

STATE OF NEW MEXICO  
SECOND JUDICIAL DISTRICT COURT  
BERNALILLO COUNTY

DANIEL LIBIT,

Plaintiff,

v.

No. D-202-CV-2017-01620

THE UNIVERSITY OF NEW MEXICO  
FOUNDATION, INC., and THE BOARD  
OF REGENTS OF THE UNIVERSITY  
OF NEW MEXICO,

Defendants.

**ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT AND DENYING DEFENDANT THE UNIVERSITY OF NEW  
MEXICO FOUNDATION INC.'S MOTION FOR SUMMARY JUDGMENT**

THIS MATTER came before the Court for a hearing on May 24, 2018 on Plaintiff's Motion for Summary Judgment for his claims against Defendants The University of New Mexico Foundation, Inc. ("the Foundation") and the Board of Regents of the University of New Mexico ("the University"), and Foundation's Motion for Summary Judgment seeking dismissal of Plaintiff's claims against it.

As a preliminary issue, the Court has reviewed the briefing and arguments related to whether the Court has subject matter jurisdiction to decide this case and has concluded that it does possess subject matter jurisdiction to decide the claims brought against both Defendants.

Having considered the record evidence, the parties' supporting briefs, and having heard argument on this matter, the Court FINDS as follows:

1. NMSA 1978, § 6-5A-1 generally provides that a private entity that enters into a written agreement with a public agency does not, by the fact of entering into the written agreement, subject its records to disclosure under the New Mexico Inspection of Public Records

Act (IPRA), NMSA 1978 §§14-2-2 *et seq.* The statute does not provide that all documents created by the organization on behalf of the public agency are made exempt under all circumstances.

2. *State ex rel. Toomey v. City of Truth or Consequences*, 2012-NMCA-104, 287 P.3d 364, recognizes that it is possible for a public body to involve an otherwise private entity in conducting governmental business to such an extent that the otherwise private entity's records relating to that governmental activity become subject to IPRA.

3. The nine factors adopted in *Toomey* to determine when a private entity acts on behalf of a public agency are all present in this case.

4. The Foundation acts on behalf of the University in its fundraising efforts.

5. The University's and the Foundation's fundraising efforts are inherently public in nature.

Based on these findings, the Court CONCLUDES as a matter of law that:


A. The documents requested by Plaintiff that were created and/or maintained by the Foundation are public records subject to disclosure under IPRA; and

B. NMSA 1978, § 6-5A-1(D) may not be relied upon to exempt those records or information created and/or maintained by the Foundation from inspection by the public according to IPRA.

Therefore, Plaintiff's motion seeking summary judgment for its claims against the Foundation is well taken, and is hereby GRANTED. Conversely, the Foundation's motion for summary judgment is not well taken and is hereby DENIED. Thus, the Foundation is ORDERED to produce the documents requested through Plaintiff's IPRA requests to the Plaintiff for inspection within fifteen (15) days of the entry of this Order.

Plaintiff's motion seeking summary judgment for his claims against the Board of Regents of the University of New Mexico is not well taken because genuine disputes over material facts regarding those claims exist. Thus, Plaintiff's motion for summary judgment for his claims against the University is hereby DENIED

IT IS SO ORDERED.

  
NANCY J. FRANCHINI  
DISTRICT COURT JUDGE