

COPY

STATE OF NEW MEXICO

COUNTY OF SANTA FE

FIRST JUDICIAL DISTRICT COURT

No. D-0101-CV-2011-00432

STATE OF NEW MEXICO, ex rel.
DEPARTMENT OF PUBLIC SAFETY and
REGINA CHACON, in her official capacity
as Records Custodian,

Plaintiffs/Counterdefendants,

v.

THE RIO GRANDE SUN and
BACH & GARCIA LLC,

Defendants/Counterplaintiffs,

ENDORSED
First Judicial District Court

MAR 21 2011

Santa Fe, Rio Arriba &
Los Alamos Counties
PO Box 2269
Santa Fe, NM 87504-2268

RIO GRANDE SUN'S ANSWER TO COMPLAINT AND COUNTERCLAIM FOR VIOLATIONS OF THE NEW MEXICO INSPECTION OF PUBLIC RECORDS ACT, BREACH OF SETTLEMENT AGREEMENT, AND DECLARATORY AND INJUNCTIVE RELIEF

Defendant/Counterplaintiff *Rio Grande Sun* ("The Sun"), for its answer and affirmative defenses to the Complaint for Declaratory Judgment ("Complaint"), and counterclaim against the Plaintiffs/Counterdefendants, states as follows:

1. The *Sun* admits the allegations of paragraphs 1, 2, and 3 of the Complaint.
2. The *Sun* is without knowledge or information sufficient to admit or deny the allegations of paragraph 4 of the Complaint and, therefore, denies those allegations.
3. Paragraph 5 of the Complaint contains legal conclusions to which no response is required by the *Sun*. To the extent a response is deemed to be required, the *Sun* admits that this Court has jurisdiction over and that this district is the proper venue for the *Sun*'s counterclaim

against Plaintiffs/Counterdefendants, but denies the remaining allegations of paragraph 5 of the Complaint.

4. Paragraph 6 of the Complaint contains legal conclusions to which no response is required by the *Sun*. To the extent a response is deemed to be required, the *Sun* denies the allegations of paragraph 6 of the Complaint.

5. In response to paragraph 7 of the Complaint, the *Sun* admits that on April 18, 2008, the court in *Cox v. The New Mexico Department of Public Safety*, Case No. D-101-CV-200661415, entered summary judgment in favor of the defendants on Count IV of plaintiff's complaint in that case, but denies the remaining allegations of Paragraph 7 of the Complaint and states, by way of further answer, that the April 18, 2008 summary judgment was reversed by the New Mexico Court of Appeals in favor of the plaintiff.

6. The *Sun* admits the allegations of paragraph 8 of the Complaint.

7. In response to paragraphs 9 and 10 of the Complaint, the *Sun* states that the referenced opinion of the New Mexico Court of Appeals speaks for itself, and denies Plaintiffs'/Counterdefendants' characterization of the opinion as set forth in paragraphs 9 and 10 of the Complaint.

8. In response to paragraph 11 of the Complaint, the *Sun* admits that on August 23, 2010, the *Sun* and *Sun* reporter Bill Rodgers requested, pursuant to the New Mexico Inspection of Public Records Act ("IPRA"), that Plaintiffs/Counterdefendants permit them to inspect "any complaints and letters of reprimand or commendation for all officers in the District 7 office of the State Police from Jan. 2008 to the present[,] and further admit, by way of further answer, that Exhibit B to the Complaint is a true and correct copy of this request, but denies the remaining allegations of paragraph 11 of the Complaint.

9. The *Sun* is without knowledge or information sufficient to admit or deny the allegations of paragraph 12 of the Complaint and, therefore, denies those allegations.

10. In response to paragraph 13, the *Sun* admits that the Department of Public Safety, in their capacity as a defendant in *Cox v. The New Mexico Department of Public Safety*, Case No. D-101-CV-200661415, filed a Petition for Writ of Certiorari before the New Mexico Supreme Court in that case, but states that the Writ attached as Exhibit E to the Complaint speaks for itself and denies Plaintiff's/Counterdefendants' characterization of that Writ as set forth in paragraph 13, and further denies the remaining allegations of paragraph 13 of the Complaint.

11. Paragraph 14 of the Complaint contains legal conclusions to which no response is required by the *Sun*. To the extent a response is deemed to be required, the *Sun* is without knowledge or information sufficient to admit or deny the allegations of paragraph 14 of the Complaint and, therefore, denies those allegations.

12. Paragraph 15 of the Complaint contains legal conclusions to which no response is required by the *Sun*. To the extent a response is deemed to be required, the *Sun* denies the allegations of paragraph 15 of the Complaint.

13. The *Sun* denies the allegations of paragraphs 16 and 17 of the Complaint.

14. The *Sun* is without knowledge or information sufficient to admit or deny the allegations of paragraph 18 of the Complaint and, therefore, denies those allegations.

15. In response to paragraph 19 of the Complaint, the *Sun* admits that Plaintiffs/Counterdefendants seek a judgment from this Court, but denies the remaining allegations of paragraph 19 of the Complaint.

16. The *Sun* denies that Plaintiffs/Counterdefendants are entitled to the relief requested in the prayer.

17. The *Sun* denies that the Plaintiffs/Counterdefendants are entitled to any relief in this case.

18. Except as expressly admitted in this Answer, the *Sun* denies the allegations in the Complaint.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief may be awarded against the *Sun*.

2. The Plaintiffs/Counterdefendants lack standing to assert the claims and causes of action asserted against the *Sun*.

3. The Plaintiffs/Counterdefendants have no cause of action against the *Sun* under the New Mexico Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 to -12.

4. The Plaintiffs'/Counterdefendants' claims and cause of action against the *Sun* are precluded or limited by the New Mexico Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 to -12.

5. The Plaintiffs'/Counterdefendants' claims and cause of action are precluded or limited by the First Amendment to the Constitution of the United States.

6. The Plaintiffs'/Counterdefendants' claims and cause of action are precluded or limited by Article II, Section 17 of the Constitution of New Mexico.

7. The Plaintiffs'/Counterdefendants' claims and cause of action are unripe.

8. The Complaint fails to name indispensable parties to this action.

9. The claims in the Complaint are barred, in whole or in part, by the equitable doctrines of laches and unclean hands.

10. The *Sun* hereby adopts and incorporates by reference any other defenses asserted by any other Defendant in this action to the extent such defense is applicable to the *Sun*.

11. The *Sun* reserves the right to expressly assert any affirmative defense asserted by any other party in this litigation, and to raise additional affirmative defenses as discovery in this case progresses.

WHEREFORE, the *Sun* prays that the Complaint be dismissed with prejudice and that the *Sun* be awarded its costs, attorney fees, and such other and further relief as the Court may deem just and proper.

COUNTERCLAIM

Defendant/Counterplaintiff *Rio Grande Sun* for its Counterclaim against Plaintiffs/Counterdefendants, hereby states as follows:

Jurisdiction, Venue, & Parties

1. Counterplaintiff *Sun* is a newspaper of limited and general circulation in New Mexico, covering mainly Santa Fe, Los Alamos, and Rio Arriba counties and the communities within those counties. The *Sun*'s offices are located in Española, New Mexico.

2. Counterdefendant Department of Public Safety ("DPS") is the primary law enforcement agency in the executive branch of New Mexico state government. *See* NMSA 1978, § 9-19-1 *et seq.* DPS is a "public body" under the New Mexico Inspection of Public Records Act ("IPRA"), NMSA 1978, § 14-2-6(D).

3. On information and belief, Counterdefendant Regina Chacon is DPS's custodian of public records pursuant to sections 14-2-6(A) and 14-2-7 of the IPRA.

4. Jurisdiction and venue for this Counterclaim are proper pursuant to the IPRA, NMSA 1978, Section 14-2-1 to -12 and the venue statute, NMSA 1978, Section 38-3-1 (1988).

5. There exists an actual controversy between the parties regarding the Counterdefendants's duties under a settlement agreement between the parties regarding the IPRA and under the IPRA itself. Accordingly, the declaratory relief sought by this Counterclaim is authorized under both the IPRA and NMSA 1978, Sections 44-6-2 and 44-6-4.

Factual Allegations

6. DPS has a history of ignoring its violations of the IPRA, leading to a series of lawsuits against the agency by various news agencies, public interest groups, and private citizens. As explained below, at least one of those lawsuits, by the *Sun*, other newspapers, and the New Mexico Foundation for Open Government ("FOG"), led to a settlement agreement with the *Sun* that DPS violated when it mishandled the *Sun*'s IPRA request at issue in this case. In addition to breaching the settlement, DPS's failure to comply with the *Sun*'s public records requests violates IPRA in multiple ways, as explained below.

The Earlier *Sun v. DPS* Litigation and the Settlement

7. On August 26, 2005, the *Sun* joined with other news organizations and FOG in a lawsuit against DPS for multiple violations of IPRA.

8. The plaintiffs in that case had alleged that DPS failed to comply with IPRA and to produce public records related to "two shootings involving public safety officers, an altercation between a New Mexico State Police officer and two Albuquerque Police Department officers, and an altercation between a staff member of the New Mexico Department of Tourism and a private citizen, as well as a fifth matter, regarding personal e-mails sent by the ex-State Police Chief over state computers, which has important public policy implications." *See* excerpt, Am. Suppl. Compt., *Sun v. DPS*, 2d Jud. Dist. Cause No. CIV 2005-006554, ¶ 1 (Ex. 1).

9. In their amended and supplemental complaint, the plaintiffs alleged that DPS had

engaged “in a capricious campaign to keep these public records secret in an attempt to conceal from the press and the public the identities of the two public safety employees allegedly involved in the shooting deaths of two New Mexico citizens, as well as information regarding potential misbehavior by state public officials and employees.” *See id.* at ¶ 6.

10. After a year and a half of litigation, on February 8, 2007 the *Sun* and DPS entered into a settlement agreement, part of the purpose of which was to ensure that the “press and the public” obtain public records “in a timely manner” under the IPRA. *See* Settlement Agreement (Ex. 2) at 1.

11. The Settlement Agreement includes the following provisions:

a. DPS must comply with the IPRA with regard to records requests tendered by the *Sun*, *see* Settlement Agreement (Ex. 2) at 2, ¶ 1;

b. DPS, consistent with the requirements of Section 14-2-8(D) of the IPRA, cannot delay production to the *Sun* of any public record solely because the full 15-day time limit imposed by that section had not yet expired, *see id.* at 4, ¶ 8; and

c. DPS cannot withhold law enforcement records from the *Sun* on the grounds that disclosure of such records would “violate an individual’s right to privacy[,]” *see id.* at 6, ¶ 14a. The agreement defines law enforcement records broadly to include “all records in any form received, maintained, stored or compiled by DPS in connection with a criminal incident, investigation or prosecution[.]”

The *Sun*’s Request for Officer Complaints, Letters of Reprimand or Commendation

12. On August 23, 2010, *Sun* reporter Bill Rodgers tendered a written request to DPS to inspect “any complaints and letters of reprimand or commendation for all officers in the

District 7 office of the State Police from Jan. 2008 to the present.” *See* IPRA Request (Ex. 3).

13. By letter dated August 27, 2010, Counterdefendant Chacon responded to the *Sun*’s request on behalf of DPS. *See* Aug. 27 ltr. (Ex. 4). In its response, DPS claimed that the *Sun*’s request was “burdensome” and that DPS required “additional preparation time” to respond to the request. *See id.*

14. By waiting until August 27, 2010 to respond to the *Sun*’s request, Counterdefendants violated both the IPRA and the settlement agreement by failing to respond to the request within three days of receiving it. *See* Settlement Agreement (Ex. 2) at 2, ¶ 1; NMSA 1978, § 14-2-8(D).

15. Months passed without DPS providing any further information or communication to the *Sun* regarding its August 23, 2010 request. The next time the *Sun* received any information about its request was when it learned in early February 2011 from outside sources that DPS had sued the newspaper in an attempt to block its access to the public records the *Sun* had requested months earlier.

16. To date, Counterdefendants have not served their Complaint on the *Sun*, presumably to delay, as long as possible, their obligation to comply with the Settlement Agreement and the IPRA.

17. To date, DPS has failed to provide a) any records as is required by the IPRA; or b) any further written response to the *Sun*’s request as is required by NMSA 1978, § 14-2-11 of the IPRA.

The Inspection of Public Records Act

18. NMSA 1978, § 14-2-6(E) of the IPRA broadly defines the records to which the public is entitled to access: “all documents, papers, letters, books . . . and other materials . . . that

are used, created, received, maintained or held by or on behalf of any public body and relate to public business”

19. Further, it is the

public policy of this state, that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees. It is further the intent of the legislature, and it is declared to be the public policy of this state, that to provide persons with such information is an essential function of a representative government and an integral part of the routine duties of public officers and employees.

NMSA 1978, § 14-2-5. “IPRA’s stated policy reflects the fact that people in our democratic society have a fundamental right to inspect public records.” *San Juan Agricultural Water Users Assoc. v. KNME-TV*, No. 32, 139 (S.Ct. March 8, 2011), ¶ 15 (Daniels, C.J.) (internal citation and quotation marks omitted). “In order for government to truly be of the people and by the people, and not just for the people, our citizens must be able to know what their own public servants are doing in their name.” *Id.* at ¶ 17.

20. “IPRA creates a presumption in favor of access[.]” *Id.* at ¶ 15. Thus, the right to inspect public documents is limited by only a few exceptions stated in § 14-2-1.

21. Although DPS has, in violation of the IPRA, failed to explain in writing to the *Sun* the reasons for withholding records, *see* NMSA 1978, § 14-2-11(B), none of the exceptions set forth in the IPRA are applicable to the records sought by the *Sun*’s August 23, 2010 request.

22. The IPRA provides a specific procedure for a custodian of public records to follow upon the receipt of a written request to inspect public records:

A custodian receiving a written request shall permit the inspection immediately or as soon as is practicable under the circumstances, but not later than fifteen days after receiving a written request. If the inspection is not permitted within three business days, the custodian shall explain in writing when the records will be available for inspection or when the public body will respond to the request.

NMSA 1978, § 14-2-8 (1993). The Counterdefendants failed to follow this procedure with

regard to the *Sun*'s August 23, 2010 request.

23. Section 14-2-10 of the IPRA provides that:

If a custodian determines that a written request is excessively burdensome or broad, an additional reasonable period of time shall be allowed to comply with the request. The custodian shall provide written notification to the requester within fifteen days of receipt of the request that additional time will be needed to respond to the written request. The requester may deem the request denied and may pursue the remedies available pursuant to the Inspection of Public Records Act if the custodian does not permit the records to be inspected in a reasonable period of time.

The Counterdefendants improperly invoked this section of the IPRA, or alternatively failed to properly invoke this section of the IPRA.

24. Even if Counterdefendants properly invoked Section 14-2-10 of the IPRA with regard to the *Sun*'s August 23, 2010 request, which is denied, Counterdefendants have violated both the Settlement Agreement and the IPRA because they have failed to produce the requested records within a reasonable time.

COUNT ONE – Violation of The Inspection of Public Records Act

25. The *Sun* incorporates by reference the foregoing allegations.

26. The Counterdefendants have violated the IPRA in the following ways with regard to the *Sun*'s August 23, 2010 request:

a. The Counterdefendants failed to produce the documents requested by the *Sun* and as required by IPRA.

b. The Counterdefendants have failed to offer any valid grounds under Section 14-2-1 for refusing to produce the records requested by the *Sun* as is required by the IPRA.

c. The Counterdefendants failed, when withholding documents responsive to the records requests, to issue a proper denial of the records

requests or to explain the basis for the denial as is required by Section 14-2-11 of the IPRA.

d. To the extent Counterdefendants claim that certain information contained within responsive records is exempt from the IPRA, Defendants failed to separate exempt from nonexempt information as is required by Section 14-2-9 of the IPRA.

e. The Counterdefendants failed to identify the individuals responsible for denying the records requests as is required by Section 14-2-11(B)(2) of the IPRA.

f. The Counterdefendants failed to identify the records sought that were being withheld as is required by Section 14-2-11(B)(1) of the IPRA.

g. The Counterdefendants failed to provide the reasons for the denials as is required by the IPRA.

h. The Counterdefendants improperly invoked Section 14-2-10 of the IPRA because they failed to follow that section's requirements for doing so.

i. The Counterdefendants improperly relied on Section 14-2-10 of the IPRA because, even if they had properly invoked that section, which is denied, the *Sun's* request was neither excessively burdensome nor broad.

j. Even if Counterdefendants properly invoked and relied upon Section 14-2-10 of the IPRA, which is denied, Counterdefendants have failed to produce the records within a reasonable time.

k. The Counterdefendants failed to produce a response to the *Sun's* request within three business days of receiving it as is required by Section 14-

2-8.

1. The Counterdefendants failed to respond to either produce records responsive to the *Sun*'s request or to issue a written denial within 15 days of receiving it as is required by both Sections 14-2-8 and 14-2-11 of the IPRA. The Counterdefendants' failure to do so was unreasonable, thus entitling the *Sun* to damages under IPRA.

27. Counterdefendants' violations of the IPRA entitle the *Sun* to recover damages, at up to \$100 per day, and their costs and attorneys' fees in pursuing this action pursuant to Section 14-2-12(D).

COUNT TWO – Breach of Settlement Agreement Against Counterdefendant DPS

28. The *Sun* incorporates by reference the foregoing allegations.

29. The Settlement Agreement (Ex. 2) constitutes a valid, enforceable contract.

30. DPS breached the Settlement Agreement by refusing to perform its obligations under the agreement, including:

a. Failing to comply with the IPRA regarding the *Sun*'s August 23, 2010 public records request.

b. On information and belief, delaying production of records responsive to the *Sun*'s August 23, 2010 request merely because the 15-day time limit imposed by the IPRA had not yet run.

c. On information and belief, withholding records responsive to the *Sun*'s August 23, 2010 request on the grounds that the disclosure of those records would allegedly infringe upon an individual's right to privacy.

31. As a consequence of DPS's breaches of the Settlement Agreement, the *Sun* has suffered and will continue to suffer irreparable harm, thus entitling the *Sun* to injunctive relief, declaratory relief, specific performance of the Settlement Agreement and its attorneys' fees and costs incurred in this lawsuit. *See* Settlement Agreement (Ex. 2) at 8, ¶¶ 22-23.

COUNT THREE – Declaratory Relief

32. The *Sun* incorporates by reference the foregoing allegations.

33. There exists an actual controversy between the Counterdefendants and the *Sun* whether the Counterdefendants' conduct, as alleged above, constitutes violations of the IPRA and whether the documents requested by the *Sun* constitute public records that Counterdefendants are required by law to disclose.

34. The *Sun* is entitled to declaratory relief that Counterdefendants have violated the IPRA, and that the documents requested by the *Sun* are public records under the IPRA.

COUNT FOUR – Injunctive Relief and Mandamus

35. The *Sun* incorporates by reference the foregoing allegations.

36. Pursuant to NMSA 1978, Section 14-2-12(B), the *Sun* is entitled to a writ of mandamus or injunction ordering the Counterdefendants to produce all relevant documents in the Counterdefendants' possession that are responsive to the *Sun*'s August 23, 2010 public records request.

WHEREFORE, the *Sun* prays that:

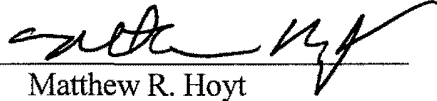
1. The Court issue a writ of mandamus or injunction ordering the Counterdefendants to produce the requested public records without further delay;

2. The Court declare that the Counterdefendants have violated IPRA with regard to the the *Sun*'s public records request; and

3. The Court enter an order for such other and further relief as the Court deems just and proper, including but not limited to an award of the *Sun*'s damages, costs, and reasonable attorneys' fees.

Respectfully submitted,

PEIFER, HANSON & MULLINS, P.A.

By: 
Matthew R. Hoyt
Attorneys for Defendant/Counterplaintiff

Rio Grande Sun

Post Office Box 25245

Albuquerque, New Mexico 87125

Telephone: (505) 247-4800

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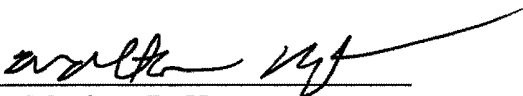
We hereby certify that a copy of the foregoing was served by email and first-class mail to counsel of record:

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this 21st day of March, 2011.

PEIFER, HANSON & MULLINS, P.A.

By: 
Matthew R. Hoyt

C 3Y

SECOND JUDICIAL DISTRICT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO
No. CIV 2005-06554

ENDORSED
FILED IN MY OFFICE THIS
MAY 09 2006

Quinita M. Duran
CLERK DISTRICT COURT

LORENZO D. RENTERIA

RIO GRANDE SUN; SANTA FE NEW MEXICAN; JASON AUSLANDER, as a reporter for the Santa Fe New Mexican and as an individual; ALBUQUERQUE JOURNAL; HARRY MOSKOS, as a reporter for the Albuquerque Journal and as an individual; ALBUQUERQUE TRIBUNE; THE NEW MEXICO FOUNDATION FOR OPEN GOVERNMENT, a not-for-profit New Mexico corporation; and ROBERT H. JOHNSON, individually and as Executive Director for the New Mexico Foundation for Open Government,

Plaintiffs,

vs.

THE NEW MEXICO DEPARTMENT OF PUBLIC SAFETY and PETER OLSON, custodian of records for the New Mexico Department of Public Safety.

Defendants.

FIRST AMENDED AND SUPPLEMENTAL COMPLAINT FOR PRODUCTION OF PUBLIC RECORDS, FOR MANDAMUS AND FOR DECLARATORY AND INJUNCTIVE RELIEF

The Plaintiffs, Albuquerque Journal ("Journal"), Jason Auslander ("Auslander"), Robert H. Johnson ("Johnson"), Harry Moskos ("Moskos"); Albuquerque Tribune ("Tribune"), The New

EXHIBIT
1

Mexico Foundation for Open Government (“NMFOG”); The Rio Grande Sun (“The Sun”); and the Santa Fe New Mexican (“The New Mexican”), by and through their undersigned counsel, state:

NATURE OF THE CASE

1. Plaintiffs bring this action pursuant to the New Mexico Inspection of Public Records Act, NMSA 1978, § 14-2-1 *et. seq.* (2003) to compel the production of public records maintained by the New Mexico Department of Public Safety (“DPS”) regarding four potentially criminal incidents: two shootings involving public safety officers, an altercation between a New Mexico State Police officer and two Albuquerque Police Department officers, and an altercation between a staff member of the New Mexico Department of Tourism and a private citizen, as well as a fifth matter, regarding personal e-mails sent by the ex-State Police Chief over state computers, which has important public policy implications.

2. The two fatal shooting incidents allegedly involve a New Mexico State Police officer in Chimayó, New Mexico and an Albuquerque Fire Department firefighter near Cochiti, New Mexico.

3. The altercation between an off-duty New Mexico State Police officer and two off-duty Albuquerque Police Officers allegedly occurred during a motorcycle show at the Albuquerque Convention Center in Albuquerque, New Mexico.

4. The altercation between a Department of Tourism staffer and a member of the public allegedly occurred at the New Mexico State Capitol Building during the 2006 regular session of the New Mexico Legislature.

5. The fifth matter involves the electronic mails, text messages and other digital communication between former New Mexico State Police Chief Carlos Maldonado and a New Mexico state legislator that allegedly occurred after business hours, and on information and belief, did not involve official state business.

6. DPS has consistently refused to respond fully or adequately to multiple requests from multiple news outlets for these documents. Instead, DPS has engaged in a capricious campaign to keep these public records secret in an attempt to conceal from the press and the public the identities of the two public safety employees allegedly involved in the shooting deaths of two New Mexico citizens, as well as information regarding potential misbehavior by state public officials and employees. Such actions not only violate the plain language of the Inspection of Public Records Act, but also the spirit and intent of the law, especially as it relates to the freedom of the press to investigate and report on matters of public concern.

PARTIES, JURISDICTION, AND VENUE

7. Plaintiffs the Sun and the New Mexican are newspapers of regional and local circulation in New Mexico, covering mainly Santa Fe, Los Alamos, and Rio Arriba counties and the communities within those counties. As with the Journal and the Tribune, these news organizations report on the conduct of public officials and employees, including crimes allegedly involving public employees, and criminal activity generally.

8. Plaintiffs the Albuquerque Journal and the Albuquerque Tribune are newspapers of general circulation in New Mexico, with their principal place of business in Bernalillo County. As newsgathering organizations, they report on the conduct of public officials and employees,

writ of mandamus or injunction ordering the Defendants to produce all relevant documents in the Defendants possession, unredacted, as provided in Plaintiffs' requests.

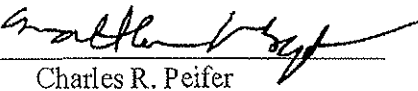
104. The Plaintiffs are entitled to recover their costs and attorneys' fees in pursuing this action pursuant to Section 14-2-12(D).

WHEREFORE, the Plaintiffs pray that:

1. the Court declare that the records sought by the Plaintiffs are public records and documents and are subject to disclosure;
2. the Court issue a writ of mandamus or injunction ordering the Defendants to produce the records and information requested without further delay, and to produce all similar such documents in the future and to adopt policies and procedures sufficient to correct the policies and practices that have resulted in the improper denials in this case; and
3. the Court enter an order for such other and further relief as the Court deems just and proper, including but not limited to costs and reasonable attorneys' fees.

Respectfully submitted,

PEIFER, HANSON & MULLINS, P.A.

By: 
Charles R. Peifer
Matthew R. Hoyt
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Albuquerque, New Mexico 87125
Telephone: (505) 247-4800

SETTLEMENT AGREEMENT

WHEREAS, Plaintiffs, the Rio Grande Sun (“The Sun”), the Santa Fe New Mexican (“The New Mexican”), Jason Auslander (“Auslander”), the Albuquerque Journal (“Journal”), Harry Moskos (“Moskos”), the Albuquerque Tribune (“Tribune”), the New Mexico Foundation for Open Government (“NMFOG”), and Robert H. Johnson (“Johnson”), commenced an action entitled *Rio Grande Sun et al. v. New Mexico Department of Public Safety et al.*, No. CIV 2005-06554, in the Second Judicial District Court, County of Bernalillo, State of New Mexico (the “Action”); and

WHEREAS, Plaintiffs and Defendants New Mexico Department of Public Safety and Peter Olson (“DPS”) desire to settle the Action; and

WHEREAS, the parties recognize the need for the New Mexico State Police and other state law enforcement officials to provide an efficient, reliable and timely reporting system regarding crime and potential criminal activity that is brought to DPS’s attention; and

WHEREAS, the parties recognize the needs of the press and the public to obtain information regarding crime and potential criminal activity in New Mexico and to obtain this information in a timely manner subject to the exceptions provided for in the New Mexico Arrest Record Information Act, NMSA 1978, § 29-10-1 *et seq.* (“ARIA”) and the New Mexico Inspection of Public Records Act, NMSA 1978, § 14-2-1 *et seq.* (“IPRA”);

NOW, THEREFORE, in consideration of the promises and the conditions contained herein, the parties agree as follows:



1. DPS shall comply with the ARIA and the IPRA, and the terms set forth in this Settlement Agreement.

2. For purposes of this Settlement Agreement, "law enforcement records" shall mean all records in any form received, maintained, stored or compiled by DPS in connection with a criminal incident, investigation or prosecution conducted by DPS or conducted by any other law enforcement or prosecuting agency whose records come into the possession or control of DPS, including inactive matters or closed investigations.

3. DPS shall not modify, change, amend or terminate any existing policy or procedure regarding the creation, modification, filing, storage or production of any law enforcement record on account of this Settlement Agreement, except as set forth in this Agreement. Specifically, DPS shall not, either in whole or part, change its current practice of creating original records of entry to avoid creating a public record.

4. For purposes of this Settlement Agreement, "initial incident report" shall mean the State of New Mexico Uniform Incident Report currently employed by DPS and other law enforcement agencies and attached as Exhibit A to this Agreement, and includes the initial narrative of all law enforcement officers who respond to the scene of an incident. DPS shall not deviate from its current policies, practices and procedures regarding the preparation, filing, storage or production of initial incident reports except as set forth in this Settlement Agreement.

5. DPS shall treat 911 tapes, 911 transcripts, initial incident reports, initial offense reports, accident and traffic offense reports, radio tapes, dispatch tapes, radio logs, mug shots and

CAD printouts as “original records of entry” as defined by the New Mexico Arrest Record Information Act, NMSA 1978, § 29-10-7(A)(2).

6. DPS shall make all such “original records of entry” as set forth in Paragraph 5 available for inspection and copying on or before the deadlines imposed by IPRA without any redaction, omission or claim of exemption.

7. For all public records other than “original records of entry,” DPS shall produce the records before the expiration of the time limits imposed by the IPRA but may redact information exempted from disclosure under the IPRA or the ARIA if DPS produces the portions of the records that are not exempt. DPS’s release of information obtained from National Crime Information Center (“NCIC”) data shall be consistent with the statutes and regulations governing the release of such information. Should DPS elect to make any redactions, it must identify any such redactions in its written response to a written request. All written responses by DPS must be signed by the public records custodian, and detail the specific and non-speculative reasons why DPS believes the release of the information requested is exempt from disclosure under the IPRA and/or ARIA. The written response shall describe in reasonable detail the factual basis for any claim of exemption under the IPRA or the ARIA. With regard to information in law enforcement records withheld under NMSA 1978, § 14-2-1(A)(4) and § 29-10-4, DPS shall not withhold any information unless it can show that that release of the records poses demonstrable and serious harm to an existing or contemplated criminal prosecution or investigation. DPS shall also provide the specific factual basis for this showing in its written response. DPS may

withhold entire record(s) only if no part of the record may be produced without disclosing information protected under the IPRA or the ARIA.

8. Consistent with the requirement of Section 14-2-8(D) of the IPRA that “[a] custodian receiving a written [IPRA] request shall permit the inspection immediately or as soon as is practicable under the circumstances[,]” DPS shall not delay the production of any public record that is otherwise available for production solely because the full 15-day time limit in Section 14-2-8(D) has not yet expired. For purposes of the IPRA, the Department shall treat emails and facsimile requests as “written requests.”

9. DPS must retain in its files its written response under Paragraph 7 and any supporting documentation for at least three (3) years from the date that it makes a written response to an IPRA request.

10. DPS may redact information from public records under the exemption enumerated in NMSA 1978, § 14-2-1(A)(4) and § 29-10-4 regarding “law enforcement records that reveal confidential sources, methods, [or] information” only if the information is not generally known, the requirements of Paragraph 7 are met, and the information consists of:

- a. The name, social security number, telephone number, address or other identifying information regarding confidential sources; or
- b. Information regarding confidential police methods or techniques, such as the use of surveillance techniques, hidden microphones, hidden cameras, or similar methods, or the identity of undercover officers so long as the identity of the officer is not disclosed in an original record of entry or other public record; or

c. Other confidential information, such as the identity and location of evidence not yet obtained, the identity and location of witnesses not yet interviewed, or the identity and location of suspects not yet detained.

11. DPS may redact information from public records under the exemption enumerated in NMSA 1978, §14-2-1(A)(4) and § 29-10-4 regarding “individuals accused but not charged with a crime” only if:

- a. The information subject to redaction actually reveals the identity of individual(s) accused but not charged with a crime;
- b. The identity of such individual(s) is not generally known;
- c. The requirements of Paragraph 7 are met;
- d. The identity of such individual(s), if released, would pose demonstrable and serious harm to an existing or contemplated criminal prosecution or investigation, such as tipping off a potential suspect, facilitating the destruction of evidence, or allowing a suspect to flee the jurisdiction; and
- e. Such individual(s) had not been arrested, cited, indicted, charged, identified in an original record of entry, or detained at the time the request for record(s) was made.

12. With regard to any information redacted under Paragraphs 10 and 11, DPS shall review the log required by Paragraph 17 every June and December and shall release the entire record for which the exemption is claimed as soon as is practicable if the source(s), method(s), or

information no longer qualifies under Paragraphs 10 and 11 as information that DPS can withhold.

13. DPS shall not redact the identity of person(s) in law enforcement records through the use of inapplicable exceptions under the IPRA and the ARIA, such as on the grounds that the “information sought to be discovered pertain[s] to illness, injury, disability, inability to perform job task, sick leave and physical or mental examinations or medical treatment” or that the information is protected by a “public interest” privilege, when the identity of person(s) could be revealed without releasing the exempt information.

14. DPS shall not deny requests for law enforcement records or original records of entry under the exception enumerated in NMSA 1978, §14-2-1(A)(12) (“as otherwise provided by law”) on the grounds that disclosure would:

- a. Violate an individual’s right to privacy; and/or
- b. Violate any federal or state telecommunications laws.

15. DPS shall not deny requests for original records of entry under the exception enumerated in NMSA 1978, §14-2-1(A)(12) (“as otherwise provided by law”) on the grounds that the record(s) are “not yet completed”; instead, within the 15-day time limit imposed by NMSA 1978, § 14-2-8(D), DPS shall produce the records requested in whatever form they exist.

16. DPS shall not redact information from law enforcement records or original records of entry under the exception enumerated in NMSA 1978, §14-2-1(A)(12) (“as otherwise provided by law”) on the grounds that the record(s) are protected by “executive privilege.”

17. DPS shall maintain a log of all written requests for public records under IPRA

received by the agency. The log shall show:

- a. The date(s) on which such request(s) are received and the name and materials requested;
- b. The date(s) on which DPS responded to the request(s);
- c. The basis for any denials or redactions;
- d. The name(s) of person(s) consulted regarding DPS's response(s) to the request(s);
- e. The name(s) of person(s) responsible for responding to the request(s) on behalf of DPS; and
- f. The existence of any supporting materials contemplated by Paragraphs 7 or 9.

18. DPS's records custodian shall review the log required by Paragraph 17 at least monthly to ensure that:

- a. DPS is responding to public records requests within the time limits imposed by IPRA;
- b. DPS has invoked the proper basis under the IRPA or the ARIA for denying public records requests;
- c. DPS's IPRA responses are consistent with the requirements of this Settlement Agreement; and
- d. The log complies with the requirements of this Settlement Agreement.

19. The log required by Paragraph 17 shall be available for public inspection under the IPRA.

20. DPS shall adopt all necessary policies and procedures to ensure its compliance with this Agreement, including but not limited to:

a. A policy requiring DPS's custodian of records to review at least yearly the policies and procedures of DPS and the training provided to DPS records custodian personnel to ensure that all DPS employees delegated the discretion by DPS to handle IPRA requests have been trained in the requirements of this Settlement Agreement, the IPRA, and the ARIA;

b. A policy requiring DPS to inform its cabinet secretary, the Chief of the New Mexico State Police, all division directors and department heads, and all other supervisory personnel of this Settlement Agreement and DPS's obligations under it; and

c. A policy ensuring that all DPS district personnel and state police officers are trained in the policies and procedures adopted under and the requirements of this Settlement Agreement.

21. DPS shall pay \$125,000 in attorneys' fees and costs to Plaintiffs within fifteen (15) days after the execution of this Settlement Agreement.

22. If any Plaintiff prevails in any court action relating to enforcement of this Settlement Agreement, a court may award such Plaintiff's reasonable attorneys' fees and costs.

23. The parties specifically agree that no adequate remedy at law exists for any breach of this Settlement Agreement by DPS. The parties stipulate and agree that any court presiding over such action has the power to award injunctive and declaratory relief, including

specific performance of the terms of this Agreement, to enforce the terms of this Settlement Agreement.

24. Within seven (7) business days after the execution of this Settlement Agreement, DPS shall disclose to Plaintiffs all records and information previously withheld in response to the IPRA requests that were the subject of the Action, including all documents responsive to the IPRA requests attached as exhibits to Plaintiffs' First Amended and Supplemental Complaint, except that Plaintiffs agree to accept a sample of the documents known as the "Maldonado emails" in lieu of full production of such documents, and agree further that DPS may withhold certain autopsy photos previously discussed by the parties. These exceptions are without prejudice to the parties' positions regarding whether such documents are public records.

25. Plaintiffs, upon execution of this Settlement Agreement, consent to the dismissal of the Action with prejudice, and shall execute a stipulated order of dismissal of the Action, subject only to a provision in such order that DPS shall not contest the jurisdiction of any subsequent court to enforce the Settlement Agreement's terms.

26. This Settlement Agreement is governed by the laws of the State of New Mexico.

27. The parties warrant and represent that they have completely read the terms of this Settlement Agreement and fully understand the terms of this Agreement and voluntarily accept those terms for the purpose of making a full and final compromise, adjustment and settlement of all claims, disputed or otherwise, on account of the matters and things above mentioned.

28. The provisions of this Settlement Agreement are severable, and if any part of the Settlement Agreement is found to be unenforceable, the other provisions shall remain fully valid

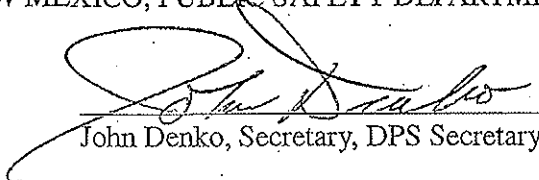
and enforceable.

29. This Settlement Agreement may only be modified by a writing executed by the parties.

30. Nothing in this Settlement Agreement limits Plaintiffs' ability to seek additional or other relief under the Inspection of Public Records Act related to any request made by Plaintiffs pursuant to that Act in the future, or to challenge any claim by DPS under this Agreement that information is exempt from disclosure under the IPRA or the ARIA. The terms, descriptions and definitions set forth in this Settlement Agreement are without prejudice to any future claim by Plaintiffs that the requirements or definitions of the IPRA or the ARIA are broader than those set forth in this Settlement Agreement.

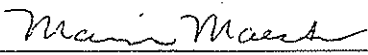
31. This Settlement Agreement may be signed in counterparts, each of which shall constitute a duplicate original.

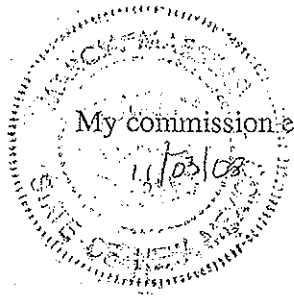
STATE OF NEW MEXICO, PUBLIC SAFETY DEPARTMENT


John Denko, Secretary, DPS Secretary 2/8/07
Date

STATE OF New Mexico
COUNTY OF Santa Fe

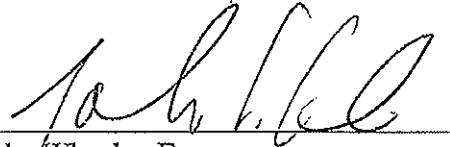
The foregoing instrument was acknowledged before me this 8th day of February, 2007 by John Denko.


Notary Public



My commission expires:

REVIEWED AS TO LEGAL SUFFICIENCY:

A handwritten signature in black ink, appearing to read "John Wheeler", written over a horizontal line.

John Wheeler, Esq.
Chief Counsel, DPS

RIO GRANDE SUN

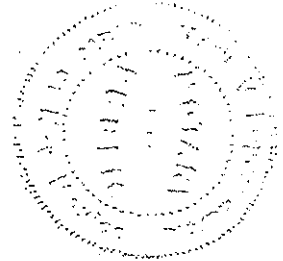
Robert B. Trapp 2-8-07
Robert B. Trapp Date

STATE OF New Mexico
COUNTY OF Rio Arriba

The foregoing instrument was acknowledged before me this 8th day of
2007 by Robert B. Trapp.

Maria V. Lopez Garcia
Notary Public

My commission expires: July 13, 2009



SANTA FE NEW MEXICAN

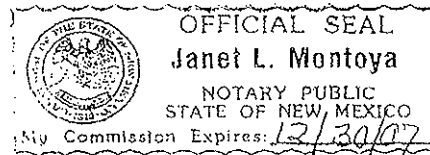
Robert Dean 2-8-07
Robert Dean Date

STATE OF New Mexico
COUNTY OF Santa Fe

The foregoing instrument was acknowledged before me this 8th day of February by Robert Dean.

Janet L. Montoya
Notary Public

My commission expires: 12/30/07



JASON AUSLANDER

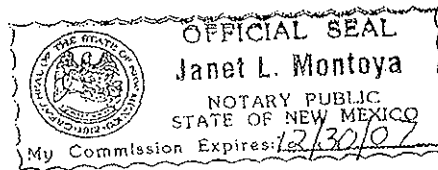
[Signature] 2/8/07
Jason Auslander Date

STATE OF NEW MEXICO
COUNTY OF SANTA FE

The foregoing instrument was acknowledged before me this 8th day of FEB. by Jason Auslander.

[Signature]
Notary Public

My commission expires: 12/30/07



HARRY MOSKOS

Harry Moskos 02/08/07
Harry Moskos Date

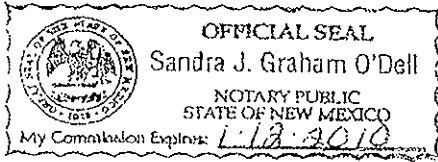
STATE OF New Mexico

COUNTY OF Bernalillo


The foregoing instrument was acknowledged before me this 8th day of Feb. 2007 by Harry Moskos.

Sandra J. Graham O'Dell
Notary Public

My commission expires:



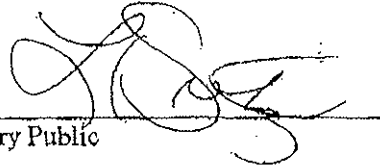
ALBUQUERQUE TRIBUNE


Kate Nelson _____ Date 2-8-07

STATE OF NM

COUNTY OF Bernalillo

The foregoing instrument was acknowledged before me this 8 day of Feb, 2007 by Kate Nelson.



Notary Public

My commission expires: 1/5/08

ROBERT H. JOHNSON

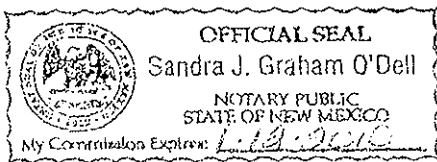
Robert H. Johnson Feb. 8, 2007
Robert H. Johnson Date

STATE OF New Mexico
COUNTY OF Bernalillo

The foregoing instrument was acknowledged before me this 8th day of
Feb. 2007 by Robert H. Johnson.

Sandra J. Graham O'Dell
Notary Public

My commission expires:



OCCURRENCE DATE(S) ON OR BETWEEN		DATE REPORTED	STATE OF NEW MEXICO UNIFORM INCIDENT REPORT		OR#	CASE NO.	PAGE FOR
MM/DD/YY	MM/DD/YY	MM/DD/YY	AGENCY / COUNTY ALBUQUERQUE POLICE DEPARTMENT		DISTRICT NO.	INCIDENT NO.	INVESTIGATOR NAME / NO.
TIME	DAY OF WEEK	TIME	DAY OF WEEK	TIME	DAY OF WEEK	ADDRESS / LOCATION OF INCIDENT	CITY

NO. OF SUPT.	OFFENSE / INCIDENT	STATUTE OR ORDINANCE	REL. INSD.	ATTA. PTD.	CRIM. STAT.	UCR OFFENSE CODE	CRIMINAL ACTIVITY CODE	LOCAT. CODE	WEAPON CODE UP TO 3 PER OFFENSE	OFFENSE(S) SUSPECTED OR USING			
										ALCOH.	DRUG	COMP.	UNK.
1													
2													
3													

NO. OF SUPT.	PERSON CODES				TYPE CODES				INJURY CODES				L-SEVERE LACERATION				LOSS OF TEETH																		
	V-VICTIM	C-CITED	S-SUSPECT	A-ARRESTED	F-FINANCIAL INST.	R-RELIGIOUS	I-APPARENT BROKEN BONE	L-SEVERE LACERATION	T-LOSS OF TEETH	G-PARENT/GUARDIAN	W-WITNESS	I-INTERVIEWED	O-OTHER	I-INDIVIDUAL	P-POLICE	O-OTHER	P-POSSIBLE INTERNAL INJURY	M-APPARENT MINOR INJURY	L-LOSS OF TEETH	R-REPORTING PERSON	D-DECEASED	M-MISSING PERSON/RUNAWAY	B-BUSINESS	G-GOVERNMENT	U-UNKNOWN	O-OTHER MAJOR INJURY	N-NONE								
	PERSON CODE	TYPE CODE	INJURY CODE	1-NAME (LAST, FIRST, MIDDLE)				SOCIAL SECURITY NO.				DOB				AGE (RANGE)				SEX				RACE											
STREET ADDRESS				APT. NO.				RES. PHONE				HEIGHT				WEIGHT				HAIR				EYES				ETHNIC				AGE, ASSAULT, JUSTIFY CAL CODE			
CITY				STATE				ZIP				BUS. PHONE				VICTIM OF OFF. NO.				VICT. OF SUSP. NO.				REL.				VICT. OF SUSP. NO.				REL.			
OCCUPATION				EMPLOYER/SCHOOL AND ADDRESS				SUSPECT OF OFFENSE NO.				ARRESTED FOR OFFENSE NO.				GANG AFFILIATION																			
ALIAS / NICKNAME				MARKS, SCARS, TATTOOS AND/OR CLOTHING DESCRIPTION																															
DRIVER'S LICENSE NO.				D.L. STATE				ARREST / CITATION NO.				F.B.I. NO.				S.I.D. NO.				NIC NO.				RES. STATUS				RES. NON							
	PERSON CODE	TYPE CODE	INJURY CODE	2-NAME (LAST, FIRST, MIDDLE)				SOCIAL SECURITY NO.				DOB				AGE (RANGE)				SEX				RACE											
STREET ADDRESS				APT. NO.				RES. PHONE				HEIGHT				WEIGHT				HAIR				EYES				ETHNIC				AGE, ASSAULT, JUSTIFY CAL CODE			
CITY				STATE				ZIP				BUS. PHONE				VICTIM OF OFF. NO.				VICT. OF SUSP. NO.				REL.				VICT. OF SUSP. NO.				REL.			
OCCUPATION				EMPLOYER/SCHOOL AND ADDRESS				SUSPECT OF OFFENSE NO.				ARRESTED FOR OFFENSE NO.				GANG AFFILIATION																			
ALIAS / NICKNAME				MARKS, SCARS, TATTOOS AND/OR CLOTHING DESCRIPTION																															
DRIVER'S LICENSE NO.				D.L. STATE				ARREST / CITATION NO.				F.B.I. NO.				S.I.D. NO.				NIC NO.				RES. STATUS				RES. NON							
	PERSON CODE	TYPE CODE	INJURY CODE	3-NAME (LAST, FIRST, MIDDLE)				SOCIAL SECURITY NO.				DOB				AGE (RANGE)				SEX				RACE											
STREET ADDRESS				APT. NO.				RES. PHONE				HEIGHT				WEIGHT				HAIR				EYES				ETHNIC				AGE, ASSAULT, JUSTIFY CAL CODE			
CITY				STATE				ZIP				BUS. PHONE				VICTIM OF OFF. NO.				VICT. OF SUSP. NO.				REL.				VICT. OF SUSP. NO.				REL.			
OCCUPATION				EMPLOYER/SCHOOL AND ADDRESS				SUSPECT OF OFFENSE NO.				ARRESTED FOR OFFENSE NO.				GANG AFFILIATION																			
ALIAS / NICKNAME				MARKS, SCARS, TATTOOS AND/OR CLOTHING DESCRIPTION																															
DRIVER'S LICENSE NO.				D.L. STATE				ARREST / CITATION NO.				F.B.I. NO.				S.I.D. NO.				NIC NO.				RES. STATUS				RES. NON							

NO. OF SUPT.	VEH. STATUS CODE	1-STOLEN				4-REC. (STOLEN OTHER JURIS.)				7-DAMAGED/VANDALIZED				10-OTHER				VEH. TYPE CODE	01-AIRPLANE				24-OTHER MOTOR VEHICLES				30-WATERCRAFT				43-ATV				
		2-SURFED	3-REC. (STOLEN LOCALLY)	5-SEIZED	6-ABANDONED	8-SUSPECT'S VEHICLE	9-VICTIM'S VEHICLE	11-EMBEZ.	12-REPO.	02-AUTOMOBILE	03-BUS	04-MOTORCYCLE	05-TRUCK (PICK-UP)	06-BOAT	07-TRUCK (TRUCK)	08-TRUCK (TRUCK)	09-TRUCK (TRUCK)		10-TRUCK (TRUCK)	11-TRUCK (TRUCK)	12-TRUCK (TRUCK)	13-TRUCK (TRUCK)	14-TRUCK (TRUCK)	15-TRUCK (TRUCK)	16-TRUCK (TRUCK)	17-TRUCK (TRUCK)	18-TRUCK (TRUCK)	19-TRUCK (TRUCK)	20-TRUCK (TRUCK)	21-TRUCK (TRUCK)	22-TRUCK (TRUCK)	23-TRUCK (TRUCK)			
YEAR	MAKE	MODEL				BODY STYLE				LICENSE NO.				LIC. YEAR				LIC. ST.				TOP COLOR				BTM. COLOR				VALUE / DAMAGE EST.					
REGISTERED OWNER'S NAME (OR SAME AS SUBJECT NO.)																VIN				DISTINGUISHING FEATURES / VISIBLE DAMAGE															
ADDRESS																TOW TO / BY				NIC NO.															
AGENCY OPTIONAL USE																TOWED FROM				<input type="checkbox"/> OWNER NOTIFIED				DATE RECOVERED				TIME RECOVERED							

EXHIBIT
A

PROPERTY STATUS		0-NONE 1-STOLEN 2-STOLEN & RECOVERED	3-RECOVERED (STOLEN THIS JURIS) 4-RECOVERED (STOLEN OTHER JURIS) 5-EVIDENCE	6-LOST	7-FOUND 8-COUNTERFEIT/FORGED 9-DAMAGED OR DESTROYED/VANDALIZED	10-BURNED 11-SEIZED 12-USED IN CRIME	13-SAFEGEERING 14-UNKNOWN 15-EMBEZZLED					
PROPERTY TYPE		01-ALCOHOL 02-BICYCLES 03-GLASSWARE 04-TOYBATTERIES 05-COMPUTER HARDWARE/SOFTWARE 06-CONSUMABLE GOODS 07-CREDS/ID CARDS 08-DRUGS/PHARMACEUTICALS 09-TOYS 10-TOYS/VIDEO EQUIPMENT	12-ARM EQUIPMENT 13-WEAPONS 14-TRAINING EQUIPMENT 15-HEAVY CONSTRUCTION/INDUSTRIAL EQUIP. 16-HOUSEHOLD GOODS 17-JEWELRY/PRECIOUS METAL 18-TEXTILES 19-VEHICLE	20-MEMORY 21-RECOGNIZABLE INSTRUMENTS 22-NON-RECOGNIZABLE INSTRUMENTS 23-OFFICE EQUIPMENT 24-FURNITURE/FIXTURES/VALUETS 25-FRIGS/TVS/VCRS 26-RECORDERS/TAPE DECKS 27-STRUCTURES/SINGLE OCCUPANCY	30-STRUCTURES-OTHER BUILDINGS 31-STRUCTURES-OTHER COMMERCIALS 32-STRUCTURES-INDUSTRIAL/AGRI 33-STRUCTURES-PUBLIC/COMMUNITY 34-STRUCTURES-RETAIL 35-STRUCTURES-OTHER 36-TOOLS 37-VEHICLE PARTS/ACCESSORIES	40-POWER EQUIPMENT 41-OTHER 42-PROPS/BACKGROUND 43-SPECIAL CATEGORY						
DRUG TYPE		A-COCAINE B-COCAINE C-HEROIN	D-HEROIN E-MARIJUANA F-MARIJUANA	G-OPRIUM H-OTHER NARCOTICS I-LSB	J-PCP K-OTHER HALLUCINOGENS L-AMPHETAMINE	M-OTHER STIMULANTS N-BARBITURATES O-OTHER DEPRESSANTS	P-OTHER DRUGS Q-UNKNOWN R-OVER 3 TYPES					
FIELD UNIT OF MEASURE		GM-GRAM	KG-KILOGRAM	OZ-OUNCE	LB-POUND	GL-GALLON	NO-NO. PLANTS	LT-LITER	FD-FLUID OUNCE	DU-DOSEAGE UNITS	ML-MILLILITER	
PROPERTY	1-PROPERTY STATUS	PROPERTY TYPE	TYPE OF ITEM	MAKE/BRAND	MODEL	CALIBER	VALUE (EXCEPT DRUGS)					
	SUSPECTED DRUG TYPE	QUANTITY/UNIT OF ME.	DESCRIPTION (COLOR, SIZE, FEATURES, ETC.)			SERIAL/ID#	DATE RECOVERED	NIC NO.				
	2-PROPERTY STATUS	PROPERTY TYPE	TYPE OF ITEM	MAKE/BRAND	MODEL	CALIBER	VALUE (EXCEPT DRUGS)					
	SUSPECTED DRUG TYPE	QUANTITY/UNIT OF ME.	DESCRIPTION (COLOR, SIZE, FEATURES, ETC.)			SERIAL/ID#	DATE RECOVERED	NIC NO.				
	3-PROPERTY STATUS	PROPERTY TYPE	TYPE OF ITEM	MAKE/BRAND	MODEL	CALIBER	VALUE (EXCEPT DRUGS)					
	SUSPECTED DRUG TYPE	QUANTITY/UNIT OF ME.	DESCRIPTION (COLOR, SIZE, FEATURES, ETC.)			SERIAL/ID#	DATE RECOVERED	NIC NO.				
	4-PROPERTY STATUS	PROPERTY TYPE	TYPE OF ITEM	MAKE/BRAND	MODEL	CALIBER	VALUE (EXCEPT DRUGS)					
SUSPECTED DRUG TYPE	QUANTITY/UNIT OF ME.	DESCRIPTION (COLOR, SIZE, FEATURES, ETC.)			SERIAL/ID#	DATE RECOVERED	NIC NO.					
M.O. EVENT CODES: (AGENCY OPTIONAL USE)						TOTAL VALUE STOLEN \$	TOTAL VALUE REC. \$	ADD. ON 3.77				
SYNOPSIS												
NARRATIVE												
CERT. STATUS	I WILL PROSECUTE/REFER TO THE OFFENSE BE ARRESTED?		I UNDERSTAND IT IS A CRIMINAL OFFENSE TO FILE A FALSE REPORT TO POLICE?		COMPLAINANT/VICTIM CERTIFICATION SIGNATURE		DATE					
	REPORTING OFFICER (PRINT)	RANK	I.D. NO.	DATE	DETECTIVE/FOLLOW-UP OFFICER/REFERRED TO			I.D. NO. DATE	DATE			
	ASSISTING OFFICER (PRINT)	RANK	DATE	I.D. NO.	DATE	PROCESSED BY		DATE	DATA ENTRY PERSON		DATE	
	APPROVING OFFICER (PRINT)	RANK	DATE	I.D. NO.	DATE	INCIDENT STATUS			EXCEPT CODE	DATE		
	DISTRIBUTION		CASES CLEARED BY THE ARREST		CASE NO.		CASE NO.		CASE NO.		REV. 3/94	
<input type="checkbox"/> B <input type="checkbox"/> NE <input type="checkbox"/> VALLEY <input type="checkbox"/> DAL <input type="checkbox"/> OTHER <input type="checkbox"/> LA <input type="checkbox"/> SE <input type="checkbox"/> N.VALLEY <input type="checkbox"/> CACU												

RIO GRANDE SUN



P.O. Box 780, Española, N.M. 87532

(505) 753-2126

Aug. 23, 2010

To:
Record Custodian
Department of Public Safety

From: Bill Rodgers
Staff Writer
Rio Grande SUN

This is a formal request under the New Mexico Inspection of Public Records Act. I wish to inspect any complaints and letters of reprimand or commendation for all officers in the District 7 office of the State Police from Jan. 2008 to the present. The state appeals court recently upheld a ruling that these documents do not fall under the "matters of opinion" exception to the public records law.

Please feel free to call me at 330-831-3274 with any questions regarding my request.
Thank you.

Sincerely -

Bill Rodgers

EXHIBIT

3



NEW MEXICO DEPARTMENT OF PUBLIC SAFETY



BILL RICHARDSON
GOVERNOR

JOHN DENKO JR.
CABINET SECRETARY

OFFICE OF THE SECRETARY
827-3370

OFFICE OF THE CHIEF
NEW MEXICO STATE POLICE
827-9219

FARON W. SEGOTTA
DEPUTY SECRETARY—OPERATIONS
CHIEF—STATE POLICE

DR. MIKE L. MIER
DEPUTY SECRETARY—ADMINISTRATION

August 27, 2010

Bill Rodgers
Rio Grande Sun
Post Office Box 790
Española, NM 87532

Dear Mr. Rodgers:

The New Mexico Department of Public Safety recently received your written Inspection of Public Records request, pursuant to NMSA 14-2-1 et seq., regarding "...complaints and letters of reprimand or commendation for all officers in District 7..."

This letter is to inform you that we are working on your request, but due to the burdensome nature of the request, additional preparation time is required. We will keep you updated on the status of your request. We apologize for any inconvenience this may cause you, but your patience in this matter is greatly appreciated.

If you require any additional information, please feel free to contact Records at 505-827-9192.

Sincerely,

Regina Chacon
LERB Assistant Bureau Chief
Department of Public Safety

jw:rc

ADMINISTRATIVE SERVICES
827-9016

INFORMATION TECHNOLOGY
827-9121

MOTOR TRANSPORTATION
POLICE DIVISION
476-2457



CALEA
ACCREDITED LAW ENFORCEMENT AGENCY

SPECIAL INVESTIGATIONS
841-8053

TECHNICAL SUPPORT
827-9221

TRAINING AND RECRUITING
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