of Albuquerque’s data housed in the Database.
7. The City of Albuquerque is the data owner of the City of Albuquerque’s data housed in the Database.
8. It is my understanding and belief that the City of Albuquerque’s data held in the Database will include information that, under the Inspection of Public Records Act (NMSA 1978 §§ 14-2-1 through 14-2-12), should be redacted and/or exempted from production.
9. Any production of the City of Albuquerque’s data from the Database is subject to the same restrictions under IPRA as it would be from the City of Albuquerque.
10. The Database is a multi-tenant database that holds data for multiple municipalities using the NextRequest software solution.
11. The Database holds data subject to CJIS and HIPAA for multiple municipal customers of CivicPlus.
12. CivicPlus, under the restrictions of CJIS and HIPAA and its standard customer agreements with the data owners, cannot provide the full Database as requested.

FURTHER AFFIANT SAYETH NOT.



Jennifer Dasenbrock

General Counsel

Title

SUBSCRIBE AND SWORN to before me this 11 day of November, 2024

by Jennifer Dasenbrock.



NOTARY PUBLIC

My Commission Expires: 5/17/25

