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FIRST JUDICIAL  
DISTRICT COURT

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

CASE NO. D-0101-CV-2011-02042.

ADVANTAGE ASPHALT & SEAL COATING, LLC,  
JOE ANTHONY MONTOYA,

Plaintiffs,

vs.

SANTA FE COUNTY,

Defendant.

RAYMOND Z. ORTIZ

**COMPLAINT FOR THE PRODUCTION OF DOCUMENTS UNDER THE  
NEW MEXICO INSPECTION OF PUBLIC RECORDS ACT**

**PRELIMINARY STATEMENT**

1. Plaintiffs bring these claims under the New Mexico Tort Claims Act NMSA 1978 §§ 41-4-1 et seq., the New Mexico Inspection of Public Records Act, NMSA 1978 §§ 14-2-1 et seq. [hereinafter referred to as "Act" or "IPRA"], and the New Mexico and United States Constitutions. Because of the misleading, notorious, and sensationalized attention brought onto Plaintiffs, Plaintiffs have sought access to public documents in order to counter-balance the flow of dis-information given publicly and confidentially to law enforcement personnel by County public officials and employees who have sought to defame the Plaintiffs' personal and business reputations, who have interfered with Plaintiffs' contractual relations, and who seek to prevent Plaintiffs from conducting business in Santa Fe County. For over a year, Plaintiffs have had to endure the attention as the only named contractor in a Santa Fe County Sheriff Office

investigation into the operation of the Santa Fe County Public Works Department. Plaintiffs are entitled to inspect and request public documents that exculpate and refute the allegations leveled against them by Santa Fe County officials and/or employees.

### **JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction of this action.
3. This Court has personal jurisdiction over the parties.
4. Venue is proper in this district.

### **PARTIES**

5. Defendant Santa Fe County is a local governmental entity within the State of New Mexico and is subject to suit under the New Mexico Tort Claims Act and IPRA. ["County"]

6. Plaintiff Advantage Asphalt & Seal Coating, LLC ["Advantage"] is a duly-registered limited liability company, whose principal place of business is located in Santa Fe County, New Mexico.

7. Plaintiff Joe Anthony Montoya is an individual and resident of Santa Fe County, New Mexico. Plaintiff Joe Anthony Montoya is the principal member of Advantage.

### **FACTUAL BACKGROUND**

8. On July 13, 2010, Plaintiffs filed a *Notice of Tort Claim and Demand for Documentation under the New Mexico Inspection of Public Records Act* letter [hereinafter referred to as "*First Demand*"].

9. The *First Demand* requested the following documents:
  - Any and all documentation be provided regarding all notes, correspondence, emails, memoranda, electronically stored information,

audio/video recordings, stenographic recordings, contracts, requests for proposals, bids, and any other documentation that relates in any way to all of the public works projects completed by Advantage for Santa Fe County for the years 2008, 2009, and 2010.

- All notes, correspondence, emails, memoranda, electronically stored information, audio/video recordings, stenographic recordings, phone records, or any other documentation that refers to or relates to Advantage or any of its members by the following Santa Fe County officials for the period April 15, 2010 to the present: County Commissioner Michael Anaya, County Commissioner Kathy Holian, County Commissioner Virginia Vigil, County Commissioner Elizabeth "Liz" Stepanics, County Commissioner Harry Montoya, former County Manager Roman Abeyta, current Public Works Director Robert Martinez, and current Land Use Director Shelley Cobau.

10. On July 23, 2010, the County responded to the *First Demand* by stating that the request was burdensome and gave a preliminary estimate of four months to respond.

11. On November 3, 2010, a follow-up correspondence seeking documents under the *First Demand* was sent to the County.

12. On November 18, 2010, the County responded to the follow-up correspondence by stating that it had compiled documents that partially responded to the *First Demand* and were available for inspection, namely the "...contracts and purchase orders relevant to Advantage Asphalt". The County again stated that it needed additional time to compile additional records. The County again stated that the request was burdensome. Lastly, the County made a statement that, "some documents may be subject to attorney client privilege, work product privileges or protected from inspection due to exceptions within the Inspection of Public Records Act."

13. The Plaintiff inspected the documents partially produced by the County on November 30, 2010. As a result of that inspection, certain documents were tagged and

copied by the County for production to the Plaintiffs.

14. On December 3, 2010, Plaintiffs confirmed the partial production for inspections of six contracts and three binders of County purchase orders. There was a second follow-up request for when there would be a "full and complete production of documents" responsive to the *First Demand*.

15. Also on December 3, 2010, Plaintiffs filed a *Demand for Documentation under the New Mexico Inspection of Public Records Act* letter [hereinafter referred to as "*Second Demand*"].

16. The *Second Demand* requested the following documents:

- all notes, correspondence, emails, memoranda, electronically stored information, audio/video recordings, stenographic recordings, requisitions, contracts, requests for proposals, bids, engineering plans, estimates, budget, and any other documentation that relates in any way to all roadways located within County Commission District 3, whether public or private, completed by any contractor for Santa Fe County for the years 2008, 2009, and 2010.
- all notes, correspondence, emails, memoranda, electronically stored information, audio/video recordings, stenographic recordings, phone records, or any other documentation that refers to or relates to all roadways located within County Commission District 3, whether public or private, for the years 2008, 2009, and 2010 by the following Santa Fe County officials: County Commissioner Michael Anaya, former County Manager Roman Abeyta, and current Public Works Director Robert Martinez.

17. On December 6, 2010, the County responded to the *Second Demand* by stating that the request was forwarded to various County offices and that the County would contact within fifteen days to review the information.

18. Also on December 6, 2010, in response to the second follow-up on the *First Demand*, the County responded by stating that, "It is quite difficult to estimate when

the documents would be ready. We have determined that it will be necessary to review approximately 39,000 electronic records in order to identify which are responsive to your request.” The County also stated in the December 6, 2010 that it “...has begun the review process and will advise you when the relevant records available pursuant to the Inspection of Public Records Act are ready for your inspection.”

19. On December 21, 2010, with regard to the *Second Demand*, the County responded by stating that by including review of approximately 16,000 emails that the request was burdensome and needed additional time to respond. The County gave a preliminary estimate of four months to respond.

20. On April 25, 2011, the County followed up to its December 21, 2011 correspondence by stating that it had compiled documents and were available for inspection, “...contracts and purchase orders relevant to Advantage Asphalt”. The County again stated that it needed additional time to compile additional records. The County again stated that the request was burdensome. Lastly, the County made a statement that, “some documents may be subject to attorney client privilege, work product privileges or protected from inspection due to exceptions within the Inspection of Public Records Act.”

21. On May 27, 2011, the County sent an email representing that, “The requested documents have been compiled and are available for review for the IPRA requests dated July 13, 2010 and December 3, 2010.”

22. The Plaintiff inspected the documents produced by the County on June 2, 2011. As a result of that inspection, certain documents were tagged and copied by the County for production to the Plaintiffs.

23. The Plaintiff paid for and picked up those documents copied by the County on June 16, 2011.

**COUNT I**  
**VIOLATION OF NEW MEXICO INSPECTION OF PUBLIC RECORDS ACT**

24. Plaintiffs re-allege and incorporate by reference Paragraphs 1-23 as though set forth in full.

25. The documents requested by the Plaintiffs in their *First Demand* are public records, as defined by IPRA § 14-2-6 (E), and are required to be disclosed under the Act.

26. No statutory exception to disclosure applies to these records of Defendant Santa Fe County.

27. The written request described in paragraph 9 above identified the public records sought with the reasonable particularity required by IPRA, § 14-2-8.

28. Defendant Santa Fe County has denied Plaintiffs the right to timely, promptly, and completely inspect public records, except as stated herein, in violation of the requirements of the Act.

29. Defendant Santa Fe County failed to ever produce to the Plaintiffs documents responsive to the following:

- All notes, correspondence, emails, memoranda, electronically stored information, audio/video recordings, stenographic recordings, phone

records, or any other documentation that refers to or relates to Advantage or any of its members by the following Santa Fe County officials for the period April 15, 2010 to the present: County Commissioner Michael Anaya, County Commissioner Kathy Holian, County Commissioner Virginia Vigil, County Commissioner Elizabeth "Liz" Stepanics, County Commissioner Harry Montoya, former County Manager Roman Abeyta, current Public Works Director Robert Martinez, and current Land Use Director Shelley Cobau.

30. Plaintiffs are entitled under law to access and government disclosure of public documents.

31. There is no provision with IPRA that exempts any of the documents requested under the *First Demand*. The County has failed to set forth, with any particularity that any document that was not produced falls within any of the exceptions listed in Section 14-2-4 (A) of the Act.

32. Defendant Santa Fe County's refusal to identify and to disclose required public documents will continue unless and until this Court takes action. The continued denial to disclose public documents has caused and will continue to cause harm to the Plaintiffs and to the public at large, unless and until this harm is prevented and rectified by this Court.

33. Section 14-2-12 of the Act authorizes Plaintiffs to bring an action in this Court to enforce the provisions of the Act and to seek appropriate remedies which include declaratory and injunctive relief, damages, and payment of attorney fees and costs for violations of the IPRA.

34. Section 14-2-12 of the Act allows for the imposition of a fine of up to one hundred dollars (\$100.00) per day of violation of the Act.

35. From the date of the County's response to the *First Demand* to the filing of the instant action, approximately three hundred and thirty (330) days have passed.

36. From the date of partial production of documents by the County to the *First Demand* to the filing of the instant action, approximately two hundred and twenty-five (225) days have passed.

37. Plaintiffs requests that the Court impose a fine in the range of up to thirty-three thousand dollars (\$33,000), and no less than twenty-five thousand dollars (\$25,000), on the County, plus pre- and post-judgment interest; plus a fine to be imposed for every day that the requested documents under the *First Demand* are not produced up to trial in this matter.

**COUNT II**  
**VIOLATION OF NEW MEXICO INSPECTION OF PUBLIC RECORDS ACT**

38. Plaintiffs re-allege and incorporate by reference Paragraphs 1-37 as though set forth in full.

39. The documents requested by the Plaintiffs in their *Second Demand* are public records, as defined by IPRA § 14-2-6 (E), and are required to be disclosed under the Act.

40. No statutory exception to disclosure applies to these records of Defendant Santa Fe County.

41. The written request described in paragraph 16 above identified the public records sought with the reasonable particularity required by IPRA, § 14-2-8.

42. Defendant Santa Fe County has denied Plaintiffs the right to timely, promptly, and completely inspect public records, except as stated herein, in violation of the requirements of the Act.

43. Defendant Santa Fe County failed to ever produce to the Plaintiffs documents responsive to the following:

- all notes, correspondence, emails, memoranda, electronically stored information, audio/video recordings, stenographic recordings, phone records, or any other documentation that refers to or relates to all roadways located within County Commission District 3, whether public or private, for the years 2008, 2009, and 2010 by the following Santa Fe County officials: County Commissioner Michael Anaya, former County Manager Roman Abeyta, and current Public Works Director Robert Martinez.

44. Defendant Santa Fe County only partially produced to the Plaintiffs documents responsive to the following:

- all notes, correspondence, emails, memoranda, electronically stored information, audio/video recordings, stenographic recordings, requisitions, contracts, requests for proposals, bids, engineering plans, estimates, budget, and any other documentation that relates in any way to all roadways located within County Commission District 3, whether public or private, completed by any contractor for Santa Fe County for the years 2008, 2009, and 2010.

45. Defendant Santa Fe County only produced documents that related to two or three roadways located within County Commission District 3: County Road 42, County Road 17, which may or may not be known as Martin Road.

46. Upon information and belief for the years 2008-2010, there were more than 2-3 roads, both public and private, that were completed by Santa Fe County in County Commission District 3 for the years 2008-2010.

47. Plaintiffs are entitled under law to access and government disclosure of public documents.

48. There is no provision with IPRA that exempts any of the documents requested under the *Second Demand*. The County has failed to set forth, with any particularity that any document that was not produced falls within any of the exceptions listed in Section 14-2-4 (A) of the Act.

49. Defendant Santa Fe County's refusal to identify and to disclose required public documents will continue unless and until this Court takes action. The continued denial to disclose public documents has caused and will continue to cause harm to the Plaintiffs and to the public at large, unless and until this harm is prevented and rectified by this Court.

50. Section 14-2-12 of the Act authorizes Plaintiffs to bring an action in this Court to enforce the provisions of the Act and to seek appropriate remedies which include declaratory and injunctive relief, damages, and payment of attorney fees and costs for violations of the IPRA.

51. Section 14-2-12 of the Act allows for the imposition of a fine of up to one hundred dollars (\$100.00) per day of violation of the Act.

52. From the date of the County's response to the *Second Demand* to the filing of the instant action, approximately one hundred and eighty (180) days have passed.

53. From the date of partial production of documents by the County to the *Second Demand* to the filing of the instant action, approximately twenty-one (21) days have passed.

54. Plaintiffs requests that the Court impose a fine of up to eighteen thousand dollars (\$18,000), and no less than twenty-one hundred dollars (\$2,100) on the County, plus pre- and post-judgment interest; plus a fine to be imposed for every day that the requested documents under the *Second Demand* are not produced up to trial in this matter.

**WHEREFORE**, Plaintiffs respectfully request the following:

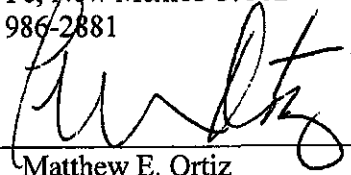
- A. That the Court enter a declaratory judgment holding that the Defendant Santa Fe County, by the actions described herein, has violated the provisions of the New Mexico Inspection of Public Records Act and that the Defendant Santa Fe County knowingly and intentionally withheld public records from the Plaintiffs;
- B. That the Court enter an injunction requiring Defendant Santa Fe County to immediately produce for inspection the requested public documents;
- C. That the Court award damages for violations of the New Mexico Inspection of Public Records Act, in an amount to be determined at trial, plus pre- and post-judgment interest;
- D. That the Court award Plaintiffs their reasonable attorneys' fees and costs, pursuant to § 14-2-12 (D) of the Act; and,
- E. That the Court order such further relief as it deems appropriate.

Dated: June 22, 2011

Respectfully submitted,

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