

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

**SANTA FE REPORTER NEWSPAPER,**

**Plaintiff,**

**v.**

**No.** D-101-CV-2019-00661

**THE CITY OF SANTA FE and  
GREG GURULE, in his official capacity as a  
Records Custodian for the City of Santa Fe,**

Case assigned to Judge, Division VI

**Defendants.**

**COMPLAINT TO ENFORCE THE INSPECTION OF PUBLIC RECORDS ACT  
AND FOR INJUNCTIVE RELIEF AND DAMAGES**

1. This case challenges Defendant City of Santa Fe's unlawful denial of Plaintiff Santa Fe Reporter's requests under the New Mexico Inspection of Public Records Act ("IPRA") for records about whether four officers of the Santa Fe Police Department had been subjected to any discipline for their conduct as police officers for the City. Because each of these officers was involved in either an allegedly excessive use of force against a citizen or was the subject of a citizen complaint alleging significantly improper police conduct, the request for these officers' discipline records was vital to the Santa Fe Reporter's ability to bring information about the City's supervision and control over its police department to the public's attention. Reporting about this issue is a matter of the utmost public concern.

2. IPRA was passed to provide transparency and accountability to the public regarding the performance of governmental functions. Plaintiff brings this action pursuant

to IPRA, NMSA 1978, §§ 14-2-1 through 14-2-12. Defendants unlawfully withheld public records responsive to Plaintiff's IPRA requests, wrongly denied Plaintiff's IPRA requests and asserted overly-broad disclosure exceptions based on over-ruled and discredited case law.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction pursuant to NMSA § 14-2-12.
4. Venue is proper pursuant to NMSA § 38-3-1.

### **PARTIES**

5. Plaintiff Santa Fe Reporter Newspaper ("SF Reporter") is a New Mexico corporation with its primary place of business in Santa Fe, New Mexico.

6. Defendant City of Santa Fe ("City") is a municipality and political subdivision of the State of New Mexico. The City is a public body under NMSA § 14-2-6 (F). At all times material hereto, the City was responsible for the operation of the Santa Fe Police Department ("SFPD") and for claims against SFPD.

7. At all times material hereto, Defendant Greg Gurule was a designated Records Custodian for the City of Santa Fe, New Mexico and/or the Santa Fe Police Department under NMSA § 14-2-6 (A). Defendant Greg Gurule is sued in his official capacity.

### **FACTS PERTAINING TO THE REQUEST ABOUT OFFICER BENJAMIN VALDEZ**

8. On December 18, 2018, Santa Fe Reporter journalist Aaron Cantu submitted a written public records request to the City pursuant to NMSA §14-2-1 for "[a]ll documents that state the factual disciplinary actions, if any, taken against SFPD employee Benjamin Valdez from Jan 1, 2011 up to the date of this request." **Exhibit 1.**

9. On January 7, 2019, Greg Gurule, a records custodian for the City of Santa,

issued a blanket denial of Plaintiff's IPRA request on the basis of two IPRA exceptions set forth at NMSA 1978, § 14-2-1(A)(3) and § 14-2-1(A)(4). **Exhibit 2.**

10. Neither of the cited IPRA sections creates a categorical exemption for records pertaining to discipline actions. Section 14-2-1(A)(3) states that "letters or memoranda that are **matters of opinion** in personnel files or students' cumulative files" are exempt from disclosure under IPRA. Section 14-2-1(A)(4) states that "law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime" are exempt from disclosure.

11. Defendants failed to comply with the mandatory requirements of § 14-1-9(A) which mandates that "[r]equested public records containing information that is exempt and nonexempt from disclosure shall be separated by the custodian prior to inspection, and the nonexempt information shall be made available for inspection."

12. Defendants made no effort to identify whether the City actually had any responsive records which it was withholding or whether all the withheld records actually contained exempt information.

13. On January 9, 2019, Plaintiff's counsel asked the City Attorney for clarification as to whether any such allegedly privileged documents existed or whether there simply were no records of discipline taken against SFPD Officer Benjamin Valdez. **Exhibit 3.**

14. On January 25, 2019, the City Attorney responded that the City could not confirm or deny the existence of any such discipline records without creating a new public record which would also be exempted from disclosure as a privileged "document concerning disciplinary action" and that the privilege could only be waived by the affected individual. **Exhibit 4.**

**FACTS PERTAINING TO THE REQUEST ABOUT OFFICERS  
JACQUAAN MATHERSON, NICK WOOD AND LADISLAS SZABO**

15. On February 1, 2019, SF Reporter journalist and editor Julie Ann Grimm submitted a written public records request to the City pursuant to NMSA §14-2-1 for “[a]ll records showing the fact of discipline in all internal/administrative investigations into the conduct of the following SFPD officers from January 1, 2014 to the present:

- Jacquaan Matherson
- Nick Wood
- Ladislav Szabo.”

**Exhibit 5.**

16. On February 4, 2019, Defendants categorically denied Plaintiff’s IPRA request on the basis that all records of disciplinary actions are exempt from disclosure under NMSA 1978, §§14-2-1(A)(3) and 14-2-1(A)(4). **Exhibit 6.** Defendants further cited an unpublished Court of Appeals decision for the proposition that records of internal disciplinary proceedings are categorically “exempt from IPRA disclosure requirements.”

**THE APPLICABLE LAW**

17. The New Mexico Legislature has declared that “all persons are entitled to the greatest possible information regarding the affairs of government.” NMSA 1978, § 14-2-5. “While information can come in the form of tangible documents, it can also be gathered based upon an agency's denials. [...] Denials are valuable information gathering tools. With respect to any given record request, the absence of either (1) production of responsive records or (2) a conforming denial based upon a valid IPRA exception sends a strong message to the requester that no responsive public record exists.” *ACLU of N.M. v. Duran*, 2016-NMCA-063, ¶ 38.

18. In 1993, the New Mexico Legislature amended IPRA to include a broad definition of public record. Public records under IPRA include “all documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, regardless of physical form or characteristics, that are used, created, received, maintained or held by or on behalf of any public body and relate to public business, whether or not the records are required by law to be created or maintained.” NMSA 1978, § 14-2-6(G).

19. In 2012, the New Mexico Supreme Court held that in providing in IPRA a broad definition of public records and delineating a specific and limited list of exceptions, the Legislature had rejected prior New Mexico case law that had authorized courts to create additional IPRA exceptions under the implied “rule of reason” articulated in *State ex rel. Newsome v. Alarid*, 1977-NMSC-076 and its progeny. See *Republican Party of N.M. v. N.M. Tax and Rev.*, 2012-NMSC-026, ¶¶ 14-16. In *Republican Party*, the Supreme Court held that “courts now should restrict their analysis to whether disclosure under IPRA may be withheld because of a specific exception contained within IPRA, or statutory or regulatory exceptions, or privileges adopted by this Court or grounded in the constitution. Therefore, cases applying the ‘rule of reason’ to all of the exceptions enumerated by the Legislature are overruled to the extent they conflict with this Opinion.” *Id.* at ¶ 16.

20. “IPRA is intended to ensure that the public servants of New Mexico remain accountable to the people they serve. The citizen's right to know is the rule and secrecy is the exception.” *Id.* at ¶ 12 (internal citations omitted).

21. “Under IPRA, ‘[e]very person has a right to inspect public records,’ § 14–2–1(A), by making a request pursuant to the procedures set forth in Section 14–2–8. This right is limited only by the Legislature's enumeration of certain categories of records that are excepted from inspection.” *Id.* at ¶ 13. “IPRA provides for eight exceptions to [the]

definition, which further refine the definition of ‘public record’ and highlight the broadness of the basic definition reflecting the general presumption in favor of public access to records.” *Edenburn v. N.M. Dep’t of Health*, 2013-NMCA-045, ¶17. “It is clear that *Republican Party II* expressly overruled cases in which the ‘rule of reason’ was endorsed and limited the scope of what documents are exempt from IPRA.” *Id.* at ¶ 33.

22. In *Republican Party*, the Court further stressed that “for a privilege to exist in New Mexico, it must be recognized or required by the Constitution, the Rules of Evidence, or other rules of the Court.” *Republican Party*, ¶ 35. Contrary to the City’s unlawful denial, no Constitutional or evidentiary privilege exists in New Mexico that gives government employees the authority to bar disclosure of the facts of disciplinary action against them, and by its plain terms § 14-2-1(A)(3) does not create such a privilege.

### **CLAIMS FOR VIOLATION OF THE INSPECTION OF PUBLIC RECORDS ACT**

23. The Inspection of Public Records Act provides that “[e]very person has a right to inspect public records of this state”. NMSA 1978, § 14-2-1.

24. The records Plaintiff requested from Defendant City constitute public records as defined by NMSA 1978, § 14-2-6(G).

25. Under IPRA and the law discussed above, Defendants’ categorical denial of Plaintiff’s IPRA requests was unlawful.

26. The records custodian bears the burden of showing whether a specific IPRA exception or a recognized constitutional or evidentiary privilege exempts public records from disclosure. Defendants here failed to meet their burden to show that all of the withheld records are exempt from disclosure under either § 14-2-1(A)(3) or §14-2-1(A)(4). Instead, Defendants unlawfully relied on case law which has been overruled and

superceded by subsequent IPRA law.

27. Defendants further violated IPRA when they failed to identify whether each withheld record actually contained information they claimed was exempt from disclosure under IPRA. Therefore they failed to comply with their mandatory duty to produce non-exempt information under NMSA 1978, § 14-2-9(A).

28. Plaintiff is entitled to relief pursuant to NMSA 1978, §14-2-12.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court:

A. Order injunctive relief, including but not limited to production of the requested public records;

B. Award compensatory damages, costs and reasonable attorneys' fees to Plaintiff; and

C. Grant such other and further relief as the Court deems proper.

Respectfully submitted,

/s/ Daniel Yohalem

Daniel Yohalem

1121 Paseo de Peralta

Santa Fe, NM 87501

(505) 983-9433 Fax: (505) 989-4844

Katherine Murray

P.O. Box 5266

Santa Fe, NM 87505

(505) 670-3943

Attorneys for Plaintiff

----- Forwarded message -----

From: **Aaron Cantu** <aaron@sfreporter.com>  
Date: Tue, Dec 18, 2018 at 12:44 PM  
Subject: Request - Lt. Benjamin Valdez  
To: <sfpd.ipra@santafenm.gov>

Hello,

Pursuant to the state's IPRA, I request the following:

All documents that state the factual disciplinary actions, if any, taken against SFPD employee Benjamin Valdez from Jan 1, 2011 up to the date of this request.

We would prefer these documents be delivered in electronic form. Thanks for your help.

Best,

--

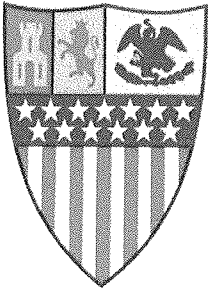
AARON MIGUEL CANTU | STAFF WRITER

SANTA FE REPORTER | 132 E MARCY ST, SANTA FE, NM 87501

OFFICE X1218 | CELL 505.629.3329 | FAX 505.988.5348 | aaron@sfreporter.com







# City of Santa Fe, New Mexico

200 Lincoln Avenue, P.O. Box 909, Santa Fe, NM 87504-0909  
www.santafenm.gov

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Carol Romero-Wirth, District 2  
Roman "Tiger" Abeyta, District 3  
Chris Rivera, District 3  
Mike Harris, District 4  
JoAnne Vigil Coppler, District 4

January 7, 2019

Aaron Cantu  
aaron@sfreporter.com

Mr. Cantu:

***We are denying this request because disciplinary actions are protected under NMSA 1978, Section 14-2-1(A)(3) (matters of opinion) and Section 14-2-1(A)(4) (law enforcement records). There is a discussion of this matter in a court case, Newsome v. Alarid, 90 NM 790. Also, in the last year, the City and SFPD have won two different District Court cases upholding these exceptions. See Lopez v. City of Santa Fe, D-101-CV-2018-01793; Santa Fe Reporter Newspaper v. City of Santa Fe, D-101-CV-2018-03370.***

Thank you,

*Greg Gurulé*

Greg Gurulé  
SFPD PIO/IPRA Custodian  
[Sfpd.ipra@santafe.gov](mailto:Sfpd.ipra@santafe.gov)





Katherine Murray <kemurraylaw@gmail.com>

### SFR IPRA request re Police discipline

Katherine Murray <kemurraylaw@gmail.com>

Wed, Jan 9, 2019 at 1:25 PM

To: ekmcsherry@santafenm.gov

Cc: Dan Yohalem <dyohalem@aol.com>

Erin, How are you?

Dan Yohalem and I are representing the Santa Fe Reporter as to several of their IPRA requests to the City. I am writing to follow up on the Santa Fe Reporter's IPRA request for "all documents that state the factual discipline actions, if any, taken against SFPD employee Benjamin Valdez from January 1, 2011 to the date of this request" submitted on December 18, 2018.

As you can see from the attached denial letter, the City's records custodian has given no indication as to whether the City is withholding responsive records and if so how many. Under IPRA's mandatory requirement that public entities sever and produce all responsive records and portions of records not protected from disclosure (section 14-2-9A), the City must at least indicate whether it is withholding responsive records and whether it determined whether there was any severable public information in the record(s).

Please let us know whether this is another instance of the City issuing a blanket denial that responsive police department records are protected (as was the case with SFR's request for discipline records regarding Officer Bisagna), rather than informing the requester that there are (or are not) records responsive to the request for which the City asserts a privilege or an IPRA exception.

Thank you, Kate

Katherine Murray  
Attorney at Law  
P.O. Box 5266  
Santa Fe, N.M. 87505  
(505) 670-3943

 **City response to Cantu ipra re Valdez.pdf**  
153K





Katherine Murray &lt;kemurraylaw@gmail.com&gt;

**SFR IPRA request re Police discipline****MCSHERRY, ERIN K.** <ekmcsberry@santafenm.gov>

Fri, Jan 25, 2019 at 12:14 PM

To: Katherine Murray &lt;kemurraylaw@gmail.com&gt;

Cc: Dan Yohalem &lt;dyohalem@aol.com&gt;, "SHANDLER, ZACHARY A." &lt;zashandler@santafenm.gov&gt;

Hi Kate,

Following up on this, given further consideration of this situation by my office, the City cannot confirm or deny if there are responsive documents in response to these types of requests without creating a document that itself would be protected from disclosure under IPRA.

If the City were to disclose that there are documents pursuant to a particular request that include the "facts of discipline", that communication itself would fall under the protection against disclosure of "documents concerning disciplinary action", recognized as protected in Judge Shaffer's recent Order Denying and Dismissing SFR's Verified Petition for Alternative Writ of Mandamus, issued on December 6, 2018. The privilege of disclosure of disciplinary action may be waived by the affected individual alone.

This situation is similar to requests for protected health information that I faced when I represented NMDOH. When a requester asked for medical records about a particular person, the Department would not confirm or deny that the records existed, because to confirm would be to disclose the fact that the person was a patient, which is a prohibited disclosure under HIPAA.

Erin



Erin K. McSherry

City Attorney | City of Santa Fe

City Hall | 200 Lincoln Avenue

Santa Fe, New Mexico 87504

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**From:** MCSHERRY, ERIN K.**Sent:** Tuesday, January 15, 2019 5:19 PM**To:** 'Katherine Murray' <kemurraylaw@gmail.com>**Cc:** Dan Yohalem <dyohalem@aol.com>**Subject:** RE: SFR IPRA request re Police discipline

Hi Kate,

Thank you for the email, and I apologize for the delay. Things have been quite busy. I will follow-up on this request and get back to you.

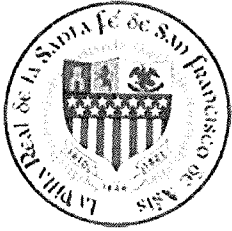
Erin

Erin K. McSherry

City Attorney | City of Santa Fe

City Hall | 200 Lincoln Avenue

Santa Fe, New Mexico 87504



**From:** Katherine Murray <kemurraylaw@gmail.com>  
**Sent:** Wednesday, January 09, 2019 1:26 PM  
**To:** MCSHERRY, ERIN K. <ekmcsherry@santafenm.gov>  
**Cc:** Dan Yohalem <dyohalem@aol.com>  
**Subject:** SFR IPRA request re Police discipline

Erin, How are you?

[Quoted text hidden]

[Quoted text hidden]

----- Forwarded message -----

From: **Julie Ann Grimm** <editor@sfreporter.com>

Date: Fri, Feb 1, 2019 at 10:30 AM

Subject: IPRA from SFR

To: <sfpd.ipra@santafenm.gov>, GURULE, GREG J. <ggurule@ci.santa-fe.nm.us>

Good morning, Greg,

Please consider this a formal request under the New Mexico Inspection of Public Records Act:

I request access to inspect and/or receive copies of the following records in the possession of the city of Santa Fe and/or the Santa Fe Police Department: All records showing the fact of discipline in all internal/administrative investigations into the conduct of the following SFPD officers from January 1, 2014 to the present:

- Jacquaan Matherson
- Nick Wood
- Ladislav Szabo

The records I am requesting should include, but not be limited to any notices of final discipline, or similarly titled records.

Thank you,  
Julie Ann Grimm

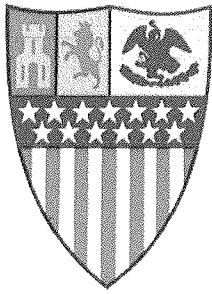


JULIE ANN GRIMM | EDITOR and PUBLISHER | she, her, hers  
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# City of Santa Fe, New Mexico

200 Lincoln Avenue, P.O. Box 909, Santa Fe, NM 87504-0909

[www.santafenm.gov](http://www.santafenm.gov)

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Carol Romero-Wirth, District 2

Roman "Tiger" Abeyta, District 3

Chris Rivera, District 3

Mike Harris, District 4

JoAnne Vigil Coppler, District 4

February 4, 2019

Julie Ann Grimm  
Editor, [sfreporter](mailto:sfreporter)

Ms. Grimm:

This is in regards your request to inspect records involving records for three former and present members of the Santa Fe Police Department.

We are denying this request because disciplinary actions are protected under NMSA 1978, Section 14-2-1(A)(3) (matters of opinion) and Section 14-2-1(A)(4) (law enforcement records). The New Mexico Court of Appeals has ruled that an "internal affairs file" is "exempt from IPRA disclosure requirements." See Leirer v. NM Department of Public Safety, No. 35,154 @ 2016 WL 3958959 (Ct. App. June 7, 2016). There is a discussion of this matter in a court case, Newsome v. Alarid, 90 NM 790. Also, in the last year, the City and SFPD have won two different District Court cases upholding these exceptions. See Lopez v. City of Santa Fe, D-101-CV-2018-01793; Santa Fe Reporter Newspaper v. City of Santa Fe, D-101-CV-2018-03370. Finally, we cannot confirm or deny if there are responsive documents in response to these types of requests without creating a document that itself would be protected from disclosure under IPRA.

Thank you,

*Greg Gurulé*

Greg Gurulé

SFPD PIO/IPRA Custodian

[sfpd.ipra@santafe.gov](mailto:sfpd.ipra@santafe.gov)

