

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

FILED
2ND JUDICIAL DISTRICT COURT
Bernalillo County
5/31/2021 12:59 PM
CLERK OF THE COURT
Patricia Serna

NANCY HENRY,

Plaintiff,

No.: D-202-CV-2021-03380

v.

NEW MEXICO LIVESTOCK BOARD, and
JULIE GAUMAN (in her capacity as designated Records Custodian),

Defendants.

**COMPLAINT FOR VIOLATION OF THE INSPECTION OF PUBLIC RECORDS
ACT, DAMAGES, AND WRIT OF MANDAMUS**

PLAINTIFF Nancy Henry (“Ms. Henry”), by and through counsel of record, Grover Law, LLC (Thomas Grover) with her Complaint for Violations of the Inspection of Public Records Act, Damages, and Writ of Mandamus against the New Mexico Livestock Board and Julie Gauman, and states the following:

I. PARTIES, JURISDICTION, AND VENUE

1. Ms. Henry, as the Plaintiff in this matter is a beneficially interested person in the issues of this case as required by NMSA 1978, § 44-2-5 and is a resident of the County of Bernalillo, State of New Mexico.

2. Ms. Henry is entitled to enforce the Inspection of Public Records Act (“IPRA”) as a person whose written request has been denied pursuant to NMSA 1978, §§ 14-2-11(C) and 14-2-12(A)(2).

3. Defendant New Mexico Livestock Board (“Defendant NMLB”) is an agency of the State of New Mexico with its principal office located in Albuquerque, County of Bernalillo, State of New Mexico.

4. Defendant Julie Gauman (“Defendant Gauman”) is, or at all times relevant was, the Records Custodian for the NMLB and held herself out as the custodian of records for Defendant NMLB.

5. At all times relevant, persons employed by Defendant NMLB, including Defendant NMLB, responded and processed IPRA requests.

6. This Court has jurisdiction to issue writs of mandamus pursuant to Article VI, Section 13 of the New Mexico Constitution.

7. The acts alleged herein were committed in the County of Bernalillo, State of New Mexico.

8. Venue of the Court is proper pursuant to NMSA 1978, § 38-3-1.

II. FACTUAL BACKGROUND

9. Plaintiff is a watchdog and citizen journalist who advocates for members of the public, and interests involving equine and livestock animals.

10. Plaintiff has sought records including, but not limited to, investigative reports which include factual findings and determinations regarding alleged misconduct by livestock law enforcement officials. Plaintiff has not sought records related to “disciplinary actions” or “matters of opinion.”

11. On November 26, 2020, Ms. Henry submitted an IPRA request to Defendants NMLB and Gauman. In this request, Ms. Henry sought the following public records:

“Per the attached invoice, submitted for payment in 2017, by the private investigation firm, Martins Consulting, paid for by the State of NM, \$721.18 (see attached check), also attached the Purchase Order authorized by former Deputy Director Ray E. Baca, to “ASSIST W/ THE NMLB WITH ANY INVESTIGATION & FIELD WORK AS NEEDED” I am requesting a copy of the following public records that will contain facts and findings. If you deny this request please cite the IPRA exemption you are relying on.

- 1. Completed investigation report pertaining to Barry Allen*
 - 2. Completed investigation report pertaining to Gary Mora*
- (Entries below taken from the attached invoice)”*

10/16/17 start Gary Mora report	4:30 pm - 6:30 pm	2.0	\$ 20.00	\$40.00
10/20/17 Finish Gary Mora Report/type barry's	10:30 am - 3:30 pm	5.0	\$ 20.00	\$100.00

See email thread of November 26, 2020 to December 16, 2020, attached and incorporated herein as Exhibit #1 (pp. 4-5).

12. On December 3, 2020, Defendant Gauman replied and asserted more time was needed until December 11th, 2020. On December 11th, 2020, Defendant Gauman responded with a denial letter asserting:

“Please find the attached denial letter pertaining to this request attached. This concludes our response to Request ID 2493.”

Id. (pp. 2-3).

13. The denial letter issued by Defendant Gauman asserted the following basis for denying Ms. Henry’s IPRA request:

“We cannot permit inspection of the investigation reports (items 1 and 2) or the mp3 investigation interview file of Barry Allen, because they are confidential and exempted from disclosure under NMSA 14-2-1 (C), letters or memoranda that are matters of opinion in personnel files; NMSA 29-14-7 (A) No document containing comments adverse to a peace officer shall be entered into his personnel file unless the officer has read and signed the document. When an officer refuses to sign a document containing comments adverse to him, the document may be entered into an officer's personnel file; NMAC 1.7.1.12 (C), records and documentation containing matters of opinion and documents concerning infractions and disciplinary actions.

As you know, this issue regarding disclosure of personnel records is the main subject of litigation you have already initiated. As dispositive motions have been made, we await further guidance from the courts. Once the court clarifies this legal question, you may seek to revisit this request.”

See December 11, 2020, letter attached and incorporated herein as Exhibit #2.

14. On December 12, 2020, Plaintiff replied to Defendant Gauman in furtherance of a good-faith effort to address Defendants’ denial of her IPRA request and attempting to reason with Defendants to inspect the records sought with her IPRA request.. See Exhibit #1 (pp. 1-2).

15. On December 16, 2020, Defendants replied to Ms. Henry with a 2nd denial letter. See December 16, 2020, letter attached and incorporated as Exhibit #3.

16. Previously however, on August 13, 2019, Ms. Henry submitted an IPRA request to the

NMLB and sought production of public records pertaining to investigation reports concerning other NMLB employees, including employee Barry Allen. In response to that August 13, 2019, IPRA request, Defendants claimed that “*We do not have records responsive to investigation reports pertaining to Shawn Davis, Barry Allen, or Troy Patterson for 2016 and 2017.*” See email thread attached and incorporated herein as Exhibit #4 (emphasis added).

17. Upon information and belief, Defendants’ response to Ms. Henry’s August 13, 2019, in asserting that there were no records is false as it is inconsistent with their exclusion of the same responsive report as requested by Ms. Henry in her November 26, 2020, IPRA request, wherein they asserted the investigative report concerning Barry Allen was exempt from production.

18. Further, upon information and belief, there exists a public concern regarding the issues investigated in the sought-after investigative reports which address various issues of misconduct. Such issues involve, and are not limited to, complaints by citizens submitted to NMLB regarding NMLB conduct and operations, and the subsequent investigations of such complaints. See October 5, 2017, letter attached and incorporated herein as Exhibit #5.

19. On February 24, 2021, Ms. Henry submitted another IPRA request for five (5) investigative reports she knew existed through a previous IPRA request for billing invoices concerning investigation firm(s).

*“I am requesting the associated **investigative reports** pertaining to the 5 investigations referenced within each attached invoice (5 attachments).*

1. *Craig Martin Consulting investigative report prepared on 2/8/2016, pertaining to a redacted name (redaction not explained)¹*
2. *Craig Martin Consulting investigative report prepared on 2/26/2018, pertaining to April Riggs*
3. *Thompson & Associates investigative report prepared on 3/10/2020, pertaining to Shannon Cain*
4. *Thompson & Associates investigative report prepared on 3/12/2020, pertaining to Priscilla Pena-Johnson*

¹ The unredacted version was provided to Plaintiff upon request. “Tim Martinez” is the redacted name.

5. *Thompson & Associates investigative report prepared on 9/15/2020, pertaining to Byron Waldrop*
See email thread attached and incorporated herein as Exhibit #6 (pp. 2-3).

20. On March 1, 2021, Defendant Gauman replied to Ms. Henry stating more time was needed until March 11, 2021. See Exhibit #6 (p. 2).

21. On March 11, 2021, Defendant Gauman replied to Ms. Henry with a Denial Letter stating:

“We cannot permit inspection of the investigation reports because they are confidential and exempted from disclosure pursuant to NMSA 1978, Section 14-2-1 (C) (“letters or memoranda that are matters of opinion in personnel files”) and NMAC 1.7.1.12 (C) (“records and documentation containing matters of opinion; interview notes; documents concerning infractions and disciplinary actions; performance appraisals; opinions as to whether a person should be re-employed [.]”). For additional reference, please see attached court determination related to disclosure of similar investigation reports.”

See Denial Letter thread incorporated herein as Exhibit #7.

22. On March 12, 2021, Ms. Henry responded to Defendant Gauman’s email and attached a September 13, 2018, Order by Judge Alan M. Malott (ret.) which addressed a previous dispute concerning a denied IPRA request which involved a sought after investigative report from Defendants by Ms. Henry. In that Order, Judge Malott directed Defendant NMLB to produce to Ms. Henry the sought after investigative report. See September 13, 2018, Order on *In Camera* Review attached and incorporated herein as Exhibit #8.

23. Plaintiff has attached a 1-page table as a demonstrative exhibit entitled “IPRA Requests Timeline at a Glance” which provides a summary of the three (3) IPRA requests that concern this action and the relevant timelines. See Chart attached and incorporated herein as Exhibit #9.

IV. CLAIMS & LEGAL BASIS FOR PLAINTIFF’S ENTITLEMENT TO RELIEF

24. Ms. Henry hereby incorporates by reference each preceding paragraph as though fully contained herein.

25. Public records are subject to production by default and exclusion of such production is only under exceptional circumstances. “[A] citizen has a fundamental right to have access to public records.” *State ex rel. Newsome v. Alarid*, 90 N.M. 790, 797, 568 P.2d 1236, 1243 (1977). “The citizen's right to know is the rule and secrecy is the exception.” *Id.* “People have a right to know that the people they entrust with the affairs of government are honestly, faithfully and competently performing their function as public servants.” *Bd. of Comm’rs of Doña Ana County*, 2003-NMCA-102, ¶ 29, 134 N.M. 283, 76 P.3d 36 (internal quotation marks and citation omitted).

26. Pursuant to IPRA, the term “public records” means 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. The records sought by Ms. Henry in this matter are public records.

27. As the records custodian for Defendant NMLB, Defendant Gauman has a clearly defined duty and obligation to members of the public to produce public records for inspection upon submission of an IPRA request such as Ms. Henry’s IPRA requests.

28. Defendants have wholly denied Ms. Henry’s IPRA requests by failing to produce records responsive to the requests for inspection as submitted by Ms. Henry on August 13, 2019, November 26, 2020, and February 24, 2021.

29. Defendants, in part, rely upon 1.7.1.12(C) NMAC of the New Mexico Administrative Code, which states:

For the purposes of inspection of public records under Section B of 1.7.1.12 NMAC, the following material shall be regarded as confidential and exempted from public inspection: records and documentation pertaining to physical or mental illness, injury or examinations, sick leave and medical treatment of

persons; records and documentation maintained for purposes of the Americans with Disabilities Act . . . ; letters of reference concerning employment, licensing, or permits; *records and documentation concerning matters of opinion*; interview notes; *documents concerning infractions and disciplinary actions*; performance appraisals; opinions as to whether a person should be re-employed; college transcripts; military discharge; information on race, color, religion, sex, national origin, political affiliation, age, and disability of employees; home address and personal telephone number unless related to public business; social security number; laboratory reports or test results . . . ; and as otherwise provided by state or federal law.

Id.

30. Defendants' reliance upon 1.7.1.12(C) NMAC is misplaced and incorrect that this regulation exempts the requested records from IPRA. Such determinations have been made previously by Judge Malott (ret.) in other matters concerning the NMLB. Further, upon the plain reading of the IPRA and this section of the NMAC, the records sought are not opinion-based nor are the records relating to disciplinary action.

31. As of the filing of this action Defendants' have not produced any records responsive to Ms. Henry's IPRA requests.

**Count I: Violation of the Inspection of Public Records Act to wit
Unlawful Denial of Public Records.**

32. Ms. Henry hereby incorporates by reference each preceding paragraph as though fully contained herein.

33. The records requested by Ms. Henry are the type included within the meaning of public records and there exists no statutory or legal basis permitting Defendants to exempt the records from being produced in response to an IPRA request.

34. Pursuant to NMSA 1978, § 14-2-8(D), as the records custodian, Defendant Gauman was required to produce public records responsive to Ms. Henry's IPRA request for inspection not later than fifteen (15) days after receipt of her IPRA request. To date, records responsive to Ms. Henry's

IPRA requests have not been produced to her for inspection.

35. Pursuant to NMSA 1978, § 14-2-8(D), as the records custodian, Defendant Gauman was required to explain in writing when the records would be available for inspection if the inspection is not permitted within three (3) days of Ms. Henry's IPRA request, however no date was provided and the requests were closed.

36. In failing to produce records for inspection which are otherwise entirely, or in part, subject to production, Defendants have wrongfully denied Plaintiff's access of her right to inspect these NMLB related public records.

37. Even *if* some of the records sought by Ms. Henry in her three (3) IPRA requests were subject to a basis of exclusion, the remaining records are subject to production pursuant to NMSA 1978, § 14-2-9(A).

38. Defendant Gauman breached a clear and indisputable duty by her denial of Ms. Henry's request for public records.

39. IPRA explicitly provides that a person whose request has been denied may enforce her right to access through the issuance of a writ of mandamus and a complaint for damages. NMSA 1978, § 14-2-12(B).

40. Mandamus is the appropriate vehicle for relief in this case. First, IPRA specifically provides that a person whose written request has been denied may bring an enforcement action under the statute, NMSA 1978, § 14-2-12(A)(2), and that the Court "may issue a writ of mandamus" to enforce IPRA pursuant to NMSA 1978, § 14-2-12(B). Additionally, mandamus generally lies "to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust or state. NMSA 1978, § 44-2-4.

41. Accordingly, Ms. Henry requests that the Court issue an alternative writ of mandamus

directing Defendants to produce the public records responsive to Ms. Henry's IPRA request or show cause as to why a peremptory writ should not be issued.

Count II: Declaratory and Injunctive Relief

42. Ms. Henry hereby incorporates by reference each preceding paragraph as though fully contained herein.

43. IPRA provides that the court shall award damages, costs, and reasonable attorney's fees to any person whose written request has been denied and is successful in a court action to enforce provisions of IPRA. NMSA 1978, §§ 14-2-11 and 14-2-12(D).

44. The Court may award damages of up to \$100.00 per day for failure to provide a timely explanation of a denial. NMSA 1978, § 14-2-11(C). In this matter, Defendants failed to comply with IPRA by failing to identify specifically who, and including their job title, was responsible for the denial of Ms. Henry's IPRA request and by failing to produce responsive records to Ms. Henry for her inspection.

45. In this enforcement action, Ms. Henry has incurred damages, costs, expenses, possible attorney's fees, and is entitled to recovery of those injuries and expenditures.

V. REQUEST FOR RELIEF

WHEREFORE, Plaintiff prays as follows:

A. The Court issue a writ of mandamus compelling Defendants to produce all requested records and/or injunctive relief ordering the Defendants to produce all outstanding records requested, and ensuring speedy and full compliance by Defendants of future records requests under IPRA;

B. Award statutory damages as provided in the Inspection of Public Records Act;

C. Award attorney fees and costs as provided in the Inspection of Public Records Act;

D. And such other and further relief as may be just and proper.

Respectfully Submitted,

/s/ Thomas R. Grover

Thomas R. Grover
GROVER LAW, LLC
9400 Holly NE, Bldg. 4
Albuquerque, NM 87122
Office: (505) 695-2050
thomas@grover-law.com
Attorney for Nancy Henry

nlhenry@mindspring.com

From: Gauman, Julie C., NMLB <Julie.Gauman@state.nm.us>
Sent: Wednesday, December 16, 2020 6:14 PM
To: nlhenry@mindspring.com
Subject: RE: [EXT] IPRA - Investigation Reports for Allen & Mora
Attachments: Denial Letter 12-16-20.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

December 16th, 2020

Via email nlhenry@mindspring.com

Nancy Henry
PO Box 56644
Albuquerque, NM 87187

RE: Request to Inspect Public Records/Request ID 2493

Nancy Henry:

Please find an updated denial letter attached.

Thank you,

Julie C. Gauman
New Mexico Livestock Board

Systems Admin I/Records Custodian
300 San Mateo Blvd NE #1000
Albuquerque, NM 87108
505-362-1565

Julie.Gauman@state.nm.us



From: nlhenry@mindspring.com [mailto:nlhenry@mindspring.com]

Sent: Saturday, December 12, 2020 5:37 AM

To: Gauman, Julie C., NMLB <Julie.Gauman@state.nm.us>; Rasmussen, Leif, DGF <Leif.Rasmussen@state.nm.us>

Cc: Manzanares, Molly, NMLB <Molly.Manzanares@state.nm.us>; Garland, Belinda, NMLB

<Belinda.Garland@state.nm.us>; Salazar, Melissa, GOV <Melissa.Salazar3@state.nm.us>; Dolan, Tobin, NMLB

<Tobin.Dolan@state.nm.us>; CasadosJr, Tony, NMLB <Tony.CasadosJr@state.nm.us>; P-Gutierrez, Rita, NMLB <Rita.P-

Gutierrez@state.nm.us>; Longinaker, Kathy, NMLB <Kathy.Longinaker@state.nm.us>; Conniff, John, NMLB

<John.Conniff@state.nm.us>; S-McGinley, Morgan, NMLB <Morgan.S-McGinley@state.nm.us>; Torres, Edward, NMLB <Edward.Torres@state.nm.us>

Subject: RE: [EXT] IPRA - Investigation Reports for Allen & Mora

NM Livestock Board, Julie Gauman, Leif Rasmussen, Board Members, et al.,

Regarding your Denial Letter, your usual argument fails as has been pointed out to you by my open government attorneys, and the Honorable Judge Malott. I have attached Malott's Order, after his in camera review, to produce another investigative report. These reports are also ordered produced by the courts for APD, BCSO, SFPD, etc. Investigation firms are not hired for their "opinions" however for "fact finding" which are then reported to you via their report, and you are charged quite a bit for those "facts." As you had been directed by the OAG in 2015 you must separate out matters of opinion from fact. Please review your copy of the OAG Determination Letter of 2015.

These investigative results are not "matters of opinion" that can be hidden away in a personnel file. You are required under the IPRA to produce these records and have not cited an actual exception that applies. As the *Attorney General's Compliance Guide* states, any section of the report that includes a disciplinary action, if there is even such a section, can easily be redacted and the remainder of the report can be disclosed. Therefore, I am entitled to inspect the requested records.

Also, per *NM Foundation for Open Government*; "The outcome of an investigation into police conduct is a fact. While considered part of a personnel record, the outcome is a fact, not an opinion. As such the records are subject to IPRA. #abq #Police #opengov #nmpol #transparency"

Please respond with the requested records before 12/17/20, the investigative reports, to avoid legal recourse. I am again trying to work with you, giving you yet another opportunity, however will not wait until it is a good time for you for me to proceed with the next step I am entitled to under the IPRA. As you know, these matters can take years in court, as do the appeals. This violation is its own unique matter.

Despite the future outcome of the prior two similar lawsuits (one I prevailed you appealed, which has taken 2 years to even be calendared by the COA, and will take most likely another year, and the other, bench trial in Feb 2021), you will then refuse to produce these unique records for one defiant reason or another, just as you ignored Judge Malott's Order of 2018.

Nancy L. Henry
2019 Dixon Award 🏆 **NM Foundation for Open Government**
NM for Equine Rights & Open Government
Equine/Public Advocate
<https://www.facebook.com/NewMexicoAgainstHorseSlaughter/>
505.250.9457, PO Box 56644, ABQ NM, 87187

From: Gauman, Julie C., NMLB <Julie.Gauman@state.nm.us>
Sent: Friday, December 11, 2020 5:28 PM
To: Nancy Henry (nlhenry@mindspring.com) <nlhenry@mindspring.com>
Subject: RE: [EXT] IPRA - Investigation Reports for Allen & Mora

December 11th, 2020

Via email nlhenry@mindspring.com

Nancy Henry

PO Box 56644
Albuquerque, NM 87187

RE: Request to Inspect Public Records/Request ID 2493

Nancy Henry:

Please find the attached denial letter pertaining to this request attached.

This concludes our response to Request ID 2493.

Regards,

Julie C. Gauman
New Mexico Livestock Board

Systems Admin I/Records Custodian
300 San Mateo Blvd NE #1000
Albuquerque, NM 87108
505-362-1565
Julie.Gauman@state.nm.us



From: Gauman, Julie C., NMLB
Sent: Thursday, December 3, 2020 4:56 PM
To: 'nlhenry@mindspring.com' <nlhenry@mindspring.com>
Subject: RE: [EXT] IPRA - Investigation Reports for Allen & Mora

December 3rd, 2020

Via email nlhenry@mindspring.com

Nancy Henry
PO Box 56644
Albuquerque, NM 87187

RE: Request to Inspect Public Records/Request ID 2493

Nancy Henry:

We are in receipt of your request on November 26th, 2020 for records related to a completed investigation report for Barry Allen and Gary Mora. We will require more time to review records and respond, until Friday December 11th, 2020.

Regards,

Julie C. Gauman
New Mexico Livestock Board

Systems Admin I/Records Custodian
300 San Mateo Blvd NE #1000
Albuquerque, NM 87108
505-362-1565
Julie.Gauman@state.nm.us



From: nlhenry@mindspring.com [mailto:nlhenry@mindspring.com]
Sent: Thursday, November 26, 2020 6:54 AM
To: recordsrequests@nmlbonline.com; Gauman, Julie C., NMLB <Julie.Gauman@state.nm.us>
Subject: [EXT] IPRA - Investigation Reports for Allen & Mora

To the NMLB Records Custodians,

Per the attached invoice, submitted for payment in 2017, by the private investigation firm, *Martins Consulting*, paid for by the State of NM, \$721.18 (see attached check), also attached the Purchase Order authorized by former Deputy Director Ray E. Baca, to "ASSIST W/ THE NMLB WITH ANY INVESTIGATION & FIELD WORK AS NEEDED" I am requesting a copy of the following public records that will contain facts and findings. If you deny this request please cite the IPRA exemption you are relying on.

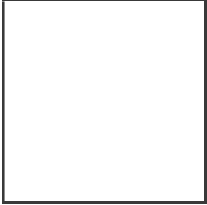
1. Completed **investigation report** pertaining to **Barry Allen**
2. Completed **investigation report** pertaining to **Gary Mora**

(Entries below taken from the attached invoice)

10/16/17 start Gary Mora report	4:30 pm - 6:30 pm	2.0	\$
10/20/17 Finish Gary Mora Report/type barry's	10:30 am - 3:30 pm	5.0	\$

Nancy L. Henry
2019 Dixon Award  **NM Foundation for Open Government**
NM for Equine Rights & Open Government
Equine/Public Advocate
<https://www.facebook.com/NewMexicoAgainstHorseSlaughter/>
505.250.9457, PO Box 56644, ABQ NM, 87187

“... there will be an opportunity to determine if those who have been entrusted with the affairs of government are honestly, faithfully and competently performing their function as public servants.” ~ NM Supreme Court



This email has been checked for viruses by Avast antivirus software.
www.avast.com

Molly Manzanares, *Tierra Amailla*
Chair

Tobin "Toby" Dolan, *Las Vegas*
Vice Chair

John N. Conniff, *Las Cruces*
Secretary

Belinda Garland
Executive Director

Darron "Shawn" Davis
Deputy Director

NEW MEXICO LIVESTOCK BOARD



300 San Mateo, NE
Suite 1000
Albuquerque, NM 87108
(505) 841-6161

EXHIBIT
#2

Gutierrez, *Jarales*
ginaker, *Santa Fe*
Morgan Switzer-McGinley, *Mesilla*
Tobin "Toby" Dolan, *Las Vegas*
Edward Paul Torres, *Bosque Farms*
Tara M. Vander Dussen, *Clovis*
Tony Casados, Jr., *Tierra Amarilla*

Vacant
Chief Legal Counsel

Ralph Zimmerman, DVM
State Veterinarian

December 11, 2020

Via Email nlhenry@mindspring.com

Ms. Nancy L. Henry
NM for Equine Rights & Open Government
PO Box 569644
Albuquerque, NM 87187

Re: Request ID 2493

Dear Nancy Henry,

On November 30th, 2020 we received your request to review the following records:

"Per the attached invoice, submitted for payment in 2017, by the private investigation firm, *Martins Consulting*, paid for by the State of NM, \$721.18 (see attached check), also attached the Purchase Order authorized by former Deputy Director Ray E. Baca, to "ASSIST W/ THE NMLB WITH ANY INVESTIGATION & FIELD WORK AS NEEDED" I am requesting a copy of the following public records that will contain facts and findings. If you deny this request please cite the IPRA exemption you are relying on.

1. Completed **investigation report** pertaining to **Barry Allen**
2. Completed **investigation report** pertaining to **Gary Mora**
(*Entries below taken from the attached invoice*)"

We cannot permit inspection of the investigation reports (items 1 and 2) or the mp3 investigation interview file of Barry Allen, because they are confidential and exempted from disclosure under NMSA 14-2-1 (C), letters or memoranda that are matters of opinion in personnel files; NMSA 29-14-7 (A) No document containing comments adverse to a peace officer shall be entered into his personnel file unless the officer has read and signed the document. When an officer refuses to sign a document containing comments adverse to him, the document may be entered into an officer's personnel file; NMAC 1.7.1.12 (C), records and documentation containing matters of opinion and documents concerning infractions and disciplinary actions.

As you know, this issue regarding disclosure of personnel records is the main subject of litigation you have already initiated. As dispositive motions have been made, we await further guidance from the courts. Once the court clarifies this legal question, you may seek to revisit this request.

Sincerely,
Julie Gauman
Records Custodian
New Mexico Livestock Board

Additional person responsible for this denial:
Leif Rasmussen, General Counsel, New Mexico Livestock Board

Molly Manzanares, *Tierra Amailla*
Chair

Tobin "Toby" Dolan, *Las Vegas*
Vice Chair

John N. Conniff, *Las Cruces*
Secretary

Belinda Garland
Executive Director

Darron "Shawn" Davis
Deputy Director

NEW MEXICO LIVESTOCK BOARD



300 San Mateo, NE
Suite 1000
Albuquerque, NM 87108
(505) 841-6161

**EXHIBIT
#3**

Gutierrez, *Jarales*
ginaker, *Santa Fe*
Morgan Switzer-McGinley, *Mesilla*
Tobin "Toby" Dolan, *Las Vegas*
Edward Paul Torres, *Bosque Farms*
Tara M. Vander Dussen, *Clovis*
Tony Casados, Jr., *Tierra Amarilla*

Vacant
Chief Legal Counsel

Ralph Zimmerman, DVM
State Veterinarian

December 16th, 2020

Via Email nlhenry@mindspring.com

Ms. Nancy L. Henry
NM for Equine Rights & Open Government
PO Box 569644
Albuquerque, NM 87187

Re: Request ID 2493

Dear Nancy Henry,

On December 12th, 2020 we received an additional request to review the investigation reports of Barry Allen and Gary Mora:

"Please respond with the requested records before 12/17/20".

We cannot permit inspection of the investigation reports (items 1 and 2 in the original request on November 26th, 2020) or the mp3 investigation interview file of Barry Allen, because they are confidential and exempted from disclosure under NMSA 14-2-1 (C), letters or memoranda that are matters of opinion in personnel files; NMSA 29-14-7 (A) No document containing comments adverse to a peace officer shall be entered into his personnel file unless the officer has read and signed the document. When an officer refuses to sign a document containing comments adverse to him, the document may be entered into an officer's personnel file; NMAC 1.7.1.12 (C), records and documentation containing matters of opinion and documents concerning infractions and disciplinary actions.

As you know, this issue regarding disclosure of personnel records is the main subject of litigation you have already initiated. As dispositive motions have been made, we await further guidance from the courts. Once the court clarifies this legal question, you may seek to revisit this request.

Sincerely,
Julie Gauman
Records Custodian
New Mexico Livestock Board

Additional person responsible for this denial:
Leif Rasmussen, General Counsel, New Mexico Livestock Board

nlhenry@mindspring.com

From: Gauman, Julie C., NMLB <Julie.Gauman@state.nm.us>
Sent: Friday, August 30, 2019 5:19 PM
To: Nancy Henry (nlhenry@mindspring.com)
Subject: RE: [EXT] RE: IPRA - Investigations of Shawn Davis, Barry Allen, Troy Patterson 2016 & 2017

August 30, 2019

Via email nlhenry@mindspring.com

Ms. Nancy L. Henry
NM for Equine Rights & Open Government
PO Box 569644
Albuquerque, NM 87187

RE: Request to Inspect Public Records/Request ID 1979

Dear Ms. Henry:

We have received your request for additional information regarding this request.

We do not have records responsive to investigation reports pertaining to Shawn Davis, Barry Allen, or Troy Patterson for 2016 and 2017.

Sincerely,

Julie C. Gauman
Systems Admin I/Records Custodian Designee
New Mexico Livestock Board

300 San Mateo Blvd NE Ste 1000

Albuquerque, NM 87108

Julie.Gauman@state.nm.us

(505) 362-1565

From: nlhenry@mindspring.com [<mailto:nlhenry@mindspring.com>]
Sent: Thursday, August 29, 2019 5:25 AM
To: Gauman, Julie C., NMLB <Julie.Gauman@state.nm.us>
Cc: Witte, Jeff <jwitte@nmda.nmsu.edu>
Subject: [EXT] RE: IPRA - Investigations of Shawn Davis, Barry Allen, Troy Patterson 2016 & 2017

Julie Gauman, I am not sure I understand the response “*specifically* pertaining to...” What does that mean, that you have no records pertaining to all three, or each individually? Based upon information and belief these records do exist. I look forward to clarification.

From: Gauman, Julie C., NMLB <Julie.Gauman@state.nm.us>
Sent: Wednesday, August 28, 2019 3:04 PM
To: Nancy Henry (nlhenry@mindspring.com) <nlhenry@mindspring.com>
Subject: RE: IPRA - Investigations of Shawn Davis, Barry Allen, Troy Patterson 2016 & 2017

August 28, 2019

Via email nlhenry@mindspring.com

Ms. Nancy L. Henry
NM for Equine Rights & Open Government
PO Box 569644
Albuquerque, NM 87187

RE: Request to Inspect Public Records/Request ID 1979

Dear Ms. Henry:

We have no responsive records to provide specifically pertaining to formal investigations reports of Shawn Davis, Barry Allen, and Troy Patterson for 2016 and 2017.

Sincerely,

Julie C. Gauman
Systems Admin I/Records Custodian Designee
New Mexico Livestock Board
300 San Mateo Blvd NE Ste 1000
Albuquerque, NM 87108
Julie.Gauman@state.nm.us
(505) 362-1565

From: Gauman, Julie C., NMLB
Sent: Thursday, August 15, 2019 4:10 PM
To: 'nlhenry@mindspring.com' <nlhenry@mindspring.com>
Subject: RE: IPRA - Investigations of Shawn Davis, Barry Allen, Troy Patterson 2016 & 2017

August 15, 2019

Via email nlhenry@mindspring.com

Ms. Nancy L. Henry
NM for Equine Rights & Open Government
PO Box 569644
Albuquerque, NM 87187

RE: Request to Inspect Public Records/Request ID 1979

Dear Ms. Henry:

We are in receipt of your request on August 13, 2019 for records related to investigation reports of Shawn Davis, Barry Allen, and Troy Patterson for 2016 and 2017.

We require more time to research for records and respond, until Wednesday August 28, 2019.

Sincerely,

Julie C. Gauman
Systems Admin I/Records Custodian Designee
New Mexico Livestock Board
300 San Mateo Blvd NE Ste 1000
Albuquerque, NM 87108
Julie.Gauman@state.nm.us
(505) 362-1565
<image001.jpg>

From: nlhenry@mindspring.com [mailto:nlhenry@mindspring.com]
Sent: Tuesday, August 13, 2019 1:07 PM
To: recordsrequests@nmlbonline.com
Subject: IPRA - Investigations of Shawn Davis, Barry Allen, Troy Patterson 2016 & 2017

NMLB and Records Custodian,

I am requesting a copy of the **Investigation Reports** pertaining to the following:

1. **Shawn Davis**
2. **Barry Allen**
3. **Troy Patterson**

These formal investigations would have taken place in 2016 and 2017.

Nancy L. Henry
2019 Dixon Award 🏆 **NM Foundation for Open Government**
NM for Equine Rights & Open Government
Equine/Public Advocate
<https://www.facebook.com/NewMexicoAgainstHorseSlaughter/>
505.250.9457, PO Box 56644, ABQ NM, 87187

“... there will be an opportunity to determine if those who have been entrusted with the affairs of government are honestly, faithfully and competently performing their function as public servants.” ~ NM Supreme Court



This email has been checked for viruses by Avast antivirus software.
www.avast.com

Confidentiality Notice: New Mexico has a very broad public records law. Most written communications to or from state employees are public records. Your e-mail communications may therefore be subject to public disclosure. This e-mail, including all attachments is for the sole use of the intended recipients. Any unauthorized review, use, disclosure or distribution is prohibited unless specifically provided under the New Mexico Inspection of Public Records Act.



1355 Acequia Borrada

Santa Fe, New Mexico 87505

505-310-4082

E-mail: gajones56@hotmail.com

October 5, 2017

To: Robert Alexander, Interim Executive Director

From: Gilbert Archuleta, Livestock Owner

Re: Gary Mora

On October 3, 2017, I received a phone call at 8:17pm from Inspector Ralph Martinez advising me that "Supervisor Gary Mora had almost hit one of my cows that was on the highway and for me to go and get those cows and bring them home now". I asked Inspector Martinez where the cows were and he gave me a general location where they were at, and then his phone faded out. I live in Santa Fe, New Mexico, so I proceeded to drive to Tierra Amarilla, New Mexico. After an hour and a half drive I found one of my cows on the highway right of way about 100 yards from a gate to a pasture, where I proceeded to secure the cow in. I only found one cow and tried calling Inspector Martinez numerous times to try inquiring if it was a single cow or more on the highway.

My question to you, Mr. Alexander, Isn't it the Livestock Inspectors job to remove livestock from public highways to prevent accidents? If so, why didn't either the supervisor or the inspector do that?

One of the reasons that I am writing this letter is to inform you that Gary Mora has made this a personal vendetta on his part to put a financial burden on me, through his Inspectors: Listed below are a few reasons why I say that:

1) On July 27, 2017, through an investigation with Inspector Randol Riley, we were able to locate 5 of 9 calves that were stolen from my herd in Meadow Lake and able to pair 4 of the calves with the mother cow. One calf didn't pair up. Inspector Riley and I decided that Inspector Riley would follow me to Tierra Amarilla and I would haul the pairs and the one calf in my trailer. On July 28, 2017 I received a phone call from Inspector Ralph Martinez, informing me that Supervisor Gary Mora had told him to tell me that I "HAD" to gather the 5 cows that were missing calves (cows were in Tierra Amarilla) and haul them to Los Lunas, New Mexico. I tried to reason with Inspector Martinez and he said that I had to do what Supervisor Mora had said. I tried calling Supervisor Mora to no avail, I called Inspector Martinez and he informed that Supervisor Mora was at the Rio Arriba County Fair and that cell service was bad. I found that to be odd because my company provides security services for the fair and I have always had excellent cell service throughout the fairgrounds, and Verizon is my carrier.

At that time I called Ray Baca, Deputy Director and informed him of the situation and he said to give him some time so that he could talk with Inspector Riley and get more information. Deputy Director Baca called me back and informed me to proceed with the original plan but that Inspector Riley would haul the calf in the New Mexico Livestock Board trailer as not to lose the chain of custody.

2) On July 29, 2017, I hauled the cow and calf pairs and Inspector Riley followed me with the calf in the NMLB trailer to Tierra Amarilla, New Mexico. When we got there I called my cows so that they would gather around the trucks and trailers and I informed Inspector Riley which cow was the momma to the calf. I proceeded to spread cattle pellets around the trucks and trailers, at which time Supervisor Mora arrived at our location, out of uniform but driving a marked NMLB vehicle, and proceeded to stand next to the trailer where the calf was located. At which time I asked Supervisor Mora to move away because my cows did not recognize him and he gave me a smirk and laughed. With that being done, the momma cow did not go next to the trailer, so Inspector Riley made the decision to release the calf from the trailer. After a few minutes I was able to get the cow and calf together and the calf started sucking from the cow that I had pointed out. At that time Inspector Riley took pictures and they both departed.

3.) On September 25, 2017, I had Inspector Martinez inspect some cows and calves that I was taking to the livestock auction in Dalhart, Texas, at which time I informed him that I was missing three (3) pairs and one dry cow. I informed Inspector Martinez if my cows were located to call me and I would go and handle the situation and try to avoid the threat of a citation.

My complaint is that Supervisor Gary Mora has "never" called me to inform me that my cows are on the highway, he always has his Inspectors call and always with the threat of a citation if I don't remove them. Also I feel that Supervisor Gary Mora has made this a personal vendetta against me due to the circumstances that surrounded the events when Deputy Director Ray Baca overrode Supervisor Mora decision on me having to take the cows to Los Lunas. Also some of my acquaintances have informed me that Supervisor Mora has made derogatory statements about me, but I have taken them with a grain of salt, but if this continues I will have to take it to the next level.

It is my understanding that the New Mexico Livestock Board is here to assist livestock owners and to enforce the laws that govern the board, but I feel that I am being singled out by Supervisor Mora and his decisions are made on how it will affect me financially and cause a burden on me. For example, when he claims that he almost hit that cow on the highway, why didn't he pen her up in the pasture that was located next to where she was located, instead he had Inspector Martinez call me and had me drive an hour and half to go and pen the cow up? What would have happened if someone had hit this cow on the highway before I got there and both employees of the NMLB were aware that this cow was on the highway?

I hope that situation can be handled in a professional manner and that I receive the same treatment concerning my cattle as the residents of the Tierra Amarilla area receive. I am a cattle grower and I pay my dues: i.e., brand card, inspection fees, and other fees at the livestock auctions. I am sending this electronic correspondce, but I am also mailing a signed copy in the mail.

Thank You for attention to this matter.

Respectfully

Gilbert Archuleta

nlhenry@mindspring.com

From: nlhenry@mindspring.com
Sent: Friday, March 12, 2021 6:01 AM
To: 'Gauman, Julie C., NMLB'
Cc: 'DGF'; 'belinda.garland@state.nm.us'; 'Molly.Manzanares@state.nm.us'; 'stephanie.lujan@state.nm.us'
Subject: RE: [EXT] IPRA - 5 Investigative Reports
Attachments: D-202-CV-2016-07836 Order on In Camera Review.pdf
Importance: High

Julie Gauman, Records Custodian, et al.,

In regards to your Denial Letter, please find attached the Order of the Honorable Judge Alan Malott, who after an in camera review of similar investigative reports, ordered them produced, you appealed. Many District Court Judges have ordered these types of reports produced for APD, SFPD, etc. These are indeed public records containing facts and determinations, not “matters of opinion” to be hidden way in a personnel file. As you know, we have appealed the decision you attached in your reply, as the Judge refused an in camera review and we feel erred in law.

Your reply also denied the requested 5 “investigative reports” based on records that were not requested such as, you wrote “(“records and documentation containing *matters of opinion; interview notes; documents concerning infractions and disciplinary actions; performance appraisals; opinions as to whether a person should be re-employed [.]”*)” There was also no indication as to how this applied to each unique report, as each would be very different from the other, different people, situations, years, and investigation firms.

Any investigative report that contains such activity can be redacted to the extent allowed by law. You have denied entire records. I doubt the completed “investigative reports” by those firms would even contain such. They are hired to find facts, not for their “opinions.” You appear to be relying on a prior incorrect court decision based on a report where an in camera review did not even take place. It remains a secret as to what was actually in that report, to the public and to the court. In 2015 you also received a letter from the Attorney General directing you to fulfill your statutory obligation to the public by separating exempt and nonexempt materials. This has not been done here.

I have done my due diligence to work with you on this matter. Regards, Nancy Henry

From: Gauman, Julie C., NMLB <Julie.Gauman@state.nm.us>
Sent: Thursday, March 11, 2021 5:29 PM
To: Nancy Henry (nlhenry@mindspring.com) <nlhenry@mindspring.com>
Subject: RE: [EXT] IPRA - 5 Investigative Reports

March 11th, 2021

Via email nlhenry@mindspring.com

Nancy Henry
PO Box 56644

Albuquerque, NM 87187

RE: Request to Inspect Public Records/Request ID 2618

Nancy Henry:

Please find attached the denial letter in response to this request.

This concludes our response to Request ID 2618.

Regards,

Julie C. Gauman
New Mexico Livestock Board

Systems Admin I/Records Custodian

300 San Mateo Blvd NE #1000

Albuquerque, NM 87108

505-362-1565

Julie.Gauman@state.nm.us



From: Gauman, Julie C., NMLB

Sent: Monday, March 1, 2021 3:54 PM

To: Nancy Henry (nlhenry@mindspring.com) <nlhenry@mindspring.com>

Subject: RE: [EXT] IPRA - 5 Investigative Reports

March 1st, 2021

Via email nlhenry@mindspring.com

Nancy Henry

PO Box 56644

Albuquerque, NM 87187

RE: Request to Inspect Public Records/Request ID 2618

Nancy Henry:

We are in receipt of your February 24th, 2021 below described request for records pertaining to investigative reports. We need more time to respond, until Thursday March 11th, 2021.

Regards,

Julie C. Gauman
New Mexico Livestock Board

Systems Admin I/Records Custodian
300 San Mateo Blvd NE #1000
Albuquerque, NM 87108
505-362-1565
Julie.Gauman@state.nm.us



From: nlhenry@mindspring.com [<mailto:nlhenry@mindspring.com>]
Sent: Wednesday, February 24, 2021 8:53 AM
To: recordsrequests@nmlbonline.com
Subject: [EXT] IPRA - 5 Investigative Reports

NMLB and Records Custodian,

I am requesting the associated **investigative reports** pertaining to the 5 investigations referenced within each attached invoice (5 attachments).

1. Craig Martin Consulting investigative report prepared on 2/8/2016, pertaining to a redacted name (redaction not explained)
2. Craig Martin Consulting investigative report prepared on 2/26/2018, pertaining to April Riggs
3. Thompson & Associates investigative report prepared on 3/10/2020, pertaining to Shannon Cain
4. Thompson & Associates investigative report prepared on 3/12/2020, pertaining to Priscilla Pena-Johnson
5. Thompson & Associates investigative report prepared on 9/15/2020, pertaining to Byron Waldrop

Nancy L. Henry
2019 Dixon Award 🏆 NM Foundation for Open Government
NM for Equine Rights & Open Government
Equine/Public Advocate
<https://www.facebook.com/NewMexicoAgainstHorseSlaughter/>
505.250.9457, PO Box 56644, ABQ NM, 87187

"... there will be an opportunity to determine if those who have been entrusted with the affairs of government are honestly, faithfully and competently performing their function as public servants." ~ NM Supreme Court

Molly Manzanares, *Tierra
Amailla*
Chair

Tobin "Toby" Dolan, *Las
Vegas*
Vice Chair

John N. Conniff, *Las Cruces*
Secretary

Belinda Garland
Executive Director

Darron "Shawn" Davis
Deputy Director

NEW MEXICO LIVESTOCK BOARD



300 San Mateo, NE
Suite 1000
Albuquerque, NM 87108
(505) 841-6161

EXHIBIT
#7

Gutierrez, *Jarales*
ginaker, Santa Fe
Morgan Switzer-McGinley, *Mesilla*
Tobin "Toby" Dolan, *Las Vegas*
Edward Paul Torres, *Bosque Farms*
Tara M. Vander Dussen, *Clovis*
Tony Casados, Jr., *Tierra Amarilla*

Leif Rasmussen
Chief Legal Counsel

Ralph Zimmerman, DVM
State Veterinarian

March 11, 2021

Via Email nlhenry@mindspring.com

Ms. Nancy L. Henry
NM for Equine Rights & Open Government
PO Box 569644
Albuquerque, NM 87187

Re: Request ID 2618

Dear Nancy Henry,

On February 24, 2021 we received your request to review the following records:

"NMLB and Records Custodian,

I am requesting the associated **investigative reports** pertaining to the 5 investigations referenced within each attached invoice (5 attachments).

1. Craig Martin Consulting investigative report prepared on 2/8/2016, pertaining to a redacted name (redaction not explained)
2. Craig Martin Consulting investigative report prepared on 2/26/2018, pertaining to April Riggs
3. Thompson & Associates investigative report prepared on 3/10/2020, pertaining to Shannon Cain
4. Thompson & Associates investigative report prepared on 3/12/2020, pertaining to Priscilla Pena-Johnson
5. Thompson & Associates investigative report prepared on 9/15/2020, pertaining to Byron Waldrop"

We cannot permit inspection of the investigation reports because they are confidential and exempted from disclosure pursuant to NMSA 1978, Section 14-2-1 (C) (“letters or memoranda that are matters of opinion in personnel files”) and NMAC 1.7.1.12 (C) (“records and documentation containing matters of opinion; interview notes; documents concerning infractions and disciplinary actions; performance appraisals; opinions as to whether a person should be re-employed [.]”). For additional reference, please see attached court determination related to disclosure of similar investigation reports.

Sincerely,
Julie Gauman
Records Custodian
New Mexico Livestock Board

Additional person responsible for this denial:
Stephanie Lujan, HR Manager
Leif Rasmussen, General Counsel, New Mexico Livestock Board

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

NANCY HENRY,

Plaintiff,

v.

D-202-CV-2016-07836
D-202-CV-2017-07353

NEW MEXICO LIVESTOCK BOARD,

Defendants.

ORDER ON IN CAMERA REVIEW

THE COURT, having directed Defendant New Mexico Livestock Board (NMLB) to produce certain documents it has objected to producing in response to Plaintiff's IPRA requests; Defendant NMLB having produced said documents along with its "Privilege Log"; and the Court having reviewed same; and being sufficiently advised;

IT IS ORDERED:

1. The e-mail dated 11/8/16 between Ms. Hedgecock and Ms. White shall be produced.
2. The e-mail dated 12/19/16 between Ms. Hedgecock and Mr. Biernoff shall be produced.
3. The Investigative Report dated 3/29/17 by Robert Caswell Investigations shall be produced.
4. The e-mail dated 11/23/17 from Ms. Hedgecock to NMLB staff shall be produced.
5. Items already produced either in open court or in response to previous requests, having been provided to Plaintiff, are moot.




Hon. Alan M. Malott
District Court Judge

Copies of the foregoing were mailed, e-mailed, or delivered on the date of filing to:

Nancy L. Henry, pro se
PO Box 56644
Albuquerque, NM 87187
(505) 250-9457

Colin L. Hunter
Barnett Law Firm P.A.
1905 Wyoming Boulevard NE
Albuquerque, New Mexico 87112
(505) 275-3200
info@theblf.com

Joseph Holloway, General Counsel
New Mexico Livestock Board
300 San Mateo NE, Suite 1000
Albuquerque, NM 87108-1500
Joseph.Holloway@state.nm.us
(505) 841-6161



Susan L. Gibson, TCAA
Division XV

IPRA Requests Timeline at a Glance

Ref #	Gen nature of the request	Date of Request	Date of NMLB Response	Substance of the Response from NMLB	Records They Have
1	Investigative Reports pertaining to Shawn Davis, Barry Allen, Troy Patterson 2016 & 2017)	8/13/19	8/15/19	Will research & respond 8/28/19.	Martins Consulting, Investigative Report, pertaining to Barry Allen.
			8/28/19	No records “specifically”	In 2020 it was discovered this record does exist and was unlawfully withheld under the guise that none existed.
		8/29/19 Petitioner asked what “specifically” meant.	8/30/19	“No responsive records”	
2	Investigative Reports pertaining to Barry Allen & Gary Mora	11/26/20	12/3/20	Will respond by 12/11/20	Martins Consulting, Investigative Reports, pertaining to Barry Allen and Gary Mora.
			12/11/29	Denial Letter “matters of opinion”	
		12/12/20 Petitioner requested the records again.	12/16/20	2nd Denial Letter “matters of opinion”	
3	Investigative Reports pertaining to:	2/24/21	3/1/21	Will respond by 3/11/21	Thompson Consulting and Martins Consulting, Investigative Reports, for all 5.
	1. Tim Martinez 2. April Riggs 3. Shannon Cain 4. Priscilla Pena-Johnson 5. Byron Waldrop		3/11/21	Denial Letter “matters of opinion” etc.	
		3/12/21 Petitioner’s opinion regarding the denial letter.		No response.	