

IN THE DISTRICT COURT
FIRST JUDICIAL DISTRICT
COUNTY OF RIO ARRIBA
STATE OF NEW MEXICO

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FIRST JUDICIAL
DISTRICT COURT

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NO: D-117-CV-2009-473

RIO GRANDE SUN and LOUIS MATTEI,
individually and as a reporter for the Rio
Grande Sun,
Plaintiffs,

V.

JEMEZ MOUNTAIN PUBLIC SCHOOL
DISTRICT and ADAN DELGADO,
Superintendent and custodian of public
records for the Jemez Mountain Public
School District,
Defendants.

ORDER GRANTING PLAINTIFF'S MOTION FOR
PARTIAL JUDGMENT ON THE PLEADINGS

THIS MATTER having come before the Court on written Motion for Partial Judgment on the Pleadings filed by the Plaintiff on December 11, 2009, and a Response and Reply having been filed, and the Court having considered all pleadings, and the Court denying the Request for Hearing pursuant to LR1-306H,

THE COURT FINDS:

1. The Plaintiff properly made requests under the Inspection of Public Records Acts to the Defendant for check payments to Kathy Borrego from 1999 through 2009, and then a second request for payment vouchers from the Defendants funds to the Abiquiu land Grant, and to certain individuals.
2. The Defendants denied the Plaintiff's requests on the grounds that the records are evidence in an ongoing criminal investigation, and law enforcement records.

3. The state auditor conducted an audit of the Defendant's financial records and concluded that there were unauthorized funds withdrawn from school accounts. Kathy Borrego was identified as the person making the withdrawals.
4. The information, including copies of the checks and the payment vouchers, was forwarded to law enforcement and a criminal investigation is currently in progress.
5. The information that Kathy Borrego is the subject of a criminal investigation based on these alleged acts of embezzlement has already been made public through the media.

THE COURT CONCLUDES:

6. NMRA 1-012(C) is the appropriate procedural method for bringing this action before the Court.
7. The matters outside the pleadings that were submitted for consideration by the Defendants have been reviewed by the Court to determine the propriety of considering them or excluding them. These outside documents are the report of the auditor, the Pacheco affidavit, and the Delgado affidavit.
8. The outside documents do not show the existence of any disputed facts, but simply verify the allegations made in the Response regarding the existence of the investigation and the motivation for the Defendant to deny the Plaintiff's records requests. There is no dispute between the parties that an investigation is taking place, and the motive for denying the records request (whether it was done in good or bad faith) is immaterial to the application of the IRPA.
9. The outside documents are irrelevant and are properly excluded.
10. The Motion for Partial Judgment on the Pleadings is not converted to a Motion for

Summary Judgment.

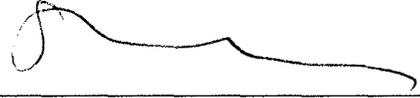
11. The uncontroverted facts listed in the above findings are all the facts that are necessary to determine the application of NMSA 1978 section 14-2-1(A)(4) (*the pertinent statute*).
12. The pertinent statute provides a definition of law enforcement documents that is very wide and basically includes all documents, from whatever source, that are now in the possession of law enforcement in connection with an investigation.
13. The checks and vouchers requested in this case do fall under the broad category of law enforcement records as used in the second part of paragraph (4) .
14. However, only a subgroup of that large category described in the second part of paragraph (4) is exempted from production under the pertinent statute. The first section of paragraph (4) identifies which law enforcement records can be withheld from production: those "...that reveal confidential sources, methods, information or individuals accused but not charged with a crime."
15. The appropriate legal evaluation of the requested documents in this case is therefore a determination as to whether they contain confidential sources, methods, information or individuals accused but not charged with a crime.
16. The Defendant fails to put forward an argument that this is the case, no less carry its burden and persuade the Court.
17. The Defendant argues that the requested documents are part of the ongoing criminal investigation, and the records custodian withheld them from the Plaintiffs in good faith believing he would be disobeying the wishes of the state auditor and law enforcement if he did not.

18. The Court is very much persuaded that the requested documents are 1) part of the ongoing criminal investigation, and 2) that the records custodian did what he thought was right, however, these two facts do nothing to show that the records would reveal confidential sources, methods, information or individuals accused but not charged with a crime.
19. The Defendants have failed to show to any degree that the requested documents contain the type of secret and sensitive information outlined in the exception in the pertinent statute, and further, common sense would dictate that the checks and payment vouchers had already been made public just by having traveled through the normal channels of commerce as would be necessary to accomplish the alleged embezzlement.
20. The requested checks and payment vouchers do not fall within the exception of NMSA 1978 section 14-2-1(A)(4).
21. The Defendants failed to comply with the Inspection of Public Records Act when they refused to produce the information described in the two requests made by the Plaintiff that are the subject of this Motion.

THE COURT ORDERS:

22. The outside matters presented by the Defendants; the auditor's report, and the Delgado and Pacheco affidavits, are excluded by the Court.
23. The Defendants have ten days from the date of entry of this Order to comply with the Plaintiff's two requests for public records that are the subject of this Motion.

IT IS SO ORDERED.



SHERI A. RAPHAELSON
DISTRICT JUDGE

Copies to:
Matthew R. Hoyt
P.O. Box 25245
Albuquerque, NM 87125

Emery Cuddy, Jr.
Cuddy & McCarthy
P.O. Box 4160
Santa Fe, NM 87502-4160