

STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT COURT

DESERT TOWN INVESTMENTS, LLC,
d/b/a, *THE JAL RECORD*,

Plaintiff,

vs.

No. D-506-CV-2016-01346

THE CITY OF JAL, ROBERT GALLAGHER,
JOHN DOES 1-3, AND JANE DOES 1-3,

Defendants.

**PLAINTIFF *THE JAL RECORD*'S INITIAL RESPONSE IN OPPOSITION
TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION AND GROUNDS FOR SUMMARY DENIAL.

Defendant The City of Jal's frivolous motion for summary judgment is the exclamation mark on the misconduct by the City that has (a) flagrantly violated IPRA, (b) frustrated our State's public policy of governmental openness, (c) defeated the public's right to timely information about the affairs of its government and the conduct of its public officials, (d) necessitated the filing of this IPRA lawsuit, and (e) needlessly multiplied the litigation and dramatically increased its cost ever since.

Inexplicably, the City files this Motion despite repeatedly having acknowledged – as recently as August 13, 2018, in open Court before Your Honor – that it woefully has failed to comply with IPRA. August 13, 2018 Hearing Transcript at p. 42, l. 16 through p. 43, l. 5 and p. 117, l. 2-11. (August 13, 2018 Transcript excerpts attached as Exhibit 1.) *See also, e.g.,*

admission by then City Manager Gallagher that there was “no excuse” for the City’s wholesale IPRA violations (Exhibit 2 hereto, p. 35, l. 6.), and prior admission by the Defendant’s counsel that the City “failed miserably” to comply with State Law (Exhibit 3 hereto, p. 138, l. 12-16). Immediately upon receipt of the City’s Motion Defendant *The Jal Record* pointed out all this and more to the City’s counsel. Plaintiff asked the City to withdraw the Motion and avoid needlessly burdening the Court with a frivolous filing and the parties with pointless fees (noting that in this IPRA case “both parties’ legal expenses ultimately will be borne by your client).” Exhibit 4 hereto. Nevertheless, the City refused and insisted on proceeding with its frivolous Motion. *Id.*

At bottom, the City’s Motion is based on its disputed contention that – after having fought Plaintiff *The Jal Record* tooth and nail for more than two years in a relentless effort to evade its duty under State Law to produce public records voluntarily and “immediately or as soon as is practicable” (NMSA 1978, § 14-2-8(D)) – the City *now* supposedly has produced all of the requested records. Even assuming for argument’s sake that the City’s demonstrably false contention were true (and even indisputably true as a matter of law, as required for relief under Rule 1-056), the City’s Motion still would be absurd. That is, the City’s contention in no way would be a basis for summary judgment in its favor. To the contrary, it would **define a successful IPRA case**, in which *The Jal Record* would be entitled to an award in its favor as a successful IPRA plaintiff.

Surely Defendant must understand this. And although the proposition is obvious without citation, it also is mandated by binding appellate and statutory authority. *See, e.g., ACLU of NM v. Duran*, 2016-NMCA-063, § 40, 392 P.3d 181 (“[b]ecause Appellee’s litigation secured the production of previously denied responsive public records, the litigation was ‘successful’ as that word is used in the statute. *See* § 14-2-12(D).”); NMSA 1978, § 14-2-12(D) (“[t]he court shall

award damages, costs and reasonable attorneys' fees to any person whose written request has been denied and is successful in a court action to enforce [IPRA]"). The City's insistence on contending otherwise defies both reason and candor.

Moreover, in addition to Defendant the City of Jal's repeated admissions that the "IPRA request that's at issue in this Complaint was not properly responded to" (Exhibit 5 hereto, p. 18, l. 12-18), Defendant has gone so far as to credit *The Jal Record* with educating the City about its legal obligations under IPRA: "[t]his lawsuit has identified a variety of areas that needed improvement" (Exhibit 6 hereto, p. 87, l. 12-13). And as if all of that were not enough to expose the City's Summary Judgment Motion as utterly groundless, the City went further still by agreeing to "*stipulate* that in this particular case we didn't meet the requirements of IPRA." Exhibit 5 hereto, p. 18, l. 11-18 (emphasis added). This stipulation alone should have been sufficient under our Rules to dictate that the City refrain from filing its Motion

Accordingly, Plaintiff *The Jal Record* is at an absolute loss to understand how the City could "respectfully request" that Your Honor ignore all of this, turn IPRA squarely on its head, and enter what would be a plainly erroneous summary judgment in its favor and against Plaintiff.

While it is clear on the face of the City's Motion that it must be denied, in order to submit a full and complete response detailing all of the reasons requiring denial Plaintiff *The Jal Record* would need, in effect, to present a preview of the evidence Plaintiff plans to offer to prove its case at trial. To do so, Plaintiff would require a substantial extension of time, to which the City declined to consent (Exhibit 4), as well as leave to exceed the presumptive page limits.

Accordingly, simultaneously herewith and in the alternative, Plaintiff has filed an opposed motion for leave to file a supplemental response. In light of the Court's comments at the August 13, 2018 Hearing, however, Plaintiff requests that Your Honor summarily deny the City's

Motion on its face without a hearing based on this Initial Response alone, and then deny as moot Plaintiff's alternative motion for leave to file a supplemental response. Plaintiff takes this approach in order to honor this Court's observations at the August 13, 2018 Hearing (which the City has chosen to ignore) that (a) the City's IPRA liability is obvious, (b) enough litigation is enough, and (c) Your Honor disapproves multiplication of the proceedings by lawyering that amounts to churning the file. *See, e.g.*, Exhibit 1, at p. 42, l. 16 through p. 43, l. 5; p. 117, l. 2-21; and p. 120, l. 3-7.

Accordingly, for the reasons apparent on the face of Plaintiff's Motion and set forth in this Initial Response, Plaintiff *The Jal Record* respectfully requests that this Court summarily deny the City's Motion without a hearing and deny as moot Plaintiff's motion for leave to file a supplemental response. In the alternative, Plaintiff asks that the Court defer ruling on the Motion and grant Plaintiff thirty (30) days from entry of the Court's Order to file a supplemental response not to exceed an additional thirty-five (35) pages in length, exclusive of exhibits.

II. THE CITY'S ADMISSIONS OF INTENTIONAL DESTRUCTION OF PUBLIC RECORDS PRECLUDE SUMMARY JUDGMENT.

One reason Defendant The City of Jal's contention that it supposedly "produced all documents" it was required to produce (Motion, p. 1) is demonstrably false is that two of the City's witnesses admitted that they intentionally destroyed public records, and one of those witnesses admitted that he did so with the intention of avoiding disclosure of the documents in response to Plaintiff's IPRA requests. These facts preclude any conceivable good faith basis for the City's Motion. While references to the printed transcript that can be attached as exhibits to this filing are sufficient to prove this point, the printed page is a poor substitute for the video recordings of the testimony. Accordingly, Plaintiff will cause excerpts of the video recordings to be delivered separately to Your Honor's chambers and to be served upon Defendant's Counsel.

The first witness who admitted the destruction of public records was then City Manager Robert Gallagher. Mr. Gallagher – who had decades of experience as a New Mexico public official – claimed that a box of documents he received as City Manager from City Councilor Ellison and used to support a request he made in his official capacity to a State agency somehow were not public records that he was required to maintain and produce pursuant to IPRA. The following are excerpts from Mr. Gallagher’s deposition testimony:

Q There was a box of documents, correct?

A There was.

Q It was brought to you, correct?

A It was brought in my office, yes.

Q Your office. The city manager for the City of Jal's office, correct?

A Right.

Q On City property?

A Yes.

Q It was showed to you in your capacity as the city manager?

A Correct.

Q It was brought to you by City Councilor [sic] Ellison?

A It was. . . .

Q You looked at the documents?

A Some of them.

Q And then Councilor Ellison asked you if you wanted to keep them and you said, no, you take them back?

A Councilor Ellison said, "What should we do?" I said, "I'm going to write a letter to the OCD and request them to investigate." He said, "Do you want those

documents?" I said, "No, they're no use to me." And he wasn't offering them – they weren't City records. He got 'em from a private citizen is what he told me.

Q And then he took them away?

A Yes, right away with him that day.

Q *Your understanding of IPRA is that if you receive documents from anyone, regardless of the kind of documents they are, that they're not public records?*

A *I just figured if I get a thousand documents a day, if I read it and discard it, throw it away -- you know, if I don't have it in my possession, they're not public records. They weren't any part of an investigation or any part of anything the City was doing. . . .*

But specifically here, I didn't have 'em. So the answer to Jenny was, "No we don't have 'em. We don't have anything like that."

(Exhibit 2, p. 62, l. 10 through p. 64, l. 25 (emphasis added)).

This testimony by Mr. Gallagher – that he genuinely believed he had the power to turn IPRA “public records” into documents that were “not public records” simply by giving them away or throwing them away is not credible. But even making the dubious assumption that Mr. Gallagher truly believed he had that power, every time he “discarded” one of those “thousand documents a day” and therefore did not produce those documents in response to an IPRA request, the City violated IPRA. Or in the context of the City’s motion for summary judgment, at a minimum there is a disputed issue of material fact about whether the City violated IPRA.

The second witness who testified to destroying public records is Councilor Jimmie Ellison, who also is the Councilor with the box of documents referenced above. The following are excerpts from Mr. Ellison’s deposition testimony:

Q. So if you wanted to communicate with the whole council, you would still need to send an e-mail, right?

A. Yes, but I stopped sending all e-mails from anything having to do with City, and I told Bob and Jenny if they sent me e-mails, I would not answer them. If I answer Bob, I text him.

Q. When was that?

A. That was two or three months ago. *So if you want to get the e-mails again, you can get e-mails written by other people, but you won't get any written by me.*

Q. Do you preserve your texts?

A. No.

Q. So you delete your texts?

A. Yes.

Q. Why did you stop using e-mails?

A. *Because of this. Because of you. Because of you all wanting all of the public records, fine. Get them from the other people. I don't have any for you.*

Q. So then you use texts instead of e-mails, and then you delete the texts?

A. *That's correct. . . .*

Q. Why is it that you want to keep what you're doing as a Jal City Councilor secret . . .

A. No, it's not keeping it secret. You got the e-mails that are sent to me. I don't respond to them.

Q. But you sent texts instead, and then you delete them. Why do you do that?

A. Why not?

Q. Haven't you just testified that you are intentionally trying to avoid the public policy of the State of New Mexico to allow people to be aware of the things that their public officials are doing?

A. If I don't send any e-mails, how am I breaking the law?

(Exhibit 5, p. 35, l. 14 through p. 38, l. 9 (emphasis added). *See also id.* p. 88, l. 5-25 and p. 144, l. 15 through p. 146, l. 3 (Ellison deleted e-mails and texts regarding his extensive non-public meetings with Gallagher) and p. 144, l. 21-24 (“Q. When you stopped sending e-mails and deleted your texts, was that tied to [admitted favoritism]? A. No. It absolutely was not. ***It was just that the IPRA, you was not going to get anything from me.***” (emphasis added)).

Councilor Ellison’s destruction of public records and the accompanying nonproduction of the destroyed records likewise violated IPRA. *See also* other Ellison testimony regarding the nonproduction of his e-mail that Plaintiff obtained from a third-party, p. 146, l. 4 through p. 147, l. 12 (concluding with “***I probably just deleted it***” (emphasis added)). Or in the context of the City’s motion for summary judgment, at a minimum this evidence likewise shows that there is a disputed issue of material fact about whether the City violated IPRA.

Once again, Plaintiff *The Jal Record* is at an absolute loss to understand why Defendant the City of Jal would consider it permissible to seek summary judgment in its favor on this record. Indeed, ***Plaintiff*** could have filed a motion demonstrating that ***it is entitled*** to partial summary judgment on a variety of these factual questions. But Plaintiff determined that the motion practice was not cost justified, because even after entry of partial summary judgment in Plaintiff’s favor virtually all of the same evidence still would have been required at trial to resolve the remaining questions incapable of resolution on motion. *See* Exhibit 4 hereto.

Completely aside from whether a meritorious summary judgment motion would have been cost justified, however, it is abundantly clear that Defendant The City of Jal’s Motion lacks even the good faith basis required to file it.

III. THIRD-PARTY DOCUMENTS LIKEWISE PROVE IPRA VIOLATIONS.

A second reason Defendant The City of Jal's contention that it supposedly "produced all documents" it was required to produce (Motion, p. 1) is demonstrably false is that City of Jal documents within IPRA's definition of "public records" that *The Jal Record* obtained from third-parties *never* have been disclosed by the City. By way of example only, to the best of Plaintiff's knowledge, information and belief based on electronic and manual searches of the documents produced by Defendant the City of Jal, the City did not produce the following documents:

- Gallagher Deposition Exhibit 4, attached hereto as Exhibit 7, which includes an e-mail that the evidence will show falls within a category of documents Messrs. Gallagher and Ellison had a corrupt motive to hide, was obtained from a third-party. Notably, the 11:53 a.m. message in this e-mail chain from Mr. Ellison to Mr. Gallagher should have been in Mr. Ellison's outbox and in Mr. Gallagher's inbox, and the 12:22 p.m. message from Mr. Gallagher to Senator Kernan should have been in Mr. Gallagher's outbox, but not one of these three versions ever was produced by the City.
- Gallagher Deposition Exhibit 5, attached hereto as Exhibit 8, which the evidence likewise will show falls within a category of documents Messrs. Gallagher and Ellison had a corrupt motive to hide, also was obtained from a third-party. And not a single version of this e-mail chain, from any City inbox or outbox, was produced by the City.
- Documents produced by Souder, Miller and Associates ("SMA") and numbered SMA-DT00257, SMA-DT00639, SMA-DT00705, SMA-DT00788, and SMA-DT08287-8289, most of which Mr. Gallagher had corrupt motives to hide, are attached hereto as Exhibit 9. Plaintiff's Counsel selected a small sample of the 12,468 pages of documents produced by SMA and attempted to locate those documents among the universe of public records produced by the City, including the documents from Mr. Gallagher's hard drive that the Court ordered to be produced (despite the City's kicking and screaming every step of the way). Although Plaintiff's Counsel does not purport to have used a sample or a methodology sufficient to permit a statistical prediction applicable to all 12,468 pages of SMA's production, based on the electronic searches Plaintiff conducted approximately 1 in 4 of responsive e-mails in the sample were not produced by the City.

In addition, Exhibit 10 hereto further proves the point that the City did not voluntarily produce documents that Messrs. Ellison and Gallagher did not want to produce. It is a July 11, 2017 e-mail from Councilor Ellison to the City Manager Gallagher acknowledging Mr. Gallagher's role as "attack dog," and praising his "Good job . . . !!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!" The City

did not produce this e-mail from either the Councilor's outbox or the City Manager's inbox. To the contrary, Plaintiff only eventually obtained it thanks to two Court Orders entered over the City's objections, which resulted in the e-mail being recovered by S.W.A.T. IT Solutions from the deleted messages folder on Mr. Gallagher's hard drive.

Of course, Plaintiff has no way of knowing how many other public records were withheld, deleted, destroyed, or otherwise disposed of by Mr. Gallagher, Mr. Ellison, and/or other City officials. But Plaintiff does know it only obtained discovery of documents from *one single City* vendor, and Plaintiff only received a handful of documents from other third parties. Accordingly, the fact-finder can draw the conclusion from this evidence that there are or were many other public records that were destroyed, secreted and/or otherwise kept from Plaintiff.

All of these facts likewise preclude summary judgment and further demonstrate the lack of any possible good faith basis for the City's Motion.

IV. RESPONSES TO CITY ARGUMENTS REGARDING SPECIFIC REQUESTS.

The City's references to the parties' communications following the August 13, 2018 Hearing are incomplete and misleading, and as a result the City's arguments and conclusions regarding specific IPRA requests set forth in Section IV of its Motion (pp. 4-11) are wrong.

To put these issues in context, when it became apparent to Your Honor at the hearing that Plaintiff contended the City still was refusing to comply with IPRA, the Court stated:

THE COURT: Let me stop you for just a second. If there's documents that the plaintiff believes are still out there under an IPRA request that they have not received, I need you guys to work that out amongst yourselves. I need some communication back and forth, emails, letters, however way you want to do it. Because at some point that's going to become an issue determining whether or not those documents were turned over and whether or not they were appropriately withheld, are they an exception. . . . I need communication between the two of you. Because if there are other IPRA -- and let me just do it globally. If there are IPRA requests that are unanswered, then I need the two of you to -- in other words, let's look at the big picture.

How much of the pie is missing, if any, because that's going to be a very important issue.

And I don't think it's fair to wait until the time of trial and say, oh, yeah, we forgot about this one. Because I need -- the Court needs to be informed of that up front so if there needs to be, you know, part of IPRA is an opportunity - - we may want to do some more in camera inspections by the Court. And I'm willing to do that if we need to do that, but bottom line is I want to make sure that we're addressing everything. Okay? So that -- that really isn't before me, but that's my intent, what I would like to see happen. Is that clear?

MR. FALLICK: Yes, Your Honor. We have a -- I have a series of emails I sent to follow up on those things, and I'll resend them all --

THE COURT: Thank you. . . .

MS. SANCHEZ-RIVET: Thank you, Your Honor. I appreciate that. And the reason I brought that up is because it did strike me as odd. And perhaps I do remember a conversation about it, but I thought that Mr. Newell had provided that document after that interaction, and I will follow up and make sure . . . if they didn't provide it that we provide it.

THE COURT: Sounds very good. Time clock is ticking.

Exhibit 1, p. 36, l. 15 through p. 38, l. 14.

That evening, in an e-mail the City's Motion fails to acknowledge but that is attached hereto as Exhibit 11, *The Jal Record's* undersigned counsel sent the City's counsel a copy of the index of the binder Plaintiff provided to the Court and the City on April 3, 2018, which included copies of a series of e-mails from Plaintiff's counsel to Defendant's counsel repeatedly following-up on outstanding IPRA requests and asking the City to respond and disclose the requested public records. This e-mail concluded with: "I will find those e-mails (hopefully tomorrow) and forward you copies."

Undersigned counsel did find and forward those five e-mails the following day. That is, *the day after* the August 13th hearing and Your Honor's instructions, Plaintiff again forwarded Defendant the series of e-mails cataloguing all of Defendant's potentially-remediable

outstanding IPRA violations. And once again, notwithstanding this Court’s clear directive, Defendant ignored those communications. That is, despite the Court’s direction that counsel “work that out amongst yourselves,” and Your Honor’s statements that “I need some communication back and forth, emails, letters . . . I need communication between the two of you,” in the ensuing *two-and-a-half months* the City once again *never* responded substantively to *any* of these e-mails.

Instead, after another two-and-a-half months of silence the City filed its groundless motion for summary judgment, which (in addition to all of the flaws described above) wrongly purports to dispose of all of Plaintiff *The Jal Record*’s outstanding requests but entirely mischaracterizes the circumstances. Defendant’s mischaracterizations begin with the selective and misleading exhibits the City attaches to its Motion. That is, the City’s Motion completely omits one of the e-mails, and attaches incomplete versions of three of the remaining four. To remedy these flaws in the record and for ease of reference, Plaintiff has attached true and correct copies of all five e-mails as Exhibits 12 through 16 hereto. And Plaintiff addresses the City’s erroneous contentions below.

A. The Chevron Document Promised But Withheld for More Than Two Years.

The e-mail attached as Exhibit 12 hereto addresses the Chevron document explicitly discussed at both the April 3rd Hearing before Judge Clingman and the August 13th Hearing before Your Honor, and which the City explicitly represented to Your Honor would be produced (“I will follow up and make sure . . . if they [*i.e.*, Mr. Newell and his paralegal] didn’t provide it that we provide it”). But, as indicated above, the City did not keep this promise. Instead, despite the City’s consistent representations throughout the proceedings that it had produced everything in the box of Chevron documents – and without even deigning to acknowledge either its promise

to Your Honor or the litany of its prior representations – the City now seeks a summary judgment order ruling that it need not produce the document.

As detailed in Exhibit 12, Plaintiff first learned that the document was not produced in a meeting immediately after the December 19, 2017 Hearing. The City’s former counsel explained that the nonproduction was a result of a miscommunication between him and his paralegal. Given the repeated inaccurate representations to the Court, Plaintiff would have been well within its rights to seek sanctions for the nonproduction. But Plaintiff did not do so. Instead, Plaintiff’s counsel accepted the explanation that the nonproduction was an honest mistake and simply requested production of the document. But the City’s current counsel objected to the production until she reviewed it, noting that the document on its face is marked as confidential. Plaintiff’s counsel reluctantly acquiesced, but (then and repeatedly thereafter) “pointed out that:”

- (1) again, defendants had represented to the Court that plaintiff already had received all of the documents, (2) defendants in fact already had produced a number of other Chevron documents designated as confidential, and (3) regardless of any designation placed on the face of the document, it thereafter was given to Mr. Ellison by a Chevron representative (who had apparent authority to release the document, whether or not she had actual authority to do so). Accordingly, as I said at our meeting, defendants have no right to withhold the document from plaintiff. (*Id.*)

When more than a month passed without the production or any further word from the City’s counsel, Plaintiff’s counsel followed-up with the January 29, 2018 message in the e-mail chain in Exhibit 12. Defendant ignored that e-mail, however, and with the exception of filing its Motion on the last possible day, it has continued to do so ever since.

Given that the City did not object to producing this document but instead spent more than two years continuously representing to the Court that it had been or would be produced (repeatedly to Judge Clingman and then again to Your Honor on August 13th), the City should

not now be heard to claim it has the right (as a matter of law no less) to refuse production. Moreover, while the City's repeated representations are sufficient to require production, in addition (a) any confidentiality interest was waived when the document was provided to Councilor Ellison without restriction, when it was shared with Mr. Gallagher, and when it was relied on by Mr. Gallagher in seeking action by a State agency, (b) any confidentiality interest likewise was waived when the City produced a number of the other Chevron documents that also were designated as confidential, and (c) the City's failure while possessing the document for more than two years to notify Chevron to seek a protective Order if it wished to prevent further disclosure or otherwise contact Chevron confirms that the document is not confidential in the City's hands and the City has waived any claim to the contrary.

Accordingly, insofar as the City's Motion seeks a ruling authorizing it to withhold the Chevron document, it should be denied for these reasons as well.

B. The Internal Investigation Promised to the Public is not a Personnel Record.

The City's Motion spends five pages analyzing appellate authority regarding personnel files to attempt to justify its refusal to disclose the City's internal investigation of claims of extremely disturbing sexual harassment allegations against Mr. Gallagher. The details of that investigation, Plaintiff's IPRA request, and the City's denial are included in Exhibit 15 hereto.

While the City's Motion completely mischaracterizes *Cox v. New Mexico Dep't of Public Safety*, 2010-NMCA-096, 148 N.M. 934, *cert. quashed*, 150 N.M. 765 (2011) (holding that the Department must disclose citizen complaints under IPRA), that lengthy analysis is entirely beside the point. Contrary to the City's contention, the internal investigation is not a personnel record, and the City has presented *no evidence* to support its entitlement to summary judgment on its contention to the contrary.

Most obviously, the investigation and its report are not exempt as personnel records because the attorney who conducted the investigation and prepared the Report – Richard E. Olson – *never even claimed they were personnel records*. See Exhibit 15. To the contrary, he refused to disclose the document solely based on the assertion of “attorney-client privilege . . . in connection with pending or threatened litigation.”

As Plaintiff points out in Exhibit 15, however, the then City Attorney waived any privilege by publicly requesting that the citizens of Jal wait for and then accept the investigation. See highlighted quote in Hobbs *News-Sun* October 12, 2017 report, included in Exhibit 16. Since the investigation was not intended as confidential, it is not protected from disclosure. In addition, as further discussed in Exhibit 16, the selective disclosures from the investigation at the October 16, 2017 City Council meeting waived any claim of confidentiality, *Gingrich v. Sandia Corp.*, 2007-NMCA-101, ¶¶ 12-13, 142 N.M. 359, 363. Moreover, even absent waiver the privilege claim in this context is particularly weak. 24 Charles Alan Wright & Kenneth W. Graham, Jr., *Federal Practice and Procedure Evidence* § 5478 (2018) (“The better view would seem to be that investigative work is not ‘professional legal services’ and that no privilege applies where the lawyer’s primary function is as detective.”). See *Bhandari v. Artesia General Hospital*, 2014-NMCA-018, ¶¶ 7-8, 317 P.3d. 856, 862, *cert. denied*, 321 P.3d 935. And finally, these factors combined dictate that the public’s right to know prevail over the City’s privilege claim, since the privilege must be strictly construed. *Hartman v. El Paso Natural Gas Co.*, 1988-NMSC-080, ¶¶ 31-38, 107 N.M. 679, 686-88 (the privilege “must be strictly construed”).

Accordingly, insofar as the City’s Motion seeks a ruling authorizing it to withhold the documents requested in the October 18, 2017 IPRA request included in Exhibit 16, it also should be denied.

C. *The City Does Not Even Attach – Let Alone Properly Address – Plaintiff’s August 29, 2017 IPRA Request Included in Exhibit 15.*

Plaintiff’s Motion fails to attach the August 29, 2017 IPRA request included in Exhibit 14 hereto (and omitted from Plaintiff’s Exhibit C), and effectively ignores numbered paragraphs 1 through 44 of that letter. There is no evidence at all that the City ever even attempted to comply with any of those 44 numbered paragraphs, the responses to which were required more than a year ago. Indeed, the City’s one paragraph argument regarding this IPRA request (Defendant’s Motion, p. 5) does not even purport to identify any evidence supporting its false claim of compliance. Obviously, the City is not entitled to summary judgment on those requests based on its “say so” alone, with no evidence whatsoever of compliance.

Moreover, the City’s assertion that the documents in its August 29, 2018 production merely are Bates stamped versions of documents that had been previously produced (§ 9, p. 3) – which also is unsupported by any evidence – likewise is false. Plaintiff notified Defendant’s counsel on November 8, 2018, that “my review (including electronic review) of both sets of documents reveals that this statement is inaccurate;” *i.e.*, that the documents previously “were provided for you by the office of Mike Newell.” Exhibit 17 hereto. Plaintiff requested that Defendant “investigate this representation further and either confirm that it is inaccurate” or provide evidence supporting their claim. *Id.* Once again, the City’s counsel ignored this e-mail. Accordingly, having failed to offer any evidence whatsoever in support of its assertion, the City’s request for summary judgment on this issue must be denied as well.

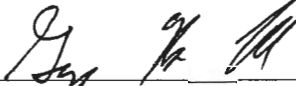
V. **CONCLUSION**

For all of these reasons, Plaintiff *The Jal Record* respectfully requests that this Court summarily deny Defendants’ Motion for Summary Judgment as frivolous. In the alternative,

Plaintiff respectfully requests that this Court defer ruling on Defendant's Motion and grant Plaintiff's Motion, in the Alternative, for Leave to File a Supplemental Response.

Respectfully submitted,

FALLICKLAW, LTD.



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I hereby certify that on November 19, 2018, I caused a true and correct copy of the foregoing response to be served electronically by the Court's Notice of Electronic Filing (NEF) system upon all counsel listed in that system.



Gregg Vance Fallick

STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT COURT

DESERT TOWN INVESTMENTS, LLC,

Plaintiff,

vs.

Case No.: D-506-CV-2016-01346

THE CITY OF JAL, ROBERT
GALLAGHER, JOHN DOES 1-3 and
JANE DOES 1-3,

Defendants.

TRANSCRIPT OF HEARING

AUGUST 13, 2018

1 under IPRA.

2 I would like to just -- a couple of points that I
3 want to bring up that were filed in plaintiff's reply. There's
4 mention in there about -- excuse me. Bear with me here, Your
5 Honor. There's mention in that -- in the reply related to
6 documents from an oil company that defendants apparently
7 represented to the court was produced in 2016. There's a
8 mention on Page 11 of the reply that Mr. Newell had stated that
9 there was some miscommunication between his paralegal and
10 himself related to this document and that today we have still
11 not produced it. I'm not aware of what exactly that is a
12 reference to. So I just want to, for the record, say that if
13 there's a document that's missing that we have not produced
14 related to this oil company document, I want to know further
15 and determine how we can produce that.

16 Because my understanding was everything that -- at
17 the time had been produced already, and we have not recently
18 received a request for this. So I apologize. I just wanted,
19 for the record, to mention that this is something that struck
20 me as new, or at the very least something I was not aware of,
21 that plaintiffs were still seeking. But that's sort of
22 separate for the request for financial documents.

23 Again, we just reiterate that --

24 **THE COURT: Let's do this, if you don't mind. This**
25 **is probably a good place to interject this question to Mr.**

1 Fallick. Are there any documents that from your perspective
2 that -- and let's go back, because there's two levels here.
3 There's an IPRA level and there's discovery level. Everybody
4 agrees with that, correct?

5 MS. SANCHEZ-RIVET: Yes, Your Honor.

6 THE COURT: Okay. Under the IPRA, is there anything
7 that you believe has not been addressed that has been -- that
8 you have requested and it's been provided?

9 MR. FALLICK: Yes, Your Honor. And that is an
10 example -- and so I guess counsel has forgotten about it, but
11 we met with Mr. Newell after the hearing at which he withdrew
12 and Ms. Sanchez-Rivet entered. And we were going through --
13 because we had been provided Bates-stamped copies of what we
14 were told was the complete set of documents. And we have
15 issues about -- it was supposed to be a bigger volume, and what
16 happened to the rest. And so we don't think we're getting
17 honest answers, not from Ms. Sanchez-Rivet but from witnesses.

18 But ultimately we were sitting there with Mr. Newell
19 and with his paralegal and Mike said, well, we've given you
20 everything we have had, and his paralegal said no. We haven't.
21 We didn't give them this document or this document because they
22 were confidential -- they were listed as confidential. And
23 Mike said I didn't know that. That was a miscommunication --

24 THE COURT: So let me -- and I don't want to cut you
25 off, but Mr. Torgeson, has he looked at all of those documents?

1 MR. FALLICK: Not that document. That was not on
2 Gallagher -- Mr. Torgeson's role was to look at Gallagher's
3 hard drive.

4 THE COURT: Right.

5 MR. FALLICK: This was not on Gallagher's hard drive.
6 It was a hard copy of document that was part of the original
7 box that we had asked for. And so Mr. Newell said it was a
8 miscommunication. And I said, well, then we'd like to have it.
9 And Ms. Sanchez-Rivet says, well, it says it's confidential and
10 so we need to think about that. And then there were multiple
11 emails after that following up. I never got it.

12 And then we raised it at the hearing before Judge
13 Clingman and pointed out how we had never gotten it and we
14 still hadn't gotten it. If --

15 THE COURT: Let me stop you for just a second. If
16 there's documents that the plaintiff believes are still out
17 there under an IPRA request that they have not received, I need
18 you guys to work that out amongst yourselves. I need some
19 communication back and forth, emails, letters, however way you
20 want to do it. Because at some point that's going to become an
21 issue determining whether or not those documents were turned
22 over and whether or not they were appropriately withheld, are
23 they an exception. And so, again, this will help me get up to
24 speed.

25 So I would appreciate -- that's not really before me

1 today, but I think I can take care of that by just simply
2 saying I need communication between the two of you. Because if
3 there are other IPRA -- and let me just do it globally. If
4 there are IPRA requests that are unanswered, then I need the
5 two of you to -- in other words, let's look at the big picture.
6 How much of the pie is missing, if any, because that's going to
7 be a very important issue.

8 And I don't think it's fair to wait until the time of
9 trial and say, oh, yeah, we forgot about this one. Because I
10 need -- the Court needs to be informed of that up front so if
11 there needs to be, you know, part of IPRA is an opportunity --
12 we may want to do some more in camera inspections by the Court.
13 And I'm willing to do that if we need to do that, but bottom
14 line is I want to make sure that we're addressing everything.
15 Okay? So that -- that really isn't before me, but that's my
16 intent, what I would like to see happen. Is that clear?

17 MR. FALLICK: Yes, Your Honor. We have a -- I have a
18 series of emails I sent to follow up on those things, and I'll
19 resend them all --

20 THE COURT: Thank you. And, again, I have not been
21 able to comb through that to see, but I just think that's a
22 very important issue.

23 The discovery side now, that's a little different
24 story because you guys have documented that very well. But as
25 I'm -- and I made myself a note to remember to ask you about

1 that. So if you make sure that you do that, that would be very
2 much appreciated.

3 MR. FALLICK: Okay.

4 THE COURT: Sorry I cut you off.

5 MS. SANCHEZ-RIVET: Not at all. Thank you, Your
6 Honor. I appreciate that. And the reason I brought that up is
7 because it did strike me as odd. And perhaps I do remember a
8 conversation about it, but I thought that Mr. Newell had
9 provided that document after that interaction, and I will
10 follow up and make sure --

11 THE COURT: Okay.

12 MS. SANCHEZ-RIVET: -- if they didn't provide it that
13 we provide it.

14 THE COURT: Sounds very good. Time clock is ticking.

15 MS. SANCHEZ-RIVET: Yes, absolutely. With regard to
16 -- you know, Your Honor, I have really just -- I think I've
17 made my piece as far as this issue.

18 THE COURT: Okay.

19 MS. SANCHEZ-RIVET: I know they'll have another
20 opportunity to discuss the broader issues on our motion.

21 THE COURT: Let's do this. I'm going to give you a
22 chance to respond. We've got two more hours, and we're going
23 to get it done in two hours because that's all I've got. So
24 let's be cognizant of the time. And I'll stay a little bit
25 past lunch, but my assistant and court monitor like to eat

1 lunch, and so does the judge. So we can go a little past but
2 not much.

3 MR. FALLICK: Briefly.

4 THE COURT: Sure.

5 MR. FALLICK: So the document I was looking for is
6 clipped to the back of the document. I want to show it to Ms.
7 Sanchez-Rivet and ask her if she can -- and provide a copy for
8 the Court. So if I may, Your Honor --

9 THE COURT: You can approach.

10 MR. FALLICK: This is the corrected exhibit, which is
11 the --

12 THE COURT: I saw that. I had no idea what the
13 document meant, but I saw this document.

14 MR. FALLICK: That is a list from Souder Miller's
15 bookkeeping system of all the invoices, which was the inch-high
16 stack of invoices that -- and shows they were all paid and the
17 dates on which they were paid.

18 THE COURT: Very good.

19 MR. FALLICK: The only thing I want to respond to is
20 to what Ms. Sanchez-Rivet said about these being not public
21 records, and that is accurate. They are not. These bank
22 records are not public records, and we never claimed they were
23 public records, and they are not included in any IPRA request.
24 They're discovery. So once we learned that there was -- there
25 were intentional IPRA violations, there were all these

1 surrounding circumstances that indicated a corrupt motive to
2 keep those from us, the corrupt motive at least in part
3 appeared to be kickbacks. And so we wanted to get and Rule 26
4 his financial records, not under IPRA. Rule -- once the case
5 goes to litigation, it's like any other case. It's governed by
6 the rules and what's relevant at trial, and it doesn't have to
7 be just public records that are relevant at trial.

8 In fact, the document before Your Honor that I just
9 handed Your Honor is not a public record. We obtained it by
10 subpoena. It's Souder Miller's document. So -- and we don't
11 believe that was lost on Judge Clingman either. That was all
12 very clear to Judge -- when Judge Clingman took the issue of
13 these bank records under advisement, he didn't do so under the
14 mistaken impression that they were public records. He
15 understood exactly what they were. And when he ordered Mr.
16 Gallagher to maintain his own records, he understood perfectly
17 well that those were not public records, and there was never
18 any dispute about that. Those would not have been proper to
19 request under an IPRA request. They are proper to request
20 within the scope of discovery under our rules of procedure and
21 -- actually, Your Honor, if I may, there was one other comment.

22 Oh, Ms. Sanchez-Rivet talked about what the judge
23 took under advisement. He took under advisement whether we
24 could have the financial records. He did not take under
25 advisement whether corruption was a relevant and appropriate

1 consideration for us to be taking discovery under discovery
2 rules. He explicitly ruled that we were entitled to do that.
3 And, in fact, I said this in my papers but it's in the audio
4 record of the hearing, when we had a hearing on December 19, I
5 said if Your Honor believes that this is relevant and Your
6 Honor would consider this evidence at trial, then we would like
7 to go down this road and do this. If Your Honor believes that
8 you already have enough or that you're not interested in
9 hearing this at trial, then we're done. We're ready -- we're
10 pretty much ready for trial now. We could be ready as soon as
11 defense counsel is ready. That was the hearing that Ms.
12 Sanchez-Rivet was taking over for Mr. Newell, and there was
13 going to need to be some time to get up to speed.

14 But we said as soon as they're ready to get up to
15 speed, we're ready to go to trial unless Your Honor would let
16 us do this discovery on corruption, in which case we want to do
17 that, and then we'll get back to you about when we'll be ready
18 for trial. And the judge ruled that that was within the scope
19 and that we ought to have at it. And so instead of scheduling
20 a trial, he entered the first and second pretrial orders to
21 facilitate us getting the discovery that we needed.

22 So to be precise, the only thing that the judge took
23 under advisement was whether we were entitled to financial
24 records with Mr. Gallagher. And we asked for the same thing at
25 the time, that the purpose of asking for the various financial

1 reports was just to identify the banks at which Mr. Gallagher
2 had finances if we are going to get those records, so that we
3 didn't have to subpoena every single financial institution in
4 the state or maybe in Texas or wherever that would get a look
5 at those reports. Those were reports used by banks in
6 determining whether to permit credit, whether to open up
7 accounts. And they ought to identify where Mr. Gallagher and
8 where RMG Consulting have financial accounts. And if Your
9 Honor is inclined to give us the accounts, then those are very
10 helpful in narrowing the scope of the subpoenas that we would
11 need to issue.

12 THE COURT: All right. Let me make a couple of
13 comments and then we'll move forward because, again, we're on a
14 time frame. Go ahead and have a seat.

15 MR. FALLICK: Thank you, Your Honor.

16 THE COURT: I just have a couple of observations and
17 maybe a couple questions. It's clear to me that counsel, at
18 least on behalf of the city of Jal, has acknowledged that -- I
19 believe the statement was woefully failed to violate IPRA.
20 That, I mean, that -- you suggesting that you're throwing your
21 client down the river, that's what's been suggested to me at
22 this hearing today, that the city of Jal may have been less
23 than forthcoming with some documentation from the initial IPRA
24 request.

25 MS. SANCHEZ-RIVET: Your Honor, I think that that's

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1 been already stated on the record in past hearings, so we're
2 certainly not --

3 THE COURT: Okay.

4 MS. SANCHEZ-RIVET: -- here to argue anything
5 different.

6 THE COURT: Here's my concern. In my history, I see
7 issues that I jotted down. There's procurement issues.
8 There's Governmental Conduct Act issues. There's criminal
9 issues, potential on all of those areas. And so I just want to
10 be crystal clear in my understanding, Mr. Fallick. The reason
11 you want to get further into the financials of Mr. Gallagher is
12 to determine whether or not there was a good faith effort, and
13 all that would do is to determine whether or not reasonable
14 attorney's fees are reasonable. Correct?

15 MR. FALLICK: Yes, Your Honor. And any other
16 damages. The -- of course, we'll report about it. That's what
17 the --

18 THE COURT: What are the damages --

19 MR. FALLICK: -- request --

20 THE COURT: What are the damages?

21 MR. FALLICK: They are up to \$100 a day.

22 THE COURT: Okay. All right. That's fair. But you
23 agree with me it's up to \$100 a day and reasonable attorney's
24 fees.

25 MR. FALLICK: And other litigation costs, for
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1 that's something that's in the IPRA.

2 So when you break it down, it's an issue of whether
3 or not this judge is going to believe that your attorney's fees
4 are reasonable. Because clearly, the parties have agreed that
5 they were woefully -- I can't remember the exact words but I
6 wrote it down, it's almost like the defense has given up, hey,
7 we didn't disclose some of the things. And that will come out
8 at trial. I'm not prejudging here. But it certainly looks
9 like that, based on the evidence I have before me or at least
10 the argument of the attorneys. That evidence will come out in
11 court and I'll make that decision.

12 But really, when it gets right down to it, it's
13 whether or not these fees are going to be reasonable. And then
14 I'm a little bit pulled because, you know, were these fees
15 necessary and I'm probably getting the cart way before the
16 horse, but I'm going to tell you what I'm thinking because I
17 think it's important for you guys as you move forward. You
18 know, had we gone to the D.A.'s office, had we gone to the
19 state auditor, had we gone to the attorney general under
20 Governmental Conduct Act, procurement issues, criminal issues,
21 the governmental conducted act is serious.

22 And, you know, I'm not asking you to tell me whether
23 or not you did it, but I'm also going to take that in
24 consideration when I start considering whether or not
25 attorney's fees are reasonable. So those are my thoughts. Let

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TRANSCRIPTIONIST'S CERTIFICATE

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STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT

GREGG VANCE FALLICK,
Plaintiff,

vs. Case no. CV-2016-01346

THE CITY OF JAL, ROBERT GALLAGHER,
JOHN DOES 1-3, and JANE DOES 1-3,
Defendants.

DEPOSITION OF ROBERT GALLAGHER
Taken on the 13th day of June, 2017

DEPOSITION OF ROBERT GALLAGHER,
produced as a witness at the instance of The
Plaintiff, and duly sworn, was taken in the
above styled and numbered cause on June 13,
2017, from 9:00 a.m. to 4:05 p.m. at the
Woolworth Community Library, 100 E. Utah, Jal,
NM 88252 before Gina R. Hornbeck, Certified
Court Reporter No. 43 in and for the State of
New Mexico and Certified Court Reporter No.
2987 in and for the State of Texas, reported by
computerized stenotype, pursuant to the New
Mexico Rules of Civil Procedure (and the
provisions stated on the record or attached
therein).

Exhibit 2

1 computer and -- and so on, so I don't -- I
2 don't know that to be the case.

3 But you're saying there's no e-mails
4 from 2014?

5 Q (BY MR. FALLICK) I saw none.

6 A Okay. That may be the case, that we
7 didn't have any because we didn't keep a record
8 of 'em.

9 Q When you say your computer, are you
10 talking about your personal computer or are you
11 talking about the entire City of Jal computer
12 system?

13 A The PC that was assigned to the city
14 manager's office was a hand-me-down, and I've
15 been talking about that PC that was assigned to
16 the city manager's office.

17 Q So you're not talking about whatever
18 computer may have maintained e-mails for the
19 councilors. You're talking about your e-mails.

20 A Yes.

21 Q And so do you -- did you know that
22 there are no e-mails from 2014 that were
23 produced, not yours and not any councilor's
24 e-mails for 2014? Did you know that?

25 A I did not know that.

1 Q And there also are no e-mails in
2 document 1 through 3492 from 2015. And that
3 means none for you and none for any of the
4 councilors.

5 Did you know that?

6 A No. There's no excuse for that.
7 Obviously, there were e-mails sent.

8 MR. FALLICK: Could you give me a
9 page and line for that last answer?

10 THE REPORTER: 29, 5.

11 MR. NEWELL: And, Gregg, we'll
12 stipulate that it looks like, in looking at the
13 documents, the earliest e-mail is dated
14 2/26/16.

15 THE WITNESS: Really?

16 MR. NEWELL: Yeah.

17 MR. FALLICK: And what's the end of
18 that stipulation?

19 THE REPORTER: Begins on Page 29,
20 line 8, and ends on line 10.

21 MR. NEWELL: Gregg, if you want to
22 go off the record a minute, I think I could
23 even make this easier.

24 MR. FALLICK: Sure.

25 (Brief recess in the deposition.)

1 (Exhibit Number 2 marked for
2 identification.)

3 MR. FALLICK: So we're going to go
4 back on the record. And off the record,
5 Mr. Newell provided me with a document that --
6 it's not page numbered, but it's --

7 MR. NEWELL: It does reference --

8 MR. FALLICK: -- refers to City
9 000001 through the final document that's
10 numbered 3492, and it is a log, essentially, of
11 the documents that were produced. And
12 Mr. Newell agreed to provide that to me based
13 on the questioning right before we went off the
14 record. We've marked that as Gallagher Exhibit
15 Number 2.

16 Q (BY MR. FALLICK) And would you
17 identify that Gallagher Number 2 is the
18 document your counsel provided as the log I
19 just described?

20 A Yes, sir.

21 Q And that's an index. It's a log of --
22 log of all the documents that were produced.

23 MR. NEWELL: Mr. Fallick, may I
24 state something for the record?

25 MR. FALLICK: Sure.

1 MR. NEWELL: And I'll just cut
2 through this. Obviously, under questions that
3 were presented by Mr. Fallick and in looking at
4 the log or the index that was prepared in
5 preparation for this deposition, it appears
6 clear that 2014 and 2015 e-mails were not
7 produced. And I'll -- that's just a fact, and
8 so that's where we are.

9 MR. FALLICK: And as I understand
10 it -- and we can do this as a stipulation.
11 Instead of me asking Mr. Gallagher, I'll ask
12 you, Mr. Newell, that also no documents from
13 January 1, 2016, through February 25, 2016 --

14 MR. NEWELL: Right.

15 MR. FALLICK: -- that constitutes
16 e-mails, those weren't produced either.

17 MR. NEWELL: That appears to be
18 correct.

19 What I will state for the record is
20 the index of documents, which has been
21 identified as Gallagher Number 2, which begins
22 chronologically, begins with -- the first
23 e-mail on Page 1 is dated 2/26/16, and there do
24 not appear to be any e-mails prior to 2/26/16
25 produced, whether they were in 2016, 2015, or

1 2014.

2 Is that fair enough, counsel?

3 MR. FALLICK: Thank you.

4 Q (BY MR. FALLICK) I'm going to return
5 to questioning you, Mr. Gallagher. We're on
6 the record.

7 MR. NEWELL: No. That's fair
8 enough. And I wasn't trying to -- but I just
9 thought we could cut through some of that when
10 it's obvious that -- we obviously have made a
11 mistake. So...

12 MR. FALLICK: Well, we did, and the
13 log is certainly helpful for the record.

14 Q (BY MR. FALLICK) The City of Jal also
15 didn't produce anywhere near --

16 (Brief interruption in the
17 deposition.)

18 MR. FALLICK: I'm going to start
19 that question again.

20 MR. NEWELL: Please.

21 Q (BY MR. FALLICK) The City of Jal also
22 didn't produce anywhere near all of the 2016
23 e-mails either, right?

24 A My instructions were to produce every
25 e-mail that you asked for.

1 Councillor Ellison, and my response to that was
2 there are no documents at all for questions
3 through 4 because we didn't have any documents
4 for 1 through 4.

5 And so to help her along -- she was
6 out of town at a conference and I had been --
7 and I had been home healing from eye surgery.
8 So I was telling her -- you know, she was going
9 to send out the letter saying, "The magnitude
10 is too large, give us more than the three -- or
11 15 days. And then, by the way, the first four
12 questions, you won't have to worry about 'em
13 because we don't have anything."

14 Q What did you understand those first
15 four questions to relate to?

16 A If I could see -- Mr. Fallick, could I
17 just see it?

18 Q Of course. I'm going to give you a
19 copy of the complaint because the complaint
20 attaches the IPRA letter. And so after the
21 signature page on Page 7 -- so I'm just going
22 to fold it to that -- is where the letter
23 starts. And paragraphs 1 through 4 referred to
24 an Exhibit A, which is attached to that letter
25 which is included in the complaint, and it was

1 attached to the original letter that you sent.

2 So it's folded to the beginning of the
3 letter. The letter is six pages numbered at
4 the top. And then the Exhibit A is your e-mail
5 of August 29, 2016, which is not numbered
6 Page 7, but it's the seventh page of the
7 letter.

8 So I'm handing you that. And, again,
9 that's part of the complaint that was filed
10 with the Court.

11 A (Witness reviewing document.)

12 After reading that, it was my belief
13 that the first four questions referred to a box
14 of documents that -- that was brought to my
15 office somewhere around April 25th or
16 April 26th, and it was a --

17 MR. NEWELL: Of what year?
18 April 25th or 26th of what year?

19 THE WITNESS: I apologize.
20 April 25th or April 26th of 2016.

21 Q (BY MR. FALLICK) And that is the box
22 of documents you referred to elsewhere as the
23 documents from an oil company in the area that
24 you relied upon in your communications with
25 OCD?

1 A Yes, it is.

2 Q And so when you say, "I'll tell you
3 there are no documents at all for questions
4 number 1 through 4," what did you mean by that?

5 A We didn't have the documents. I
6 didn't -- I didn't -- the box didn't -- I
7 looked -- I looked at some documents in the box
8 and then told -- Councillor Ellison said, "Do
9 you want to keep these? You want 'em here?"
10 And I said, "No. Number one, they --
11 from my looking at 'em, they're all in the
12 public domain."

13 It appeared to me that every one of
14 them came out of an Internet search or
15 something.

16 And two is, we're not the regulatory
17 body for oil and gas. Because of my experience
18 as president and CEO of the New Mexico Oil and
19 Gas Association, it was pretty obvious to me
20 that, hey, we should just get ahold of the Oil
21 Conservation Division and ask them to take a
22 look at it.

23 Q This was a box of documents, right?

24 A It was a cardboard box that a bunch of
25 documents were in, some bound, some not.

1 Q Brought to you by?

2 A Councillor Ellison.

3 Q And Councillor Orr?

4 A Councillor Orr was with them.

5 Councillor Ellison said that he was given the
6 box.

7 Q So Councillor Ellison had the
8 documents. Councillor Orr was with him, and
9 they brought the documents to you?

10 A They did.

11 Q You were in your office in the City of
12 Jal?

13 A Yes, I was.

14 Q And you're the city manager?

15 A I am.

16 Q So you have two city councillors who
17 bring you documents to show you as the city
18 manager, right?

19 A Yes.

20 Q You look at those documents and later
21 refer to those documents in communications with
22 the OCD, true?

23 A I referred to 'em as documentation, not
24 specific.

25 Q And you relied on those documents to

1 support your request to the OCD, correct?

2 A Sure. Our request was simple: Could
3 you check this well and see if it is going into
4 another zone which contains potential drinking
5 water?

6 Q Your belief was that even though these
7 documents were brought to you in your capacity
8 as city manager on City property by two city
9 councillors requesting that you take action on
10 behalf of the City of Jal, that you didn't have
11 an obligation to treat those as public records?

12 A No. Well, first of all, they looked to
13 me like they were all public records anyway.
14 And two is, why would I -- why would I go
15 through 'em when that's the Oil Conservation
16 Division's job?

17 Q I need to re-ask the question.
18 Given that you are the city manager
19 for the City of Jal, documents are brought to
20 you on City property by two councillors asking
21 you to take a position on behalf of the City of
22 Jal based on these documents.

23 Did you consider that box of documents
24 to be public records?

25 A First of all, they did not ask me to

1 take a position about those documents. They
2 brought the documents in and said, "What should
3 we do?"

4 I said, "We should write a letter or
5 e-mail to the Oil Conservation Division, send
6 those to them, if they want them, and ask them
7 to review 'em. Plain and simple."

8 Q Let me break it down, then, to pieces
9 and ask you separate questions about it.

10 There was a box of documents, correct?

11 A There was.

12 Q It was brought to you, correct?

13 A It was brought in my office, yes.

14 Q Your office. The city manager for the
15 City of Jal's office, correct?

16 A Right.

17 Q On City property?

18 A Yes.

19 Q It was showed to you in your capacity
20 as the city manager?

21 A Correct.

22 Q It was brought to you by City
23 Councillor Ellison?

24 A It was.

25 Q He had with him City Councilor Orr?

1 A He did.

2 Q You looked at the documents?

3 A Some of them.

4 Q And then Councilor Ellison asked you if
5 you wanted to keep them and you said, no, you
6 take them back?

7 A Councilor Ellison said, "What should we
8 do?"

9 I said, "I'm going to write a letter
10 to the OCD and request them to investigate."

11 He said, "Do you want those
12 documents?"

13 I said, "No, they're no use to me."

14 And he wasn't offering them -- they
15 weren't City records. He got 'em from a
16 private citizen is what he told me.

17 Q And then he took them away?

18 A Yes, right away with him that day.

19 Q Your understanding of IPRA is that if
20 you receive documents from anyone, regardless
21 of the kind of documents they are, that they're
22 not public records?

23 A I just figured if I get a thousand
24 documents a day, if I read it and discard it,
25 throw it away -- you know, if I don't have it

1 in my possession, they're not public records.

2 They weren't any part of an investigation or
3 any part of anything the City was doing.

4 Q Ultimately, you and the City claim that
5 you produced those records in response to my
6 IPRA letter?

7 A What I'm told from -- from Mr. Newell
8 is, yes, that -- that -- that all those records
9 were produced.

10 Q Do you know why they were produced if
11 they're not public records?

12 A You asked for them. Mr. Newell said,
13 you know, "Give 'em to him. It doesn't
14 matter."

15 But -- but they weren't in our
16 possession. When Mr. Ellison gave 'em to
17 Mr. Newell, then whether they're public
18 documents or not, I don't know. If they're
19 attorney-client privilege, I don't know. But
20 why worry about it? They were all in the
21 public domain. Why not give 'em what they
22 want?

23 But specifically here, I didn't have
24 'em. So the answer to Jenny was, "No we don't
25 have 'em. We don't have anything like that."

1 Q So when you said there are no documents
2 at all for questions numbered 1 through 4, you
3 meant there were no documents at all for
4 questions 1 through 4?

5 A In our possession. We had no documents
6 at all.

7 Q You didn't mean, "Jenny, don't you
8 bother looking for 'em because I'm going to go
9 get them for you?" You didn't mean that, did
10 you?

11 A No. Just saying, "Jenny, there's --
12 there's nothing on numbers 1 through 4, and
13 we're decide -- you know, how we're going to
14 handle these other ones, who has to tell who,
15 what they're going to do, when we get back from
16 Albuquerque."

17 MR. FALLICK: Can you give me a line
18 number for that?

19 THE REPORTER: 54, 13 through 16.

20 Q (BY MR. FALLICK) What do you remember
21 about the documents that were brought to your
22 office in April of 2016 that we've been talking
23 about at this deposition?

24 A I remember there were a cardboard box,
25 small cardboard box. Some were bound and some

STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT COURT

No. D-506-CV-2016-01346

DESERT TOWN INVESTMENTS, LLC,
d/b/a, THE JAL RECORD,

Plaintiff,

v.

THE CITY OF JAL, ROBERT GALLAGHER,
JOHN DOES 1-3, AND JANE DOES 1-3,

Defendants.

DEPOSITION OF JENNY LEIGH EDWARDS

August 9, 2017

9:17 a.m.

In the Conference Room of:
WOOLWORTH COMMUNITY LIBRARY
Jal, New Mexico

PURSUANT TO THE NEW MEXICO RULES OF CIVIL
PROCEDURE, this deposition was:

TAKEN BY: GREGG VANCE FALLICK
ATTORNEY FOR THE PLAINTIFF

REPORTED BY: DEBRA ANN FRIETZE, CCR #251
PAUL BACA COURT REPORTERS
500 4th Street, NW, Suite 105
Albuquerque, New Mexico 87102

Exhibit 3

1 be able to do that. That was my thought process.

2 MR. FALLICK: So we've agreed, to the
3 extent that it's possible, to extract a copy and save
4 all 2014, 2015, 2016 emails --

5 MR. NEWELL: Right.

6 MR. FALLICK: -- so they're available to
7 me. And then we can deal with making sure that we
8 protect privilege, but we will do that?

9 MR. NEWELL: Well, up until making the
10 request, but yes. Otherwise -- because I think that's
11 what we've been trying to do this whole time.

12 Now obviously, I understand your concern
13 because we failed miserably, unfortunately, in doing
14 that. So yeah, that's the goal here, is to try to get
15 you that information that's responsive to your IPRA
16 request.

17 MR. FALLICK: Good. Thank you.

18 MR. NEWELL: And as long as we're on that
19 line, too, you're going to see some of these because I
20 obtained a lot of emails now that we're going to produce
21 that came from the computers of the individual
22 Councilors. So obviously, that will help sweep some of
23 them, so we will be able to recover some of them. The
24 completeness or whatever, you know, I guess that's where
25 you and I still have to weigh in and try to determine

From: Gregg Vance Fallick GVF@FallickLaw.com
Subject: Re: Desert Town Investments, LLC v. The City of Jal; D-506-CV-2016-01346
Date: November 1, 2018 at 11:19 AM
To: Laura E. Sanchez-Rivet LSanchez-Rivet@cuddymccarthy.com
Cc: Carlos J. Padilla cpadilla@cuddymccarthy.com



Message:

Laura —

I recall (although with less than complete certainty) that Judge Stone invited us to contact his chambers if a telephone conference would be helpful to resolve any issues that may arise. Plaintiff had the audio record of the August 13, 2018 Hearing transcribed by Paul Baca Professional Court Reporters and I am in the process of reviewing it in search of that language.

As I read through that I found the attached colloquy regarding the withheld Chevron document, in which you stated: “And perhaps I do remember a conversation about it, but I thought that Mr. Newell had provided that document after that interaction, and I will follow-up and make sure — [Judge says “Okay”] — if they haven’t provided it that we provide it.” See attached excerpts, including the Judge’s instructions to communicate back-and-forth about this (rather than sitting on my last e-mail for another two-and-a-half months without a word and then filing a motion for summary judgment on the last possible day).

If this refreshes your recollection about the Court’s instructions and your representations to Judge Stone, and as a result leads you to change your mind about withdrawing your motion, please let me know right away.

Also, please let me know whether you consent to or oppose a request for a telephone conference to address (1) my concerns about your summary judgment motion and the briefing schedule, and (2) Gallagher’s attendance at trial (unless we can resolve either issue without the Court’s assistance).

Thank you. — Gregg



8.13.2018
Hearin...pts.pdf

Gregg Vance Fallick
FallickLaw, LTD.
Suite 205
Gold Avenue I ofts

Exhibit 4

100 Gold Avenue, SW
Albuquerque, New Mexico 87102
[\(505\) 842-6000](tel:5058426000) (Telephone)
[\(505\) 842-6001](tel:5058426001) (Facsimile)
GVF@FallickLaw.com

On Oct 31, 2018, at 3:44 PM, Laura E. Sanchez-Rivet <LSanchez-Rivet@cuddymccarthy.com> wrote:

Ok.

From: Gregg Vance Fallick [<mailto:GVF@FallickLaw.com>]
Sent: Wednesday, October 31, 2018 3:44 PM
To: Laura E. Sanchez-Rivet
Cc: Carlos J. Padilla
Subject: Re: Desert Town Investments, LLC v. The City of Jal; D-506-CV-2016-01346

Message:

Laura —

Everything I said in my initial e-mail was right and I stand by it.

In light of your response, I will do as I said; that is, submit a preliminary response within the time provided by the Rules and file a motion seeking an additional thirty days to file a supplemental response.

— Gregg

Gregg Vance Fallick
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GVF@FallickLaw.com

On Oct 31, 2018, at 3:37 PM, Laura E. Sanchez-Rivet <LSanchez-Rivet@cuddymccarthy.com> wrote:

Gregg,

The City will not withdraw its motion. This deadline has been on the schedule since August, you agreed to it. The fact that you decided not to file a dispositive motion is not a reason for us not to do so, nor a valid reason for you to take 6 weeks to respond. Your client has been driving up and extending this litigation far beyond the bounds of a traditional IPRA case and the City wishes to have it addressed by the Judge as soon as possible. That's the whole point of a dispositive motion and the City is well within its right to file it. I disagree with your interpretation on the Judge's comments at the hearing about attorneys' fees and costs. The Judge's comments about driving up the cost and determining whether this should have been forwarded to the AG or the DA were related to your client's actions in this, not directed somehow at us in saying we can't file a motion to dispose of this action before trial.

As a courtesy, I am willing to give you 30 days from the date of our filing on Monday. This is an additional 15 days beyond what you are entitled to under the rules, and a reasonable amount of time for a response to a motion. We will look forward to your response on November 30th.

Thank you,

Laura

<image001.jpg>

Laura E. Sanchez-Rivét, Esq.
201 Third St. NW, Suite 1300
Albuquerque, NM 87102

[\(505\) 888-1335](tel:5058881335) (Main)

[\(888\) 977-3816](tel:8889773816) (Fax)

lsanchez-rivet@cuddymccarthy.com

 Please consider the environment before printing this email.

As a reminder to clients, you should not forward this email message. Doing so may cause you to waive the attorney-client privilege.

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IRS Circular 230 Disclaimer: To comply with requirements imposed by the IRS, we inform you that any federal tax advice contained in this communication(including attachments), unless specifically stated otherwise, is not intended or written to be used and cannot be used, for purposes of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any transaction or tax-related matter addressed herein.

From: Gregg Vance Fallick [<mailto:GVF@FallickLaw.com>]

Sent: Wednesday, October 31, 2018 7:57 AM

To: Laura E. Sanchez-Rivet

Cc: Carlos J. Padilla

Subject: Desert Town Investments, LLC v. The City of Jal; D-506-CV-2016-01346

Attention: This email was sent from someone outside of the Cuddy & McCarthy e-mail system. Always use caution when opening attachments, clicking links, or when receiving unexpected emails.

Message:

Laura —

I am writing to request that Defendant withdraw its summary judgment motion. Alternatively, I request a thirty day extension in which to respond. I would appreciate having your answer today, so that I promptly can begin proceeding as required.

Initially, off the top of my head, there are numerous reasons why Defendant should agree to withdraw the motion:

1. IPRA precludes summary judgment based on your admissions alone in response to the Court's inquiry at the last hearing:

THE COURT: I just have a couple of observations and maybe a couple questions. It's clear to me that counsel, at least on behalf of the city of Jal, has acknowledged that -- I believe the statement was woefully failed to violate IPRA. That, I mean, that -- you suggesting that you're throwing your client down the river, that's what's been suggested to me at this hearing today, that the city of Jal may have been less than forthcoming with some documentation from the initial IPRA request.

MS. SANCHEZ-RIVET: Your Honor, I think that that's been already stated on the record in past hearings, so we're certainly not --

THE COURT: Okay.

MS. SANCHEZ-RIVET: -- here to argue anything different.

Based on this and the other information before the Court, Judge Stone made it clear that Plaintiff was entitled to a remedy, and that the only question remaining was precisely what remedy. Plaintiff made the determination not to file a motion for partial summary judgment, however, primarily for two reasons. First, given Judge Stone's comments about avoiding unnecessary legal fees, Plaintiff determined that the cost of filing the motion was unjustified given that a trial on some issues still would be required. And second, because Plaintiff considered a motion for partial summary judgment unnecessary, given the Court's recognition of obvious liability.

2. Souder Miller produced 12,000+ documents containing thousands of documents that your client should have produced but did not. Moreover, SMA Exhibit 18 discloses Mr. Gallagher's representation that he disclosed that he was on SMA's payroll to the City Council in writing. The City never disclosed any such document to Plaintiff. If the document exists, it was withheld. If Mr. Gallagher is lying about its existence, that further supports Plaintiff's motive allegations.

3. Mr. Gallagher's hard drive, which Plaintiff obtained in discovery over your objection, included thousands of other documents your client did not disclose in response to Plaintiff's IPRA requests. And you not only objected to disclosure of the entire hard drive, you also wrongfully objected to the disclosure of a substantial quantity of documents it contained that Plaintiff obtained over your objection. So our ultimate success in uncovering these documents despite your client's kicking and screaming does not change the fact that your client failed to disclose them in response to our IPRA requests. In fact, this evidence that Plaintiff obtained in discovery (again, over your objection) does not support YOUR motion for summary judgment. To the contrary, if we had not made the decision to avoid the cost of summary judgment practice, it would have supported OUR motion.

4. Mr. Gallagher and Mr. Ellison both admitted that they intentionally destroyed public records, which the City then obviously could not and did not produce. Mr. Gallagher claimed that he honestly believed he could destroy the documents and that as a result they no longer were public records. Mr. Ellison admitted to doing so with the express purpose of frustrating Plaintiff's IPRA rights. I am confident Judge Stone will take a dim view of this testimony, which likewise precludes summary judgment.

5. There are many other questions of fact about IPRA violations raised by the evidence, and in particular by Mr. Gallagher's, Mr. Ellison's, and Ms. Edwards's testimony, that cannot be resolved on summary judgment.

6. And even assuming there are one or more discreet issues on which the City would be entitled to partial summary judgment (which Plaintiff denies), the expense of the motion practice and the burden on judicial resources would be entirely unjustified. Moreover, in this case both parties' legal expenses ultimately will be borne by your client.

The bottom line is that, if you insist on pursuing this motion, the practical effect is that you will force Plaintiff to file a response providing the Court with an advance roadmap of the evidence Plaintiff will present at trial fully demonstrating what you already have admitted; that is, your client's woeful failure to comply with IPRA. And ultimately, you will be forcing us to do so at your client's expense. This plainly would put the lie to any suggestion that Plaintiff — and not Defendant — was responsible for running up the legal expenses.

Alternatively, if you refuse to withdraw the Motion, please grant Plaintiff a 30 day extension of time in which to respond, which would make the Response deadline Wednesday, December 19th. In order to prepare a complete response demonstrating your Motion is utterly devoid of merit, I will need to do the same analysis of the record required to prepare for trial, which commences on April 8th of next year. As a result, there are two primary problems with my rushing to respond by November 19th: (i) it will be impossible in that time period to prepare

a full and complete response, and (ii) the time and expense of rushing through the record now to defend against summary judgment will be a complete waste, because I will need to go through all of the evidence from the beginning thoroughly to prepare for trial.

If you do not agree to either of the above, I will file a preliminary response to the Motion within the time provided by the Rules and also file a motion seeking leave to file a supplemental response by December 19th. Your forcing me to do so would be a gross example of precisely the sort of wasteful litigation Judge Stone explicitly warned against.

Again, I would appreciate having your response today.

Thank you. — Gregg

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(505) 842-6000 (Telephone)
(505) 842-6001 (Facsimile)
GVF@FallickLaw.com

STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT COURT

DESERT TOWN INVESTMENTS, LLC,

Plaintiff,

vs.

Case No.: D-506-CV-2016-01346

THE CITY OF JAL, ROBERT
GALLAGHER, JOHN DOES 1-3 and
JANE DOES 1-3,

Defendants.

TRANSCRIPT OF HEARING

AUGUST 13, 2018

Ms. Sanchez-Rivet Speaking:

1 under IPRA.

2 I would like to just -- a couple of points that I
3 want to bring up that were filed in plaintiff's reply. There's
4 mention in there about -- excuse me. Bear with me here, Your
5 Honor. There's mention in that -- in the reply related to
6 documents from an oil company that defendants apparently
7 represented to the court was produced in 2016. There's a
8 mention on Page 11 of the reply that Mr. Newell had stated that
9 there was some miscommunication between his paralegal and
10 himself related to this document and that today we have still
11 not produced it. I'm not aware of what exactly that is a
12 reference to. So I just want to, for the record, say that if
13 there's a document that's missing that we have not produced
14 related to this oil company document, I want to know further
15 and determine how we can produce that.

16 Because my understanding was everything that -- at
17 the time had been produced already, and we have not recently
18 received a request for this. So I apologize. I just wanted,
19 for the record, to mention that this is something that struck
20 me as new, or at the very least something I was not aware of,
21 that plaintiffs were still seeking. But that's sort of
22 separate for the request for financial documents.

23 Again, we just reiterate that --

24 THE COURT: Let's do this, if you don't mind. This
25 is probably a good place to interject this question to Mr.

1 Fallick. Are there any documents that from your perspective
2 that -- and let's go back, because there's two levels here.
3 There's an IPRA level and there's discovery level. Everybody
4 agrees with that, correct?

5 MS. SANCHEZ-RIVET: Yes, Your Honor.

6 THE COURT: Okay. Under the IPRA, is there anything
7 that you believe has not been addressed that has been -- that
8 you have requested and it's been provided?

9 MR. FALLICK: Yes, Your Honor. And that is an
10 example -- and so I guess counsel has forgotten about it, but
11 we met with Mr. Newell after the hearing at which he withdrew
12 and Ms. Sanchez-Rivet entered. And we were going through --
13 because we had been provided Bates-stamped copies of what we
14 were told was the complete set of documents. And we have
15 issues about -- it was supposed to be a bigger volume, and what
16 happened to the rest. And so we don't think we're getting
17 honest answers, not from Ms. Sanchez-Rivet but from witnesses.

18 But ultimately we were sitting there with Mr. Newell
19 and with his paralegal and Mike said, well, we've given you
20 everything we have had, and his paralegal said no. We haven't.
21 We didn't give them this document or this document because they
22 were confidential -- they were listed as confidential. And
23 Mike said I didn't know that. That was a miscommunication --

24 THE COURT: So let me -- and I don't want to cut you
25 off, but Mr. Torgeson, has he looked at all of those documents?

1 MR. FALLICK: Not that document. That was not on
2 Gallagher -- Mr. Torgeson's role was to look at Gallagher's
3 hard drive.

4 THE COURT: Right.

5 MR. FALLICK: This was not on Gallagher's hard drive.
6 It was a hard copy of document that was part of the original
7 box that we had asked for. And so Mr. Newell said it was a
8 miscommunication. And I said, well, then we'd like to have it.
9 And Ms. Sanchez-Rivet says, well, it says it's confidential and
10 so we need to think about that. And then there were multiple
11 emails after that following up. I never got it.

12 And then we raised it at the hearing before Judge
13 Clingman and pointed out how we had never gotten it and we
14 still hadn't gotten it. If --

15 THE COURT: Let me stop you for just a second. If
16 there's documents that the plaintiff believes are still out
17 there under an IPRA request that they have not received, I need
18 you guys to work that out amongst yourselves. I need some
19 communication back and forth, emails, letters, however way you
20 want to do it. Because at some point that's going to become an
21 issue determining whether or not those documents were turned
22 over and whether or not they were appropriately withheld, are
23 they an exception. And so, again, this will help me get up to
24 speed.

25 So I would appreciate -- that's not really before me

1 today, but I think I can take care of that by just simply
2 saying I need communication between the two of you. Because if
3 there are other IPRA -- and let me just do it globally. If
4 there are IPRA requests that are unanswered, then I need the
5 two of you to -- in other words, let's look at the big picture.
6 How much of the pie is missing, if any, because that's going to
7 be a very important issue.

8 And I don't think it's fair to wait until the time of
9 trial and say, oh, yeah, we forgot about this one. Because I
10 need -- the Court needs to be informed of that up front so if
11 there needs to be, you know, part of IPRA is an opportunity --
12 we may want to do some more in camera inspections by the Court.
13 And I'm willing to do that if we need to do that, but bottom
14 line is I want to make sure that we're addressing everything.
15 Okay? So that -- that really isn't before me, but that's my
16 intent, what I would like to see happen. Is that clear?

17 MR. FALLICK: Yes, Your Honor. We have a -- I have a
18 series of emails I sent to follow up on those things, and I'll
19 resend them all --

20 THE COURT: Thank you. And, again, I have not been
21 able to comb through that to see, but I just think that's a
22 very important issue.

23 The discovery side now, that's a little different
24 story because you guys have documented that very well. But as
25 I'm -- and I made myself a note to remember to ask you about

1 that. So if you make sure that you do that, that would be very
2 much appreciated.

3 MR. FALLICK: Okay.

4 THE COURT: Sorry I cut you off.

5 MS. SANCHEZ-RIVET: Not at all. Thank you, Your
6 Honor. I appreciate that. And the reason I brought that up is
7 because it did strike me as odd. And perhaps I do remember a
8 conversation about it, but I thought that Mr. Newell had
9 provided that document after that interaction, and I will
10 follow up and make sure --

11 THE COURT: Okay.

12 MS. SANCHEZ-RIVET: -- if they didn't provide it that
13 we provide it.

14 THE COURT: Sounds very good. Time clock is ticking.

15 MS. SANCHEZ-RIVET: Yes, absolutely. With regard to
16 -- you know, Your Honor, I have really just -- I think I've
17 made my piece as far as this issue.

18 THE COURT: Okay.

19 MS. SANCHEZ-RIVET: I know they'll have another
20 opportunity to discuss the broader issues on our motion.

21 THE COURT: Let's do this. I'm going to give you a
22 chance to respond. We've got two more hours, and we're going
23 to get it done in two hours because that's all I've got. So
24 let's be cognizant of the time. And I'll stay a little bit
25 past lunch, but my assistant and court monitor like to eat

1 STATE OF NEW MEXICO
2 COUNTY OF LEA
3 FIFTH JUDICIAL DISTRICT COURT

4 DESERT TOWN INVESTMENTS, LLC, D/B/A, THE JAL RECORD,
5 Plaintiff,

6 VS. No. D-506-CV-2016-01346

7 THE CITY OF JAL, ROBERT GALLAGHER, JOHN DOES 1-3, AND
8 JANE DOES 1-3,

9 Defendants.

10 ORAL AND VIDEOTAPED DEPOSITION OF JIM ELLISON
11 OCTOBER 31, 2017
12 9:12 A.M.

13 WOOLWORTH COMMUNITY LIBRARY
14 100 EAST UTAH AVENUE
15 JAL, NEW MEXICO 88252

16 PURSUANT TO THE NEW MEXICO RULES OF CIVIL
17 PROCEDURE, THIS DEPOSITION WAS:

18 TAKEN BY: MR. GREGG VANCE FALICK, ESQ.
19 ATTORNEY FOR THE PLAINTIFF

20 REPORTED BY: STARLA D. WIGGINS, RPR,CCR,CRR
21 STAR REPORTING SERVICE
22 NM #11; TX #2114; NV #629
23 P.O. BOX 601
24 LOVINGTON, NM 88260
25 (505) 449-7589

VIDEOTAPED BY: MR. DUSTY DEEN
RED ROADRUNNER

Exhibit 5

1 applicable to the performance of your duties as city
2 councilor?

3 A. Yes.

4 Q. To the best of your knowledge, have you
5 shown respect for New Mexico's public policy applicable
6 to the performance of your duties as Jal City Councilor?

7 A. Yes.

8 Q. Do you know what the term, quote, Sunshine
9 Laws, unquote means?

10 A. I don't have a clue.

11 MR. NEWELL: Hey, Gregg, as stated before,
12 we'll stipulate that in this particular case we didn't
13 meet the requirements of IPRA, and I think it's pretty
14 clear in Mr. Gallagher's deposition that we acknowledged
15 that. And so to the extent, you know, that's where
16 we're going, we can stipulate that this IPRA request
17 that's at issue in this Complaint was not properly
18 responded to, and I think we have acknowledged that.

19 MR. FALLICK: That's certainly part of, you
20 know, the issue. You know, but there's more to it than
21 that, because Mr. Gallagher certainly doesn't concede
22 all the things that we have claimed, which is that it's
23 an intentional bad faith, you know, ongoing violation of
24 IPRA.

25 So that's part of what we're trying to

1 when he's working, I see him a lot of time physically.

2 Q. Sometimes you see him, and the whole council
3 is not there. It's just you and maybe Mr. Orr?

4 A. That's right.

5 Q. So if you wanted to communicate with the
6 whole council, you would still need to send an e-mail,
7 right?

8 A. Yes, but I stopped sending all e-mails from
9 anything having to do with City, and I told Bob and
10 Jenny if they sent me e-mails, I would not answer them.
11 If I answer Bob, I text him.

12 Q. When was that?

13 A. That was two or three months ago. So if you
14 want to get the e-mails again, you can get e-mails
15 written by other people, but you won't get any written
16 by me.

17 Q. Do you preserve your texts?

18 A. No.

19 Q. So you delete your texts?

20 A. Yes.

21 Q. Why did you stop using e-mails?

22 A. Because of this. Because of you. Because of
23 you all wanting all of the public records, fine. Get
24 them from the other people. I don't have any for you.

25 Q. So then you use texts instead of e-mails,

1 and then you delete the texts?

2 A. That's correct.

3 Q. You don't understand that that's violating
4 the public policy of the State of New Mexico that people
5 are entitled to the -- the most information they can get
6 about what their public officials are doing?

7 A. They can get the e-mails sent to me.

8 Q. But they can't get your texts that you
9 deleted, correct?

10 A. That's right. And that's, nobody told me to
11 do that. That's my personal way of handling it.

12 Q. Why is it that you want to keep what you're
13 doing as a Jal City Councilor secret from --

14 A. No, it's not keeping it secret. You got the
15 e-mails that are sent to me. I don't respond to them.

16 Q. But you sent texts instead, and then you
17 delete them. Why do you do that?

18 A. Why not?

19 Q. Because it's keeping public information
20 from --

21 A. No, it's not. It's keeping my phone busy. I
22 mean un-busy.

23 Q. Haven't you just testified that you are
24 intentionally trying to avoid the public policy of the
25 State of New Mexico to allow people to be aware of the

1 things that their public officials are doing?

2 A. If I don't send any e-mails, how am I
3 breaking the law?

4 Q. Because you are sending a text instead, and
5 then deleting it.

6 A. Well, I can stop deleting them. But does
7 that give you a right to look at my phone?

8 Q. Well, I think it gives an IPRA requester the
9 right to request your texts, yes.

10 Going back to Exhibit 2 to the Complaint,
11 the first paragraph, the last sentence reads, quote,
12 Jenny, I will tell you that there are no documents at
13 all for questions number one through four, unquote.

14 Did I read that correctly?

15 A. I am asking Jenny to respond back to my
16 normal procedure way. Jenny. Okay. Yeah.

17 Q. So the last sentence, I'm going to read it
18 again to make sure you have it there. Quote, Jenny, I
19 will tell you that there are no documents at all for
20 questions number one through four, unquote.

21 Did I read that correctly?

22 A. Yes.

23 Q. Do you know what that refers to?

24 A. No.

25 Q. Now I'm going to ask you to close the

1 the decision making table, unquote. Is that right?

2 A. Yeah.

3 Q. But you voted against it anyway?

4 A. Okay.

5 Q. Is that right?

6 A. I guess. It says so. And I trust Levi Hill.

7 Q. You trust him to get your quote right?

8 A. Yes.

9 Q. The IPRA request in this case was on October
10 13, 2016. Do you remember anything about what was done
11 to request your e-mails and other documents you had
12 responsive to the IPRA request back in 2016?

13 A. (Witness moves head left to right).

14 Q. You have to state it out loud.

15 A. No.

16 Q. Do you remember anything you did to look for
17 documents to respond back in 2016?

18 A. Yeah, I sent a bunch in.

19 Q. In 2016?

20 A. I don't know.

21 Q. When you stopped sending e-mails and deleted
22 your texts, was that tied to favoritism?

23 A. No. It absolutely was not. It was just that
24 the IPRA, you was not going to get anything from me.

25 Q. So what --

1 A. You could get --

2 Q. -- were you trying to hide?

3 A. I wasn't trying to hide anything. You could
4 get anything that was written to me, but I'm not going
5 to do e-mails, period.

6 Q. And you are going to delete texts?

7 A. I might.

8 Q. You said you did, right?

9 A. Yeah.

10 Q. And you didn't keep any of your e-mails from
11 before you started texting, right?

12 A. No, I didn't have any.

13 Q. Well, you did?

14 A. You got them from everybody else.

15 Q. Well, we got what we got, but you saw that
16 there were e-mails today from you that came from
17 somewhere else, and not from you, right? Do you remember
18 that?

19 A. I guess.

20 Q. So you send e-mails, you just didn't keep
21 them?

22 A. If I got an e-mail from the mayor, I ignored
23 it. If I got an e-mail from Jenny, and I told Jenny that
24 I would not respond to her through e-mails.

25 And I told Bob Gallagher I would not respond

1 to his e-mails.

2 Q. The last three months?

3 A. Something like that.

4 Q. This is an e-mail from you on May 26th,
5 2010. It's marked as Gallagher Exhibit 5. This is the
6 one where you say you don't give a damn about the logs,
7 right?

8 A. 2010, I wasn't on the City Council.

9 Q. Look again. Is that from you?

10 MR. NEWELL: Is that 2010?

11 Q. Is that an e-mail from you at the top?

12 A. That's '16.

13 Q. Right. Is that an e-mail from you?

14 MR. NEWELL: Restate the question, because
15 you said, 2010.

16 MR. FALLICK: Are you sure?

17 DENNIS MAEZ: Yeah.

18 MR. NEWELL: I think so.

19 MR. FALLICK: Okay.

20 THE WITNESS: You did.

21 Q. Gallagher Exhibit Number 5 is an e-mail from
22 you, correct?

23 A. Looks like it.

24 Q. What's the date?

25 A. The 26th, 2016.

1 Q. What month?

2 A. May.

3 Q. You did not produce that document, correct?

4 A. No, it says I did.

5 Q. Well, it's an e-mail from you?

6 A. That's right.

7 Q. But you didn't produce it, because we got it

8 somewhere else. And all of the e-mails that you all

9 produced came from Mr. Newell, and they all have city

10 numbers on the bottom. This one doesn't, and that e-mail

11 is not anywhere in this set.

12 A. I probably just deleted it.

13 Q. That's my point. Did you delete your e-mails

14 and delete your texts to hide favoritism?

15 A. No.

16 Q. Did you delete your texts and delete your

17 e-mails to hide abuse of authority --

18 A. No.

19 Q. -- to further vendettas?

20 A. No.

21 Q. Did you delete your e-mails, and your texts

22 to hide corruption?

23 A. No. I do not participate in any corruption.

24 Q. You supported Melody Beckham for the Jal

25 City Council, didn't you?

1 STATE OF NEW MEXICO
2 COUNTY OF LEA
3 FIFTH JUDICIAL DISTRICT

4 DESERT TOWN INVESTMENTS , LLC ,
5 d/b/a THE JAL RECORD ,

6 Plaintiff ,

7 vs . Case no . CV-2016 -0134 6

8 THE CITY OF JAL , ROBERT GALLAGHER ,
9 JOHN DOES 1-3 , and JANE DOES 1-3 ,

10 Defendants .

11 -----

12 DEPOSITION OF MIKE ORR
13 Taken on the 28th day of September , 2017

14 -----

15 DEPOSITION OF MIKE ORR , produced
16 as a witness at the instance of The Plaintiff ,
17 and duly sworn , was taken in the above styled
18 and numbered cause on September 28 , 2017 , from
19 9:23 a.m. to 2:45 p.m. at the Woolworth
20 Community Library , 100 E. Utah , Jal , NM 88252
21 before Gina R. Hornbeck , Certified Court
22 Reporter No. 43 in and for the State of New
23 Mexico and Certified Court Reporter No. 2987 in
24 and for the State of Texas , reported by
25 computerized stenotype , pursuant to the New
Mexico Rules of Civil Procedure (and the
provisions stated on the record or attached

Exhibit 6

1 MR. NEWELL : Right .

2 Mr. Fallick , in that context I think
3 it would be also fair to say there have been
4 discussions about where Jal has fallen short in
5 this case and how in the future some of those
6 problems could be addressed on a go-forward
7 basis like Mr. Orr indicated about using iPads
8 that would be distributed to the city
9 councilors and using , like , city council e-mail
10 addresses and things of that nature . So there
11 have been discussions .

12 This lawsuit has identified a
13 variety of areas that needed improvement , and
14 we've tried to utilize this for that purpose .
15 And it's fair to say there have been
16 communications in that regard . Specific
17 communications , we'll say , you know , are
18 subject to attorney -client --

19 MR. FALLICK : I'm not trying to get
20 into that . I'm not trying to find whether
21 there 's an overall , everybody sits down at one
22 time and place and gets training on IPRA .
23 That 's what I'm trying to establish .

24 MR. NEWELL : No . Since this
25 litigation has happened , there hasn't been that

**DEPOSITION
EXHIBIT**

*GALLAGHER
#4*



From: Gregg Vance Fallick GVF@FallickLaw.com
Subject: Fallick v. City of Jal, et al.
Date: June 10, 2017 at 9:06 AM
To: Mike Newell mnewell@newellawnm.com

Message:

Mike —

I have one more request in advance of Mr. Gallagher's deposition. I am attaching a pdf copy of an e-mail string ending from Mr. Gallagher to Gary Kernan on September 22, 2016, which was provided to me by the LCS on behalf of Senator Kernan .

I intend to ask Mr. Gallagher whether this document is included in Jal's production, and if so, to identify the documents by page number (that is, by the "City" numbers you assigned to the document between City 000001 and City 003492). I intend to ask about the four the e-mails in the chain dated September 21st and September 22, 2016. Again, this request is intended to avoid wasting time on the record when Mr. Gallagher appears for his videotaped deposition at 9:00 a.m. on June 13, 2017.

Thank you. — Gregg

Gregg Vance Fallick
FallickLaw, LTD.
Suite 205
Gold Avenue Lofts
100 Gold Avenue, SW
Albuquerque, New Mexico 87102
(505) 842-6000 (Telephone)
(505) 842-6001 (Facsimile)
GVF@FallickLaw.com



Gallagher to
Kernan...16.pdf

Gay Kernan

From: Bob Gallagher <citymanager@cityofjfal.us>
Sent: Thursday, September 22, 2016 12:22 PM
To: Gay Kernan
Subject: Fwd: Disposal Well

Sent from my iPad

Begin forwarded message:

From: "Jim Ellison" <ellisonduo@valornet.com>
Date: September 22, 2016 at 11:53:18 AM MDT
To: "Bob Gallagher" <citymanager@cityofjfal.us>
Subject: Re: Fwd: Disposal Well

Monday, I will set down with you and go through step by step what they did out there. I don't understand deepening slightly to obtain a better tracer log-that's fishy as Fisherman's Wharf. I'm glad they still have concerns-if you don't mind you might forward this to Senator Kernan-she sounds like she's concerned about fresh water contamination. Have a good weekend. Hobbs street sweepers are on the ball.

From: Bob Gallagher
Sent: Thursday, September 22, 2016 11:11 AM
To: Cheryl Chance ; Amelia Trevino ; JoAn Chesser ; Beckham Melody ; Mikeojal ; Jim Ellison ; Jennings Dewayne
Subject: Fwd: Disposal Well

FYI

Sent from my iPad

Begin forwarded message:

From: "Catanach, David, EMNRD" <David.Catanach@state.nm.us>
Date: September 21, 2016 at 9:12:27 AM MDT
To: Bob Gallagher <citymanager@cityofjfal.us>
Subject: RE: Disposal Well

Bob,

We are working on a response to your questions. I hope to have everything summarized shortly.

OCD still has concerns about this well. We are in the process of allowing OWL to deepen the well slightly so as to obtain a better tracer log. We'll keep you updated on that.

Thanks,
David

From: Bob Gallagher [<mailto:citymanager@cityofjfal.us>]
Sent: Friday, September 16, 2016 9:44 AM

To: Catanach, David, EMNRD <David.Catanach@state.nm.us>
Cc: 'Cheryl Chance' <mavor@cityofjal.us>; 'Amelia Trevino' <trevino.amelia@yahoo.com>; 'JoAn Chesser' <joan193855@gmail.com>; 'Melody Beckham' <mbeckham16jcc@gmail.com>; 'Mike Orr' <mikeoial@yahoo.com>; 'Jim Ellison' <ellisonduo@valornet.com>; 'Dewayne Jennings' <dnjenn@windstream.net>; Kernan, Gay G. <ggkern@valornet.com>
Subject: Disposal Well

David,

We understand from the engineers at Souder Miller that the Owl well was tested on September 2, 2016. We have not received any notification from the OCD about the completion of the test as well as the results. Some of the information we received from SMA indicates a successful test which is certainly great news, but the same information has left many questions amongst the engineers. If OCD has already thought of these questions and have asked them I apology.

1. <!--[if !supportLists]--><!--[endif]--> Was TD 3055 tagged with a logging tool? Our report indicated the water went into a perforated zone from 2935 to 3005, but TD is 3055?
2. <!--[if !supportLists]--><!--[endif]--> What was the daily rate injected from May 1st – Sept. 1st?
3. <!--[if !supportLists]--><!--[endif]--> Were there any days that no water was injected during that time period?
4. <!--[if !supportLists]--><!--[endif]--> Did the rate change after shut in?
5. <!--[if !supportLists]--><!--[endif]--> Are there any adjacent wells within 2 miles with open perforations at the same depth as the disposal well?
6. <!--[if !supportLists]--><!--[endif]--> Will the OCD do quarterly monitoring of this well, (tubing and casing pressures)?
7. <!--[if !supportLists]--><!--[endif]--> What is the maximum injection pressure allowed by OCD? Maximum amount?
8. <!--[if !supportLists]--><!--[endif]--> Why was the well granted permission to inject into this zone? Who granted the permit?
9. <!--[if !supportLists]--><!--[endif]--> Does OCD have any concerns with this well?

The City of Jal very much appreciates the work of the OCD, but without a report from your division we are not sure if these questions were answered and if the file is closed or ongoing.



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

DEPOSITION
EXHIBIT

GALLAGHER
#5

On Thursday, May 26, 2016 8:33 PM, Jim Ellison <ellisonduo@valornet.com> wrote:

We don't give a damn about their log, we want an injection profile ran to absolutely prove where that water is going.

From: Bob Gallagher
Sent: Thursday, May 26, 2016 5:23 PM
To: Jim Ellison ; MIKE ORR
Subject: Fw: Response to Jal City letter of

On Thursday, May 26, 2016 3:05 PM, Bob Gallagher <bobgallagher93@yahoo.com> wrote:

On Thursday, May 26, 2016 3:04 PM, Bob Gallagher <bobgallagher93@yahoo.com> wrote:

I have received the email and will review it. Thank you.

On Thursday, May 26, 2016 2:48 PM, Roger Johnson <rjohnson@owlinv.com> wrote:

Bob,

As we just discussed, I wanted to send over a response letter to you and the City of Jal. We certainly want to provide you guys with the facts that surely support the safety of Jal's water supply. I will be providing a copy of this response to the OCD as well. Please feel free to call me with any questions or comments.

Attached are the following items:

1. Original letter from the City of Jal dated April 28th.
2. Owl's response letter from Lonquist, our engineers on this matter.
3. Log of the subject well discussed.

Please confirm your receipt of this if you would.

Thanks,
Roger Johnson

From: Bob Gallagher
To: KAlbert@universal-water.com; jimalice@hotmail.com; gallagherdmq@yahoo.com; nadine.welch@midwayisd.org; jagallagher62@yahoo.com; amandaegallagher@yahoo.com; bryanflivnn@gmail.com; courtwelch@gmail.com; Welch Doug; gpgallagher2007@yahoo.com; gregoryd_welch@student.midwayisd.org; laura.ramirez121@gmail.com; mlopezdegallagher@gmail.com; Gallagher Rob; stephwelch25@gmail.com; Roxie; Tod Phinney; tcope@cpotash.com; James Smith; Cindy Gray; triddle@rmmsonline.com; Tony Trujillo@FMI.com; Taylor@russellandstott.com; Moore Debbi; Doug Mize; Russell Doss; Fulfer Gregg; feuer marlene; Frank.Santiago@conocophillips.com; Edwards Jenny; Ellison Jim; James Jennifer; JackHertz@aol.com; kevinburgertime@gmail.com; pknapp2@ad.nmsu.edu; krkemper@huitt-zollars.com; Slaton Krista; Yelin Ken; chcc8w@yahoo.com; kimfulfer@aol.com; lanejwall@yahoo.com; dougc@jaynescorp.com; eddiecarroll@verizon.net; Nezzar Rick; ed@jurneyconst.com; mlutz@yourlinencompany.com; Cope Zac; vanmyrick@cityofjal.us; mayor@cityofjal.us; joan193855@gmail.com; mikeojal@yahoo.com; dnjenn@windstream.net; ymakan722@gmail.com
Subject: Should Sandoval County welcome oil exploration in our area? | News | rrobserver.com
Date: Sunday, November 22, 2015 5:02:48 PM

All, Sandridge energy is a client of mine and is proposing to drill and exploratory well out west of Sandoval County and Rio Rancho. The local newspaper is doing a poll and I would very much appreciate it if you would take just 30 seconds click on the link and vote yes. Thank you and hope to talk or see everyone soon

http://m.rrobserver.com/news/poll_b50d63a4-8ca3-11e5-9b2a-77ecb204ee47.html

Sent from my iPhone

From: Bob Gallagher
To: angelafaye.cross@state.nm.us; Ryan Biehl; Tod Phinney
Cc: mayor@cityofjal.us; "Trevino Amella"; "JoAn Chesser"; "Orr Mike"; "Jim Ellison"; "Jennings James"; mbeckham29@aol.com
Subject: FW: Jal Water Supply System, NM3521713 - Construct CP-1256 Wells
Date: Thursday, March 10, 2016 4:12:09 PM
Attachments: [Untitled attachment 00293.htm](#)
[Nonpublic Wells not Recommended at Propose Site.pdf](#)
[Untitled attachment 00296.htm](#)

Ms. Faye,

I was just made aware of the existence of this letter. I thank you for your comments and we will look into your advice. But as you noted at the first of your letter the DWB has no regulatory authority over non-potable water systems or use. We will proceed forward to the bidding phase noting your comments. I just got off the phone with your bureau chief and told her our plans and she concurred. Thank you for your time, but my concern is these plans laid in your office since October and now we are 5 months down the road only to find out they should never have been submitted to you.

From: "Cross, Angela Faye, NMENV" <angelafaye.cross@state.nm.us>
Date: February 5, 2016 at 7:08:58 PM MST
To: "vanmyrick@cityofjal.us" <vanmyrick@cityofjal.us>
Cc: "ryan.biehl@soudermiller.com" <ryan.biehl@soudermiller.com>, "Rhoton, Sara, NMENV" <Sara.Rhoton@state.nm.us>, "Garcia, Brandi, NMENV" <Brandi.Garcia@state.nm.us>, "Torres, David, NMENV" <David.Torres@state.nm.us>, "Nathanson, Peter, NMENV" <Peter.Nathanson@state.nm.us>
Subject: Jal Water Supply System, NM3521713 - Construct CP-1256 Wells

Mr. Myrick,

The proposed project for construction of CP-1256 POD 1, CP-1256 POD 2, CP-1256 POD 3, CP-1256 POD 4 would result in siting wells near contamination sources. I would not recommend construction non-public water supply wells at the proposed site. A formal response to your submittal is attached.

Angela Faye Cross, P.E.

From: Bob Gallagher
To: Scott McKitrick
Cc: Russell Doss; Matthew Earthman; Jim Ellison; Mikeopal
Subject: Re: Letter to OCD re: Injection well
Date: Tuesday, May 31, 2016 1:16:39 PM

Scott, no problem at all would like for you to fully cooperate with the OCD in this investigation. Please keep me up to date as this develops. Thank you.

Sent from my iPhone

> On May 31, 2016, at 12:21 PM, Scott McKitrick <scott.mckitrick@soudermiller.com> wrote:
>
> Bob - Phillip Goetze of the Oil Conservation Division called regarding your letter on the OWL Marolo Sholes B #2 well. He requested copies of the City's water rights appropriation application that was submitted to NMOSE, as well as the hydrogeo report we completed. Are you ok with me emailing him this information?
>
> He gave me some information on the well (depth, construction, etc.). OCD seems to currently be evaluating the construction and appropriateness of using this well for injection.
>
> _____
> Scott A. McKitrick, P.G.
> Senior Geoscientist
> Souder, Miller & Associates
> 3451 Candelaria NE, Suite D
> Albuquerque, NM 87107
> www.soudermiller.com<<http://www.soudermiller.com>>
> 505.299.0942 (office)
> 505.220.6542 (mobile)
> 505.293.3430 (fax)
>
> [SMA logo small]
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>
> <winmail.dat>

From: Bob Gallagher
To: [Tod Phinney](#); [Scott McKittrick](#)
Subject: Fwd: OWL DISPOSAL WELL
Date: Wednesday, August 31, 2016 6:00:16 PM

Please see Councilman Ellison's comments below. Thank you

Sent from my iPhone

Begin forwarded message:

From: "Jim Ellison" <ellisonduo@valornet.com>
Date: August 31, 2016 at 4:08:46 PM PDT
To: "Bob Gallagher" <citymanager@cityofjal.us>
Subject: Re: OWL DISPOSAL WELL

Perfect. You might mention to the hydrologist to request they tag bottom so we'll know the TD and can compare it to the well bore diagram that came with the information. They should do that anyway for the OCD. You have done a great job on this and I've got a lot of interesting news when you return!!!!!!!!!!!!!! Jeckel

-----Original Message----- **From:** Bob Gallagher
Sent: Wednesday, August 31, 2016 4:54 PM
To: Cheryl Chance ; Amelia Trevino ; JoAn Chesser ; **Jim Ellison ; Mikeojal ;**
mbeckham16jcc@gmail.com ; Dewayne Jennings ; Kernan Gay ;
editor@hobbsnews.com
Subject: OWL DISPOSAL WELL

Good afternoon. Wanted to let you know that the OCD has informed us today that tomorrow morning starting at 7 AM the disposal well will be tested. The injections survey should take a couple of hours and will be observed, from start to finish by two employees of the Hobbs OCD office as well as by an hydrologist with Souder Miller and associates. I will keep you informed on any information that we receive immediately following the test

Sent from my iPhone

This email has been checked for viruses by Avast antivirus software.
<https://www.avast.com/antivirus>

From: Lilla Reid
To: joan193855@gmail.com; [Bob Gallagher](#)
Cc: Mayor; [Amelia Trevino](#); mbeckham16jcc@gmail.com; [Mikeojal](#); [Jim Ellison](#); [jennings james](#); [Russell Doss](#)
Subject: RE: USDA
Date: Wednesday, February 08, 2017 7:02:35 AM
Attachments: [image011.png](#)
[image014.png](#)

Hello Ms. Chesser:

Excellent question. The City of Jal has submitted all the required documents to USDA RD. The local USDA RD office reviewed the submitted loan closing documents, decided the package was complete and forwarded to the USDA RD general council. All the documents have been provided and the City of Jal is waiting for general council review and then approval from USDA RD to bid the project. Please feel free to contact me if you have any comments and/or questions.

Hope this helps

Lilla J. Reid, P.E.
Senior Design Manager

Personal Registrations: PE NM (17634), PE AZ (49278)
Corporate Registrations: AZ Engineering/Geology/Surveying Firm (14070), SD Surveying Firm (C-7436), TX Engineering Firm (8877), TX Geology Firm (50254), TX PST CAPM (CS-0000051), TX Surveying Firm (10162200), WY Engineering/Surveying Firm (S-1704)



Souder, Miller & Associates

Engineering ♦ Environmental ♦ Surveying

3500 Sedona Hills Parkway
Las Cruces, NM 88011

www.soudermiller.com

(800) 647-0799 (office)

(575) 644-4575 (mobile)

(575) 647-0680 (fax)



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From: joan193855@gmail.com [mailto:joan193855@gmail.com]
Sent: Tuesday, February 7, 2017 11:02 AM
To: [Bob Gallagher <citymanager@cityofjal.us>](mailto:citymanager@cityofjal.us); Lilla Reid <lilla.reid@soudermiller.com>
Cc: Mayor <mayor@cityofjal.us>; [Amelia Trevino <trevino.amelia@yahoo.com>](mailto:trevino.amelia@yahoo.com);
mbeckham16jcc@gmail.com; [Mikeojal <mikeojal@yahoo.com>](mailto:mikeojal@yahoo.com); [Jim Ellison <ellisonduo@valornet.com>](mailto:ellisonduo@valornet.com); jennings james <dnjenn@windstream.net>; [Russell Doss <russell.doss@soudermiller.com>](mailto:russell.doss@soudermiller.com)
Subject: RE: USDA

SMA-DT08287

Is this what is holding up our installation of new water lines? I thought we had already jumped through all the hoops that USDA required, and we have been approved for the loan? It seems that we still have other conditions to meet, or they are making sure we have met those conditions!
Thank You,
JoAn Chesser

Sent from [Mail](#) for Windows 10

From: Bob Gallagher
Sent: Wednesday, February 1, 2017 12:57 PM
To: Lilla Reid
Cc: Mayor; Amelia Trevino; joan193855@gmail.com; mbeckham16jcc@gmail.com; Mikeojal; Jim Ellison; jennings james; Russell Doss
Subject: Re: USDA

Just checking to see if there is any update.

Sent from my iPad

On Jan 27, 2017, at 3:33 PM, Lilla Reid <lilla.reid@soudermiller.com> wrote:

Hello Mr. Gallagher:

SMA contacts USDA RD Las Cruces office weekly and requests an update on the Jal water system improvement project. The letter of conditions is still being reviewed by USDA general council. Ms. Sandra Alarcon of USDA RD did try to contact USDA RD general council today will no response. Ms. Alarcon assured me that she would provide an additional update next week. Please feel free to contact me if you have any comments and/or questions.

Hope this helps

Lilla J. Reid, P.E.
Senior Design Manager

Personal Registrations: PE NM (17634), PE AZ (49278)
Corporate Registrations: AZ Engineering/Geology/Surveying Firm (14070), SD Surveying Firm (C-7435), TX Engineering Firm (8877), TX Geology Firm (50254), TX PST CAPM (CS-0000051), TX Surveying Firm (10162200), WY Engineering/Surveying Firm (S-1704)

<image007.png>

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Las Cruces, NM 88011

www.soudermiller.com
(800) 647-0799 (office)
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<image003.jpg> <image004.jpg> <image005.png> <image006.jpg>

SMA-DT08288

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From: Bob Gallagher [<mailto:citymanager@cityofjal.us>]

Sent: Thursday, January 26, 2017 12:56 PM

To: Lilla Reid <lilla.reid@soudermiller.com>

Cc: 'Mayor' <mayor@cityofjal.us>; 'Amelia Trevino' <trevino.amelia@yahoo.com>; joan193855@gmail.com; mbeckham16jcc@gmail.com; 'Mikeojal' <mikeojal@yahoo.com>; 'Jim Ellison' <ellisonduo@valornet.com>; 'jennings james' <dnjenn@windstream.net>

Subject: USDA

Good morning. We are getting numerous inquiries from our citizens as to when the water line replacement project will begin. Have you heard anything from USDFA
Can we put some pressure on the?

From: Jim Ellison <citymanager@cityofjal.us>

Subject: Meeting

Date: July 11, 2017 at 11:19 AM

To: "Bob Gallagher" <citymanager@cityofjal.us>

Good job for an attack dog!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!

From: Bob Gallagher

Sent: Tuesday, July 11, 2017 10:58 AM

To: 'Fore, Allen'

Cc: 'Mayor'; 'Amelia Trevino'; 'JoAn Chesser'; 'Melody Beckham'; 'MIKE ORR'; 'Jim Ellison'; <dnjenn@windstream.net>; <editor@hobbsnews.com>; 'Levi Hill-ManagingEditor'

Subject: FW: Meeting

Allen,

I have yet to hear back from you in reference to my attached email dated May 25, 2017. I am very concerned that this issue has returned to a non-issue for Kinder Morgan while Jal suffers. In fact, maybe the reason for the silence is the legal notification we found to allow Kinder Morgan to appropriate 400 acre feet of water from the Captain Basin for industrial and commercial purposes. This location is within 5 miles of where the City was turned down by the State Engineer for 900 acre feet of water from the same basin for drinking water for our citizens. I can only speculate you will use this water in the same manner as you are the water from our disputed well, lease them to RockHouse for their use, never utilizing one drop of water for beneficial use for Kinder Morgan. We have hired a water attorney and will vigorously fight this application.

If I do not hear back I will assume Mr. Kinder has decided that our situation is not worth the time of day, which would be an unusual change of mind given his response to our letter approximately one year ago. Look forward to hearing back from you.

From: Bob Gallagher [mailto:citymanager@cityofjal.us]

Sent: Wednesday, May 24, 2017 1:58 PM

To: 'Fore, Allen' <Allen_Fore@kindermorgan.com > >

Subject: RE: Meeting

Allen,

To say I am disappointed would be a major understatement. I thought we were moving towards an agreement but yet we are truly back to the beginning except you give us \$50,000 one-time payment and take away \$20,000 per year. We have negotiated in good faith, as you know we significantly reduce our proposal at our last face to face meeting here in Jal. As you asked me to take another look at our proposal, which we did, I would ask you to do the same. The proposal you outlined above is not acceptable to the City. We have completed our legal research on condemnation procedures as well as the eminent domain process. I bring these to your attention not as a threat but to let you know we are badly in need of water and this well, with its history, is our best and quickest resource. I look forward to hearing back from you in the spirit of cooperation.

From: Fore, Allen [mailto:Allen_Fore@kindermorgan.com]

Sent: Thursday, May 11, 2017 9:46 AM

To: Bob Gallagher <citymanager@cityofjal.us > >

Subject: RE: Meeting Exhibit 10

Bob, enjoyed our recent meeting in Jal. I have discussed your proposal with our management team and here is where we stand:

- EPNG would permanently deed 50 acre-feet of water rights from the subject well to the City of Jal. The City of Jal would make the notifications /applications with the applicable regulators to move the 50 acre feet.
- EPNG and City of Jal would terminate the revenue sharing agreement from the subject well effective June 1, 2017.
- EPNG would make a one-time payment to the City of Jal for \$50,000, payable January 31, 2018.
- The City of Jal will immediately withdraw the protest of OSE File No. 1459.

These items are tentative and subject to final review and approval by our management team. Let me know your thoughts.

As always, look forward to your response and continuing to work with you and the City of Jal.

Regards,

Allen Fore

Vice President, Public Affairs
Kinder Morgan
630-725-3044

From: Bob Gallagher [<mailto:citymanager@cityofjal.us>]
Sent: Tuesday, April 25, 2017 11:51 AM
To: Fore, Allen
Subject: Meeting

[This email message was received from the Internet and came from outside of Kinder Morgan]

I want to express mine as well as the Mayor and City Council's appreciation and thanks for our meeting this morning. This is your 2nd trip to Jal and it is very much appreciated. As I review my notes of our meeting, I wanted to reach out to you and put what we talked about in writing for your review. I also checked on OSE File No. CP-1459, your application for permit to appropriate groundwater within the Capitan Underground water basin. The hearing, which the City of Jal is a protestant, is scheduled for tomorrow 2 pm, if we are able to reach a verbal agreement concerning the water well, we are prepared to immediately withdraw our protest.

- Kinder Morgan would permanently deed 125 (125) acre-feet of water right from the subject well to the City of Jal and make arrangements for the City to be able to properly utilize these rights;
- The City would release Kinder Morgan from the revenue sharing agreement from the subject well;
- Kinder Morgan would make a one time payment to the City of up to \$250,000 or 50% of the cost to the city of drilling a new water well, which is less;


- The City would make immediate plans to begin and finish the construction and operation of a new water well that would furnish drinking water to the citizens of Jal;
- The City would be responsible for all permitting and other requirements of such new well;
- The City is prepared to move forward with our protest of OSE File No. 1459, but will immediately withdraw such protest if this proposal or a similar proposal is agreed upon by both parties.

I very much appreciate the opportunity to present the proposed language to you. As you can see, it is considerably less than our last proposal, but would still allow the city to move forward in a positive manner. I present this proposal to you in the manner it is meant, in a professional, constructive and positive way.

I look forward to hearing back from you and I would be happy to answer any questions or provide additional information if needed or requested.



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

From: Gregg Vance Fallick GVF@FallickLaw.com 
Subject: Jal Record v. Jal
Date: August 13, 2018 at 5:17 PM
To: Laura E. Sanchez-Rivet LSanchez-Rivet@cuddymccarthy.com



*

THIS COMMUNICATION IS TRANSMITTED BY AN ATTORNEY, IS INTENDED ONLY FOR THE USE OF THE ADDRESSEE, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED AND CONFIDENTIAL.

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THANK YOU.

*

Message:


Laura — FYI, I am attaching a pdf copy of the index of the binder that I provided to you at the April 3, 2018 hearing, which included an e-mail about the unproduced IPRA document we discussed today as well as various others. I will find those e-mails soon (hopefully tomorrow) and forward you copies. — Gregg

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| 3 | Price February 6, 2018 Correspondence |
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| 5 | Gallagher Responses to Interrogatories |
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| 7 | January 8, 2018 E-Mail |
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| 12 | Response to Motion for Protective Order (Court Binder Only) |
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| 16 | Reserved |
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Gregg Vance Fallick
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(505) 842-6000 (Telephone)
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GVF@FallickLaw.com

From: Gregg Vance Fallick GVF@FallickLaw.com 
Subject: Fwd: Desert Town Investments, LLC, d/b/a The Jal Record v. The City of Jal, et al. (10.2.2017 Production -- #1)
Date: August 14, 2018 at 11:16 AM
To: Laura E. Sanchez-Rivet LSanchez-Rivet@cuddymccarthy.com



Message:

Laura — I am forwarding to you this January 29, 2018 3:13 p.m. e-mail, which follows-up on the non-production of the “Trip Report Chevron” document. This is the document you brought up and expressed confusion a out at yesterday’s hearing. Please produce this document immediately. Thank you. — Gregg

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(505) 842-6001 (Facsimile)
GVF@FallickLaw.com

Begin forwarded message:

From: Gregg Vance Fallick <GVF@FallickLaw.com>
Subject: Fwd: Desert Town Investments, LLC, d/b/a The Jal Record v. The City of Jal, et al. (10.2.2017 Production -- #1)
Date: January 29, 2018 at 3:13:30 PM MST
To: "Laura E. Sanchez-Rivet" <LSanchez-Rivet@cuddymccarthy.com>
Cc: Gloria Williams <GWilliams@cuddymccarthy.com>, Mike Newell <mnewell@newelllawnm.com>, Sage Jones <sjones@newelllawnm.com>

Message:

Laura —

This will be my final e-mail regarding outstanding issues for now; that is, until I have the opportunity to review the production of the hard drive in accordance with the Court’s January 17, 2018, First Pretrial Order Pursuant to Rule 1-016 NMRA.

When Dennis Maez and I met with you, Mike Newell, and Sage Jones in Mike’s office following the December 19, 2017 hearing, I learned for the first time that the box of documents Mr. Ellison provided to Mike included two documents that were not produced, as well as information on a number of file folders that likewise were

not produced, as well as information on a number of the folders that likewise were not copied and produced. I asked for copies of those items.

- I received a copy of one of those documents during our meeting: The Chevron document entitled "MidContinental/Alaska Risk Assessment: Stimulation of Offset Wells." (I also received copies of a handful of other documents that defendants previously had produced with control numbers, for the purpose of showing that Mr. Ellison was the source of those particular documents.)
- I also understood that I would be receiving pdf copies of the file folders (highlighted in yellow in the attached index), but I do not have any record of receiving them. Accordingly, by copy of this letter to Mike and Sage, I request that they forward those copies right away.
- Finally, regarding the "Trip Report Chevron" (highlighted in red in the attachment), I said that I recognized the defendants' failure to produce this document despite having represented to the Court that everything had been produced was an honest mistake resulting from a miscommunication between Mike and Sage, but that I did want a copy of the document given that the mistake had been identified. However, at your request Laura, I agreed to wait to receive the "Trip Report Chevron" until you had an opportunity to review it. You made this request because the document on its face is designated as confidential, and you were concerned about producing it without having read it. But I pointed out that (1) again, defendants had represented to the Court that plaintiff already had received all of the documents, (2) defendants in fact already had produced a number of other Chevron documents designated as confidential, and (3) regardless of any designation placed on the face of the document, it thereafter was given to Mr. Ellison by a Chevron representative (who had apparent authority to release the document, whether or not she had actual authority to do so). Accordingly, as I said at our meeting, defendants have no right to withhold the document from plaintiff.

Therefore, again by copy of this e-mail, I request that Mike and Sage send me a pdf copy of the "Trip Report Chevron," and that you advise them that you approve of (or alternatively do not object to) them doing so.

Thank you. — Gregg



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CHRIS IRLE FOLDER

Capitan Reef Complex Structure and Stratigraphy City 001430-1500

INACTIVE CHEVRON WELLS

NOT PRODUCED Trip Report Chevron

NOT PRODUCED MidContinent Chevron Risk Assessment

Email dated 8-30-11 from Rodney G. Bailey to Denise Wann City 001501-1508

Key Issues in Multilateral Technology City 001509-1523

Rio Grande River Map City 001524

Capitan Reef Complex Structure and Stratigraphy Sept 2009 City 001525-1583

Maps City 001584-1585

Board Water infrastructure to cost \$53 billion- Midland Reporter-Telegram
10/23/11 City 001586-1589

New Mexico Water History- New Mexico Office of the State Engineer City 001590-1593

Permian Basin Dynamics City 001594-1602

Permian Reefs and Carbonate Complexes, West Texas City 001603-1622

Settlement Agreement- State Engineer City 001623-1643

Water Clean up Contacts City 001644

Maps City 001645-1646

Water Issues Facing the Pecos Basin of Texas City 001647-1654

Water Management and Conservation Plan Permian South Operations City 001655-1659

NOT IN FOLDER

Future Water Needs of the Oil and Gas Industry City 001660-1663

The Need to Find New Water Sources City 001664-1673

MISC. FOLDER 1

Oil and Gas Caves create long-term water contamination concerns City 001674-1676

NMOCD Order of Division Pronghorn SWD System for SWD City 001677-1683

NMOCD Order of Division Anadarko Petroleum Corp for SWD City 001684-1691

NMOCD Well Location and Acreage Dedication Plat for Woolworth SWD
API 30-025-42549 City 001692-1696

Letter from Bob Gallagher to Matthew Earthman with Souder Miller & Assocs. . . City 001697

Friction Pressure Drop City 001698-1699

Lea County Regional Water Plan Section 5 Legal Issues City 001700-1706

NMOCD West Jal Disposal file API 30-025-26676 City 001707-1779

NOT IN FOLDER

NMOCD Letter dated 4-23-92 to Eluid L Martinez with State Engineer's
Office City 001780-1781

MITCH HARRIS GUADALUPE MOUNTAINS

Commercial Exploitation and the Origin of Residual Oil Zones: Developing a Case History in the
Permian Basin of NM and West TX City 001782-1938

Geologic Framework of the Capitan Reef City 001939-1950

Guadalupe Mountains National Park City 001951-1996

Syn depositional deformation of the Permian Capitan reef carbonate platform, Guadalupe Mountains,
New Mexico, USA City 001997-2034

Synsedimentary Deformation of the Upper Permian Capitan Reef Carbonate Platform, New Mexico,
USA City 002035-2037

Tectonic and petroleum influences on speleogenesis in the Guadalupe Mountains, New Mexico and
Texas City 002038-2084

The Capitan Margin of the Guadalupe Mountains- A Field Trip Guide City 002085-2130

WATER QUALITY IN THE CAPITAN REEF

Water Quality in the Capitan Reef Aquifer City 002130-2131

URANIUM ISOTOPE STUDY

Capitan Reef Complex Structure and Stratigraphy- Errata City 002132-2135

Case Study 4- Post- Permian Dissolution over the Capitan Reef City 002136-2137

Reply “Post-Speleogenetic Erosion and its Effect on Caves in the Guadalupe Mountains, New Mexico and Texas City 002138-2139

Uranium Isotope Disequilibrium in Groundwaters of Southeastern New Mexico and Implications Regarding Age-Dating of waters City 002140-2161

PRODUCED WATER DISPOSAL

Produced Salt Water: The Next Resource Play? Solving Oil Industry Problems via Paradigm Shifts, New Technologies, Markets and Community Partnerships City 002161-2169

Produced Water Disposal City 002170-2192

PLANNING AN SWD

Things to consider when planning for SWD needs: City 002193-2194

Salt-Water Disposal Systems City 002195-2214

NOT IN FOLDERS

A Typical Class II Injection Well City 002215

Capitan Reef Complex City 002216-2218

NMOCD Capitan Reef SWD API 30-025-25957 City 002219-2251

Cenozoic Pecos Alluvium Aquifer City 002252-2266

D&C Schedule City 002267

The Geology and Hydrogeology of the Capitan Aquifer: A Brief Overview City 002268-2281

El Capitan Source Water System City 002282-2287

Email dated 5-5-16 from Scott McKittrick to various recipients Re City of Jal

| | |
|--|------------------|
| Information | City 002288-2290 |
| Evaporites, Casing Requirements, Water-floods, and Out-of-formation Waters: Potential for Sinkhole Developments | City 002291-2300 |
| Geohydrology of the Delaware Basin and Vicinity, Texas and New Mexico | City 002301-2401 |
| Ground Water Atlas of the United States, Oklahoma, Texas | City 002402-2408 |
| Guadalupe Mountains National Park Information Page | City 002409-2421 |
| Guadalupian (Artesia Group) and Ochoan Shelf Succession of the Permian Basin: Effects of Deposition, Diagenesis and Structure on Reservoir Development | City 002422-2521 |
| Hydrogeologic Impact Assessment Report, Ochoa Mine Project | City 002522-2752 |
| ICP Commences Brackish Water Testing as POT Eyes Bullish Outlook on Potash Demand | City 002753-2756 |
| Late Paleozoic Sedimentation in West Texas Permian Basin | City 002757-2776 |
| Marlo Sholes B #2 diagram | City 002777 |
| Email dated 12-29-15 from Greg Hinterlong to Denise Wann, Fujun Chen .. | City 002778-2779 |
| Email dated 3-4-16 from Jim Ellison to Melody Beckham and Mike Orr ... | City 002780-2781 |
| IC Potash Commences Program to Confirm Chemistry of Processing Water | City 002782-2786 |
| A Dry Odessa Wonders if Desalination is the Answer- The Texas Tribune . | City 002787-2789 |
| Water revenues down for city- Odessa American | City 002790-2794 |
| Water Revenues down for city- Odessa American | City 002795-2797 |
| Summit: Just a few hurdles left- Summit Power | City 002798 |
| Carlsbad, NM Water Department | City 002799-2801 |
| National Cave and Karst Research Institute Annual Report 2007-2008 | City 002802-2857 |

From: Gregg Vance Fallick GVF@FallickLaw.com

Subject: Fwd: Desert Town Investments, LLC, d/b/a The Jal Record v. The City of Jal, and Robert Gallagher, et al., D-506-CV-2016-01346

Date: August 14, 2018 at 12:55 PM

To: Laura E. Sanchez-Rivet LSanchez-Rivet@cuddymccarthy.com



Message:

Laura —

This forwarded e-mail is the January 8, 2018 e-mail Plaintiff presented to Judge Clingman at the April 3, 2018 Hearing and found at tab 7 of the binder I provided to you on that date.

Judge Torgerson's May 21, 2018 decision provided for the production of the IPRA documents sought in this forwarded e-mail (referenced in the third to last paragraph below beginning with "Second, regarding my communications with Mike . . .).

This is just one example of why this litigation has been so burdensome and expensive. These documents were within the scope of Plaintiff's initial IPRA request. Defendants first falsely claimed that everything was produced and filed a motion for protective order to block discovery about it. Then Defendants were forced to acknowledge otherwise at Defendant Gallagher's deposition, and Defendants identified these documents as not having been produced but refused to produce them. I sent Defendants e-mails on October 9, 2017, October 16, 2017, October 23, 2017, October 28, 2017, and November 24, 2017, all in Plaintiff's ongoing effort to obtain production of these documents. Then I sent you the January 8, 2018 e-mail I now am forwarding, with attachments (including all in the above-referenced follow-up emails, in the Newell 11.24.17 pdf).

When I received no response to any of this efforts, I presented this to the Court at the April 3rd hearing as an example of the City's ongoing non-compliance. Defendants still did not produce the documents. Thereafter we received the documents as a result of Judge Torgerson's ruling. And finally, Plaintiff was required to incur additional legal expenses today in order to confirm that this request now is moot, because the requested documents were included in the Gallagher hard drive (produced to S.W.A.T. over Defendants' objections), and then ordered released by Judge Torgerson (again over Defendants' objections).

— Gregg

Gregg Vance Fallick
FallickLaw, LTD.
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Gold Avenue Lofts
100 Gold Avenue, SW
Albuquerque, New Mexico 87102

Exhibit 13

(505) 842-6000 (Telephone)

(505) 842-6001 (Facsimile)

GVF@FallickLaw.com

Begin forwarded message:

From: Gregg Vance Fallick <GVF@FallickLaw.com>

Subject: Desert Town Investments, LLC, d/b/a The Jal Record v. The City of Jal, and Robert Gallagher, et al., D-506-CV-2016-01346

Date: January 8, 2018 at 1:33:51 PM MST

To: "Laura E. Sanchez-Rivet" <LSanchez-Rivet@cuddymccarthy.com>

Cc: Mike Newell <mnewell@newelllawnm.com>, Sage Jones <sjones@newelllawnm.com>

Message:

Laura —

I am writing to recap a number of outstanding, unresolved issues from my communications with you and with Mike.

First, regarding our communications:

1. Please let me know as soon as you have Defendants' decision about whether or not Defendants consent to the filing of Plaintiff's amended complaint. (Please see the attached copies of prior communications and Defendants' pending motion to amend.) If Defendants do consent, I will prepare a proposed consent order incorporating the terms of the consent form I e-mailed on December 24th and noting that the opposed motion is withdrawn. Alternatively, as you know, the Court has set a telephonic hearing on the motion for January 22nd at 8:15 a.m. (notice also attached).



Sanchez-Rivet
12.24.2...att.pdf



Sanchez-Rivet
12.27.2...ails.pdf



Plaintiff The Jal

Record...ed).pdf



Notice of
Hearin...ed).pdf

2. Please let me know if you approve plaintiff's proposed form of Order attached to my January 6, 2018 e-mail. That e-mail with attachment and related e-mails are attached.



Sanchez-Rivet
1.6.201...ail.pdf



Sanchez-Rivet
12.21.2...ail.pdf



Sanchez-Rivet
12.21.2...il2.pdf

3. Please let me know when Defendants have made their decision about whether or not to pursue the pending motion to strike (see attached 12/27/2017 e-mail).



Sanchez-Rivet
12.27.2...ail.pdf

Second, regarding my communications with Mike, please see the attached e-mail exchanges ending with my November 24, 2017 e-mail (below). For the reasons stated in those exchanges of e-mail, I request that Defendants immediately produce the July 13, 2017, June 15, 2017, and August 28, 2016 e-mails discussed at length in these attached e-mails. While I understand that the other issues I raised in these e-mails will require more time and effort to resolve, it seems to me that plaintiff plainly is entitled to the production of these three e-mails and that this production could be accomplished very quickly and easily. Therefore, the production of these three e-mails would be a good start in trying to resolve whatever can be resolved amicably. without the assistance of the Court or the

special master.



Newell
11.24.2...ail.pdf

I would appreciate your prompt response.

Thank you. — Gregg

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THANK YOU.

Message:

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(505) 842-6001 (Facsimile)
GVF@FallickLaw.com

From: Gregg Vance Fallick GVF@FallickLaw.com
Subject: Re: Desert Town Investments, LLC, d/b/a The Jal Record v. The City of Jal, et al. (10.2.2017 Production -- #1)
Date: November 24, 2017 at 9:06 AM
To: Mike Newell mnewell@newellawnm.com
Cc: Sage Jones sjones@newellawnm.com



Message:

Mike —

I have heard nothing more from you since this October 28th e-mail about my attempts to resolve the outstanding issues regarding the documents provided to you by SWAT on September 14, 2017. See appended September 14th e-mail chain and my follow-up e-mails regarding same. If you are in the office today, please call me. If you are out, please call me Monday.

Again, any of these issues that the parties are capable of resolving without judicial involvement should be resolved before the December 19th hearing. To the extent that any of those issues remain unresolved by December 19th, I intend to address them at the hearing.

Thank you. — Gregg

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On Oct 28, 2017, at 4:12 PM, Mike Newell <mnewell@newellawnm.com> wrote:

I know I need to get together with you on this email. It's been that kind of a week. But I wanted to touch base about what might be a situation. I have hearings Monday afternoon in Santa fe. Several motions including as msj. Looking at the weather it appears sometime late afternoon and evening they expect snow. Obviously clines corner can be problematic. My intent is to drive back and be at the depo but weather may be a problem so if you want to reschedule out of an abundance of caution I have no problem with that. Obviously if we go forward I will keep you informed if any problems arise Monday.

On Mon, Oct 23, 2017, 9:17 AM Gregg Vance Fallick <GVF@fallicklaw.com> wrote:

**

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THANK YOU.

**

Message:

Mike —

I still have not received your answer to this October 9, 2017 e-mail, about which I last wrote to you on October 16th.

Unless we can work these issues out, I will have no alternative but to seek the assistance of the Court.

As a first step in your client cooperating in resolving these issues amicably, I demand that you immediately produce the three e-mail referenced in my October 9th e-mail in the paragraph beginning “Second,” which you withheld on the sole basis that they allegedly are “confidential.” As I have said, that is not a basis for refusal to disclose documents under IPRA, because New Mexico governmental bodies may not keep non-privileged documents secret simply because public officials prefer to keep them “confidential.”

Again, these three documents, as listed in my October 9th e-mail, are the following:

- July 13, 2017 e-mail from Jessica Lucero to Cheryl Chance and Bob Gallagher Re: City of Jal Special Audit FY’s 2008-2017 (Bob Gallagher Folder/Inbox Folder);
- June 15, 2017 e-mail from Bob Gallagher to Cheryl Chance Re: Fwd: CONFIDENTIAL - City of Jal Findings (Mayor Cheryl Chance’s Folder);
and

- August 28, 2016 e-mail from Bob Gallagher to Cheryl Chance and seven others regarding Fwd: Maralo Sholes B Well No. 2 - Injection Survey (Melody Beckham's Folder).

Thank you. — Gregg

Gregg Vance Fallick
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(505) 842-6001 (Facsimile)
GVF@FallickLaw.com

On Oct 16, 2017, at 5:28 PM, Gregg Vance Fallick <GVF@FallickLaw.com> wrote:

Message:

Mike — I would appreciate having your answer to this e-mail by the end of this week. Thank you. — Gregg

Gregg Vance Fallick
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GVF@FallickLaw.com

On Oct 9, 2017, at 3:25 PM, Gregg Vance Fallick <GVF@FallickLaw.com> wrote:

Message:

Mike —

This is the first in what will be a series of e-mails attempting to resolve (or failing that, to narrow) issues regarding the documents recovered by SWAT from Mr. Gallagher's computers that were produced by your office on October

2, 2017.

First, while your September 21, 2017 e-mail stated that SWAT provided your office with a total of 4,181 e-mails, your office produced 3,434 electronic documents in msg format and provided privilege logs identifying 744 e-mails that you refused to produce, for a total of 4,178. Please explain this discrepancy and please produce all of the e-mails produced by SWAT that are not identified in your privilege logs.

Second, your privilege logs identify as a purported basis for refusing to produce several e-mails that they allegedly are “Confidential,” although they are not identified as protected by the attorney-client privilege or any other privilege recognized by IPRA as a proper basis for the refusal to disclose. Accordingly, please immediately produce the following:

- July 13, 2017 e-mail from Jessica Lucero to Cheryl Chance and Bob Gallagher Re: City of Jal Special Audit FY’s 2008-2017 (Bob Gallagher Folder/Inbox Folder);
- June 15, 2017 e-mail from Bob Gallagher to Cheryl Chance Re: Fwd: CONFIDENTIAL - City of Jal Findings (Mayor Cheryl Chance’s Folder); and
- August 28, 2016 e-mail from Bob Gallagher to Cheryl Chance and seven others regarding Fwd: Maralo Sholes B Well No. 2 - Injection Survey (Melody Beckham’s Folder).

Third, while qui tam lawsuits are brought for the benefit of governmental entities, the governmental entities are not the “clients” in qui tam cases. That is particularly true where officials of the governmental entity have expressed their disagreement — and even their hostility — toward the case. Accordingly, please immediately produce the following e-mails, which your privilege logs improperly identify as “Attorney/Client Communications:”

- Two February 15, 2017 e-mails from Bob Gallagher to Sean Cunniff and you (Bob Gallagher Sent Items Folder);
- January 4, 2017 e-mail from Bob Gallagher to Sean Cunniff (Bob Gallagher Sent Items Folder);
- March 15, 2017 e-mail from Sean Cunniff to Bob Gallagher, with seven ccs (Mayor Cheryl Chance’s Folder);
- Two March 15, 2017 e-mail from Bob Gallagher to Sean Cunniff, with seven ccs (Mayor Cheryl Chance’s Folder);
- March 20, 2017 e-mail from Sean Cunniff to Bob Gallagher and you (Bob Gallagher Folder/ Inbox Folder);
- March 20, 2017 e-mail from Sean Cunniff to Bob Gallagher and you (Bob Gallagher Folder/ Deleted Messages Folder); and
- March 28, 2017 e-mail from Sean Cunniff to Jenny Edwards, with ccs to Bob Gallagher and you (Bob Gallagher Folder/Deleted Messages Folder).


Fourth, any and all other communications identified on your privilege logs as “Attorney-Client Communications” that include recipients outside of the attorney-client relationship and/or that otherwise were disclosed at any time to persons outside of the attorney-client relationship cannot properly be withheld under IPRA. Accordingly, please immediately produce all other such e-mails identified in your privilege logs and withheld from production.

Fifth, the attorney-client privilege does not extend to communications among non-lawyers, in which no lawyer participated. Accordingly, please immediately produce all of the e-mails exchanged among non-lawyers with the description claiming: “Contains Attorney/Client Communications.”

Thank you. — Gregg

Gregg Vance Fallick
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Gold Avenue Lofts
[100 Gold Avenue, SW](#)
[Albuquerque, New Mexico 87102](#)
(505) 842-6000 (Telephone)
(505) 842-6001 (Facsimile)
GVF@FallickLaw.com



From: Gregg Vance Fallick GVF@FallickLaw.com 
Subject: Fwd: Attached August 29, 2017 Letter Pursuant to the Inspection of Public Records Act
Date: August 14, 2018 at 1:07 PM
To: Laura E. Sanchez-Rivet LSanchez-Rivet@cuddymccarthy.com

Message:

Laura — The e-mail forwarded below likewise was presented to Judge Clingman at the April 3rd hearing. It was at tab #9 of the binder I provided to you that day. We still have had no response. Please produce the requested documents without further delay. — Gregg

Gregg Vance Fallick
 FallickLaw, LTD.
 Suite 205
 Gold Avenue Lofts
 100 Gold Avenue, SW
 Albuquerque, New Mexico 87102
 (505) 842-6000 (Telephone)
 (505) 842-6001 (Facsimile)
GVF@FallickLaw.com

Begin forwarded message:

From: Gregg Vance Fallick <GVF@FallickLaw.com>
Subject: Fwd: Attached August 29, 2017 Letter Pursuant to the Inspection of Public Records Act
Date: January 24, 2018 at 1:40:31 PM MST
To: "Laura E. Sanchez-Rivet" <LSanchez-Rivet@cuddymccarthy.com>
Cc: Mike Newell <mnewell@newelllawnm.com>, Sage Jones <sjones@newelllawnm.com>

THIS COMMUNICATION IS TRANSMITTED BY AN ATTORNEY, IS INTENDED ONLY FOR THE USE OF THE ADDRESSEE, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED AND CONFIDENTIAL.

IF YOU ARE NOT THE INTENDED RECIPIENT, YOU STRICTLY ARE PROHIBITED FROM READING, DISSEMINATING, DISTRIBUTING, OR COPYING THE MESSAGE BELOW AND ITS ATTACHMENTS. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE ERASE ALL COPIES AND NOTIFY US IMMEDIATELY AT GVF@FallickLaw.com.

THANK YOU

THANK YOU.

Message:

Laura —

I do not have any record in my file of defendants producing any of the documents requested in this August 29, 2017 IPRA letter (below). (I do not mean to say that there may not be overlap between the requests in this letter and other document productions, resulting in a limited number of responsive documents that were produced. Rather, I mean that (a) I have no record of any documents being produced specifically in response to this letter, and (b) even assuming I did receive a limited number of responsive documents in other productions, I have no record of receiving the vast majority of the requested documents.)

By carbon copies of this e-mail to Mike and Sage, I request that they advise me if they contend defendants did produce these requested documents, and if so, to direct me specifically to the claimed production by (1) the date of production, (2) the document control numbers, (3) the correspondence accompanying the production, and (4) anything else that would direct me to the production.

Otherwise Laura, I request that defendants produce these documents (requested nearly five months ago) promptly after you complete the Court-Ordered privilege review.

Thank you. — Gregg

Gregg Vance Fallick
FallickLaw, LTD.
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100 Gold Avenue, SW
Albuquerque, New Mexico 87102
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(505) 842-6001 (Facsimile)
GVF@FallickLaw.com

Begin forwarded message:

From: Gregg Vance Fallick <GVF@FallickLaw.com>
Subject: Attached August 29, 2017 Letter Pursuant to the Inspection of Public Records Act
Date: August 29, 2017 at 2:25:48 PM MDT
To: Jenny Edwards <j.edwards@cityofjal.us>
Cc: Mike Newell <mnewell@newelllawnm.com>, Sage Jones

[<sjones@newelllawnm.com>](mailto:sjones@newelllawnm.com)

Message:

Dear Ms. Edwards — I am transmitting my attached letter of this date pursuant to the Inspection of Public Records Act. As explained in the first paragraph of the attached letter, Mr. Newell directed me to send this letter to you. — Gregg Fallick

Gregg Vance Fallick
FallickLaw, LTD.
Suite 205
Gold Avenue Lofts
100 Gold Avenue, SW
Albuquerque, New Mexico 87102
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City of Jal IPRA
Letter (...17).pdf

GREGG VANCE FALLICK

ATTORNEY AT LAW

SUITE 205

GOLD AVENUE LOFTS

100 GOLD AVENUE, S.W.

ALBUQUERQUE, NEW MEXICO 87102

TELEPHONE (505) 842-6000

FACSIMILE (505) 842-6001

GVF@FallickLaw.com

August 29, 2017

Jenny Edwards, City Clerk
City of Jal
PO Drawer 340
Jal, New Mexico 88252
(VIA E-MAIL)

Re: **Inspection Of Public Records Act Request**

Dear Ms. Edwards:

I notified Michael Newell as Defendants' attorney in *Desert Town Investments, LLC, d/b/a, The Jal Record v. The City of Jal, et al.*, No. D-506-CV-2016-01346, that I intended to serve a letter requesting production of additional public records under the Inspection of Public Records Act ("IPRA"), and I requested his direction regarding the person to whom I should direct the letter as custodian of records. Mr. Newell directed that I serve you with the letter and that I send a carbon copy to him, which I agreed to do and which I now am doing.

Pursuant to NMSA 1978, Section 14-2-8, I hereby request the right under IPRA to inspect and receive copies of *all* of the public records described below, as defined in Section 14-2-6(G).

First, please update the City's response to my October 13, 2016 IPRA letter attached hereto as Exhibit I (hereinafter "Exhibit I"), as if Exhibit I had been served today. That is, please supplement the City's prior responses to Exhibit I by permitting inspection of and producing copies of all documents not previously produced by the City, from the starting dates identified in Exhibit I through and including today, August 29, 2017. Accordingly, the City's supplemental response to Exhibit I should include all documents responsive to Exhibit I not previously provided to me by Mr. Newell, that were used, created, received, maintained, and/or held by the City (including any and all City officials, employees, and/or representatives) at any time through and including August 29, 2017. The intention of this paragraph is to obtain a

supplemental production that, together with the documents Mr. Newell previously has produced on behalf of the City (*i.e.*, City 000001 through City 003890), will constitute a complete set of all documents called for by each of the categories requested in Exhibit I, through and including August 29, 2017.

I also request the right under IPRA to inspect and receive copies of *all* of the following additional public records:

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1. All e-mails from June 7, 2016 through August 29, 2017, sent to the e-mail address mbeckham16jcc@gmail.com (referenced in City 000481, attached hereto as Exhibit 2), as addressee, carbon copy recipient, blind copy recipient, and/or otherwise.

2. All e-mails from June 7, 2016 through August 29, 2017, sent from the e-mail address mbeckham16jcc@gmail.com (referenced in Exhibit 2 hereto).

3. All documents evidencing, supporting or otherwise relating to the following testimony at Mr. Gallagher's June 13, 2017 deposition (TR-117, I. 6-10): "The Captain Reef had been identified by our consulting engineers a year before this as the potential drinking water of the City of Jal."

4. All documents evidencing, supporting or otherwise relating to anyone at any time identifying the Captain Reef as potential drinking water for the City of Jal.

5. All documents evidencing, supporting or otherwise relating to the following testimony at Mr. Gallagher's June 13, 2017 deposition (TR-123, I. 10-17): "According to the engineers, it would be less than the other formations that were maybe shallower, like the Rustler and some others. They thought that that would be the less – least expensive route for the City to go."

6. All documents evidencing, supporting or otherwise relating to anyone at any time stating anything to the effect that the clean up of the water in the portion of the Captain Reef accessible to the City of Jal to provide for the City's future drinking water would be less expensive than the clean up of water from other formations.

7. All documents evidencing, supporting or otherwise relating to anyone at any time stating anything to the effect that the clean up of the water in the portion of the Captain Reef accessible to the City of Jal to provide for the City's future drinking water would be less expensive than the clean up of water from other formations.

8. All documents evidencing, supporting or otherwise relating to anyone at any time stating anything to the effect that the clean up of the water in the portion of the Captain Reef accessible to the City of Jal would be the least expensive route for the City to provide for the City's future drinking water.

9. All documents demonstrating that the following statements (and/or any of them) in the August 2, 2017 e-mail from City Manager Bob Gallagher to Anthony Dobbs (regarding the IPRA request of Jania Pearce) posted on the jalrecordonline.com were no bids taken on this project, there was no involvement with CES. This project was not a city project and the city did not pay a penny for this project:

10. All documents that have any tendency to show that the following statements (and/or any of them) in an August 2, 2017 e-mail from City Manager Bob Gallagher to Anthony Dobbs (regarding the IPRA request of Jania Pearce) posted on the jalrecordonline.com were

false: "There were no bids taken on this project, there was no involvement with CES. This project was not a city project and the city did not pay a penny for this project."

11. All documents referring and/or relating in any manner and/or any degree to the following statements (and/or any of them) in an August 2, 2017 e-mail from City Manager Bob Gallagher to Anthony Dobbs (regarding the IPRA request of Jania Pearce) posted on the jalreccordonline.com: "There were no bids taken on this project, there was no involvement with CES. This project was not a city project and the city did not pay a penny for this project."

12. All documents referring and/or relating to the process for selecting the participants in the partnership referenced in the following statement by City Manager Bob Gallagher in the July 29, 2017 e-mail to Mike Gallagher posted on the jalreccordonline.com: "For the past couple of months the city has been working on a public/private partnership concerning the use of effluent water."

13. All documents identifying persons with knowledge of the process for selecting the participants in the partnership referenced in the following statement by City Manager Bob Gallagher in the July 29, 2017 e-mail to Mike Gallagher posted on the jalreccordonline.com: "For the past couple of months the city has been working on a public/private partnership concerning the use of effluent water."

14. All documents identifying any and all entities and persons who will and/or may profit from the participants in the partnership referenced in the following statement by City Manager Bob Gallagher in the July 29, 2017 e-mail to Mike Gallagher posted on the jalreccordonline.com: "For the past couple of months the city has been working on a public/private partnership concerning the use of effluent water."

15. All documents identifying persons with knowledge of any and all entities and persons who will and/or may profit from the partnership referenced in the following statement by City Manager Bob Gallagher in the July 29, 2017 e-mail to Mike Gallagher posted on the jalreccordonline.com: "For the past couple of months the city has been working on a public/private partnership concerning the use of effluent water."

16. All documents constituting, referring and/or relating to any and all actions by City Manager Bob Gallagher on behalf of the City of Jal relating to and/or concerning in any manner and/or to any degree the partnership referenced in the following statement by City Manager Bob Gallagher in the July 29, 2017 e-mail to Mike Gallagher posted on the jalreccordonline.com: "For the past couple of months the city has been working on a public/private partnership concerning the use of effluent water."

17. All other documents not otherwise produced in response to paragraphs 12 through 16, above, referring and/or relating to the partnership referenced in the following statement by City Manager Bob Gallagher in the July 29, 2017 e-mail to Mike Gallagher posted on the jalreccordonline.com: "For the past couple of months the city has been working on a public/private partnership concerning the use of effluent water."

18. All documents referring and/or relating to the process for selecting the participants in the "Public-Private Partnership" named the Jal Water Partners LLC.
19. All documents identifying persons with knowledge of the process for selecting the participants in the "Public-Private Partnership" named the Jal Water Partners LLC.
20. All documents identifying any and all entities and persons who will and/or may profit from the "Public-Private Partnership" named the Jal Water Partners LLC.
21. All documents identifying persons with knowledge of any and all entities and persons who will and/or may profit from the "Public-Private Partnership" named the Jal Water Partners LLC.
22. All documents constituting, referring and/or relating to any and all actions by City Manager Bob Gallagher on behalf of the City of Jal relating to and/or concerning in any manner and/or to any degree the "Public-Private Partnership" named the Jal Water Partners LLC.
23. All other documents related to the Jal Water Partners LLC, not otherwise produced in response to paragraphs 18 through 22, above.
24. All documents referring and/or relating to the process for selecting the participants in the Jal Water Alliance, LLC.
25. All documents identifying persons with knowledge of the process for selecting the participants in the Jal Water Alliance, LLC.
26. All documents identifying any and all entities and persons who will and/or may profit from the Jal Water Alliance, LLC.
27. All documents identifying persons with knowledge of any and all entities and persons who will and/or may profit from the Jal Water Alliance, LLC.
28. All documents constituting, referring and/or relating to any and all actions by City Manager Bob Gallagher on behalf of the City of Jal concerning in any manner and/or to any degree the Jal Water Alliance, LLC.
29. All other documents related to the Jal Water Alliance, LLC, not otherwise produced in response to paragraphs 24 through 28, above.
30. All documents constituting, referring and/or relating to any and all actions by City Manager Bob Gallagher on behalf of the City of Jal concerning in any manner and/or to any degree DJ Engineering.
31. All communications from DJ Engineering to the City (including any and all City officials, employees, and/or representatives).

32. All documents constituting, referring and/or relating to any and all actions by City Manager Bob Gallagher on behalf of the City of Jal concerning in any manner and/or to any degree Dale Johnson.
33. All communications from Dale Johnson to the City (including any and all City officials, employees, and/or representatives).
34. All documents constituting, referring and/or relating to any and all actions by City Manager Bob Gallagher on behalf of the City of Jal concerning in any manner and/or to any degree JDLR & Associates.
35. All communications from JDLR & Associates to the City (including any and all City officials, employees, and/or representatives).
36. All documents constituting, referring and/or relating to any and all actions by City Manager Bob Gallagher on behalf of the City of Jal concerning in any manner and/or to any degree Marron and Associates.
37. All communications from Marron and Associates to the City (including any and all City officials, employees, and/or representatives).
38. All documents constituting, referring and/or relating to any and all actions by City Manager Bob Gallagher on behalf of the City of Jal concerning in any manner and/or to any degree Wayne Price.
39. All communications from Wayne Price to the City (including any and all City officials, employees, and/or representatives).
40. All documents constituting, referring and/or relating to any and all actions by City Manager Bob Gallagher on behalf of the City of Jal concerning in any manner and/or to any degree Jared Davis.
41. All communications from Jared Davis to the City (including any and all City officials, employees, and/or representatives).
42. All documents evidencing, referring and/or otherwise relating to any and all statements and/or actions by City Manager Bob Gallagher reflecting an intention to fail to disclose information to Mayor Cheryl Chance concerning the partnership referenced in the following statement by City Manager Mike Gallagher in July 29, 2017 e-mail to "Mike" posted on the jalrecordonline.com: "For the past couple of months the city has been working on a public/private partnership concerning the use of effluent water."
43. All documents evidencing, referring and/or otherwise relating to any and all statements and/or actions by City Manager Bob Gallagher reflecting an intention to fail to

disclose information to Mayor Cheryl Chance concerning any matter other than the partnership referenced in paragraph 42, above.

44. All documents identifying, referring, and/or relating to the "several companies" (and/or any of them) referenced in the following excerpt from an August 2, 2017 e-mail from City Manager Bob Gallagher to Melody Beckham posted on the jalrecordonline.com: "We have not entered into any contractual agreement whatsoever with any company to sell effluent too. We are discussing options with several companies but have not signed any documents at all."

45. A copy of the hard drive from City Manager Bob Gallagher's computer maintained by SWAT, subject to an appropriate process for protecting privileged information.

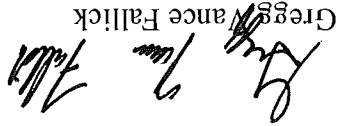
In accordance with Section 14-2-8(D), I request that the City of Jal comply with this IPR request immediately, or as soon thereafter as practicable under the circumstances, but not later than fifteen (15) days from today. In accordance with NMSA 1978, Section 14-2-9(B), I request that you provide copies of these public records in electronic format if they exist or are otherwise available to the City of Jal in electronic format. To the extent that the documents exist in multiple electronic formats, I request that they be provided in all such formats. Alternatively, if the documents exist in multiple electronic formats, I request that you consult with me about the formats in which the documents shall be produced and produce them in the formats most accessible to me.

If the City of Jal requires advance payment of any fees and/or costs due under NMSA 1978, Section 14-2-9, please let me know right away so that I can make the necessary arrangements without any delay in the process.

My name, address, and telephone number are printed above, as the person seeking access to the records under Section 14-2-8(C)(5).

Thank you.

Sincerely,



Greg Chance
Greg Chance Fallick

Attachments

cc: Michael Newell, Esquire (with attachments) (via e-mail)
Sage Jones (with attachments) (via e-mail)

GREGG VANCE FALLICK

ATTORNEY AT LAW

SUITE 205

GOLD AVENUE LOFTS
100 GOLD AVENUE, S.W.

ALBUQUERQUE, NEW MEXICO 87102

TELEPHONE (505) 842-6000

FACSIMILE (505) 842-6001

GVF@FallickLaw.com

October 13, 2016

Bob Gallagher, City Manager
City of Jal
PO Drawer 340
Jal, New Mexico 88252

(VIA E-MAIL AND UNITED STATES MAIL)

Re: **Inspection Of Public Records Act Request**

Dear Mr. Gallagher (or in Mr. Gallagher's absence, the acting Custodian of Records):

I am writing to you as custodian of records of the City of Jal for the public records
referred below.

Pursuant to NMSA 1978, Section 14-2-8, I hereby request the right under the Inspection
of Public Records Act ("IPRA") to inspect and receive copies of *all* of the following public
records, as defined in Section 14-2-6(G):

1. All documents – written, electronic, or otherwise – constituting a complete set of
the "substantial amount of documentation from an oil company in the area" referenced in
paragraph 3 of the August 29, 2016 8:32 PM e-mail from Bob Gallagher to Phillip Goetze
attached hereto as Exhibit A. That is, a complete set of all public records, as defined in Section
14-2-6(G), that are referenced in the following language in paragraph 3 of Exhibit A: "The city
of Jal, who filed the original concern with your division, after receiving a substantial amount of
documentation from an oil company in the area, wishes to insist on having a divisional employee
present for the entire test, to have a geologist or engineer of our choosing, at our expense, present
for the entire test, and that the log be available for follow up evaluation"

2. All documents – written, electronic, or otherwise – identifying, listing, or
otherwise referring to the "oil company in the area" referenced in paragraph 3 of Exhibit A. In
other words, I am requesting any and all documents, regardless of subject matter, disclosing the
identity of the "oil company in the area" referenced in paragraph 3 of Exhibit A. This request
includes, *but is not limited to*:

- (a) All e-mails, letters, memoranda, and/or other communications of any kind
whatsoever *from* the "oil company in the area" on any and all topics
whatsoever to any and all persons and/or entities whatsoever.

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- (b) All e-mails, letters, memoranda, and/or other communications of any kind from any and all persons and/or entities whatsoever. This request includes all communications as to which the "oil company in the area" is (i) the addressee, (ii) a carbon copy and/or blind copy recipient, and/or (iii) otherwise provided with a copy.
- (c) All notes, messages, memoranda, logs, minutes, agendas, calendars, schedules, sign-in sheets, attendance records, and/or activity records of any kind whatsoever referring to the "oil company in the area."
3. All documents – written, electronic, or otherwise – identifying, listing, or otherwise referring to any and all persons providing the City of Jal (including any and all representatives of the City of Jal) with the "substantial amount of documentation from an oil company in the area" referred to in paragraph 3 of Exhibit A. In other words, I am requesting any and all documents, regardless of subject matter, disclosing the identities of any and all persons responsible for and/or arguably responsible for providing the City of Jal (including its representatives) with the "substantial amount of documentation from an oil company in the area" referenced in paragraph 3 of Exhibit A. This request includes, *but is not limited to:*
- (a) All e-mails, letters, memoranda, and/or other communications of any kind whatsoever *from* any and all persons providing the City of Jal (including any and all representatives of the City of Jal) with the "substantial amount of documentation from an oil company in the area."
- (b) All e-mails, letters, memoranda, and/or other communications of any kind whatsoever *to* any and all persons providing the City of Jal (including any and all representatives of the City of Jal) with the "substantial amount of documentation from an oil company in the area." This request includes all communications as to which persons are (i) the addressee(s), (ii) carbon copy and/or blind copy recipient(s), and/or (iii) otherwise provided with a copy.
- (c) All notes, messages, memoranda, logs, minutes, agendas, calendars, schedules, sign-in sheets, attendance records, and/or activity records of any kind whatsoever referring to any and all such persons.
4. All documents – written, electronic, or otherwise – identifying, listing, or otherwise referring to any and all persons present at any and all meetings at which any and all of the "substantial amount of documentation from an oil company in the area" was reviewed and/or available to be reviewed, and which was attended – in whole or in part – by Senator Gay G. Kerian and/or Representative Larry R. Scott. In other words, I am requesting any and all documents, regardless of subject matter, disclosing the identities of any and all persons who attended any and all such meetings. This request includes, *but is not limited to:*

- (a) All e-mails, letters, memoranda, and/or other communications of any kind whatsoever, *from* any and all persons and/or *to* any and all persons, disclosing the identities of any and all such persons.
- (b) All notes, messages, memoranda, logs, minutes, agendas, calendars, schedules, sign-in sheets, attendance records, and/or activity records of any kind whatsoever referring to any and all such persons.

5. All documents – written, electronic, or otherwise – constituting, reflecting, referring, and/or relating to communications *from* the geologist and/or engineer retained by the City of Jal, as referenced in the following language in paragraph 3 of Exhibit A: “The city of Jal . . . wishes . . . to have a geologist or engineer of our choosing, at our expense, present for the entire test”

6. All documents – written, electronic, or otherwise – constituting, reflecting, referring, and/or relating to communications *to* the geologist and/or engineer retained by the City of Jal, as referenced in the following language in paragraph 3 of Exhibit A: “The city of Jal . . . wishes . . . to have a geologist or engineer of our choosing, at our expense, present for the entire test” This request includes all communications as to which the geologist and/or engineer is (a) the addressee, (b) a carbon copy and/or blind copy recipient, and/or (c) otherwise provided with a copy.

7. All documents – written, electronic, or otherwise – provided by the City of Jal *to* the geologist and/or engineer retained by the City of Jal, as referenced in the following language in paragraph 3 of Exhibit A: “The city of Jal . . . wishes . . . to have a geologist or engineer of our choosing, at our expense, present for the entire test”

8. All documents – written, electronic, or otherwise – provided to the City of Jal *by* the geologist and/or engineer retained by the City of Jal, as referenced in the following language in paragraph 3 of Exhibit A: “The city of Jal . . . wishes . . . to have a geologist or engineer of our choosing, at our expense, present for the entire test”

9. All documents – written, electronic, or otherwise – constituting, reflecting, referring, and/or relating to authorization by the City of Jal to incur the expense for the geologist and/or engineer retained by the City of Jal, as referenced in the following language in paragraph 3 of Exhibit A: “The city of Jal . . . wishes . . . to have a geologist or engineer of our choosing, at our expense, present for the entire test”

10. All documents – written, electronic, or otherwise – constituting, reflecting, referring, and/or relating to the fees, costs, expenses and/or other financial obligations incurred by the City of Jal for the geologist and/or engineer retained by the City of Jal, as referenced in the following language in paragraph 3 of Exhibit A: “The city of Jal . . . wishes . . . to have a geologist or engineer of our choosing, at our expense, present for the entire test” This request includes, *but is not limited to*, invoices, bills, checks, electronic transfers, and/or accounting entries reflecting the amounts incurred and the amounts paid for the services referenced in the language quoted in this paragraph, above.

11. All e-mails *from* Bob Gallagher, to any and all recipients, on any and all topics whatsoever, from January 1, 2014, to the date of the City of Jal's response to this request. This request includes any and all e-mails from Bob Gallagher (a) using the e-mail address citymanager@cityofjal.us, and/or (b) using any and all other e-mail addresses – including but not limited to bobgallagher93@yahoo.com – for any and all communications that relate and/or arguably relate in any manner or to any degree to the business and/or operations of the City of Jal.

12. All e-mails *to* Bob Gallagher, from any and all recipients, on any and all topics whatsoever, from January 1, 2014, to the date of the City of Jal's response to this request. This request includes any and all e-mails to Bob Gallagher (a) at the e-mail address citymanager@cityofjal.us, and/or (b) at any and all other e-mail addresses – including but not limited to bobgallagher93@yahoo.com – for any and all communications that relate and/or arguably relate in any manner or to any degree to the business and/or operations of the City of Jal. In addition, this request includes *all* communications to Bob Gallagher in any capacity, including as (i) the addressee, (ii) a carbon copy and/or blind copy recipient, and/or (iii) otherwise provided with a copy.

13. All e-mails *from* Melody Beckham, to any and all recipients, on any and all topics whatsoever, from January 1, 2014, to the date of the City of Jal's response to this request. This request includes any and all e-mails from Melody Beckham (a) using an e-mail address from the URL.cityofjal.us, and/or (b) using any and all other e-mail addresses for any and all communications that relate and/or arguably relate in any manner or to any degree to the business and/or operations of the City of Jal.

14. All e-mails *to* Melody Beckham, from any and all recipients, on any and all topics whatsoever, from January 1, 2014, to the date of the City of Jal's response to this request. This request includes any and all e-mails from Melody Beckham (a) using an e-mail address from the URL.cityofjal.us, and/or (b) using any and all other e-mail addresses for any and all communications that relate and/or arguably relate in any manner or to any degree to the business and/or operations of the City of Jal. In addition, this request includes *all* communications to Melody Beckham in any capacity, including as (i) the addressee, (ii) a carbon copy and/or blind copy recipient, and/or (iii) otherwise provided with a copy.

15. All e-mails *from* Jim Ellison, to any and all recipients, on any and all topics whatsoever, from January 1, 2014, to the date of the City of Jal's response to this request. This request includes any and all e-mails from Jim Ellison (a) using an e-mail address from the cityofjal.us, and/or (b) using any and all other e-mail addresses for any and all communications that relate and/or arguably relate in any manner or to any degree to the business and/or operations of the City of Jal.

16. All e-mails *to* Jim Ellison, from any and all recipients, on any and all topics whatsoever, from January 1, 2014, to the date of the City of Jal's response to this request. This request includes any and all e-mails from Jim Ellison (a) using an e-mail address from the cityofjal.us, and/or (b) using any and all other e-mail addresses for any and all communications

that relate and/or arguably relate in any manner or to any degree to the business and/or operations of the City of Jal. In addition, this request includes *all* communications to Jim Ellison in any capacity, including as (i) the addressee, (ii) a carbon copy and/or blind copy recipient, and/or (iii) otherwise provided with a copy.

17. All e-mails *from* Mike Orr, to any and all recipients, on any and all topics whatsoever, from January 1, 2014, to the date of the City of Jal's response to this request. This request includes any and all e-mails from Mike Orr (a) using an e-mail address from the URL cityofjal.us, and/or (b) using any and all other e-mail addresses for any and all communications that relate and/or arguably relate in any manner or to any degree to the business and/or operations of the City of Jal.

18. All e-mails *to* Mike Orr, from any and all recipients, on any and all topics whatsoever, from January 1, 2014, to the date of the City of Jal's response to this request. This request includes any and all e-mails from Mike Orr (a) using an e-mail address from the URL cityofjal.us, and/or (b) using any and all other e-mail addresses for any and all communications that relate and/or arguably relate in any manner or to any degree to the business and/or operations of the City of Jal. In addition, this request includes *all* communications to Mike Orr in any capacity, including as (i) the addressee, (ii) a carbon copy and/or blind copy recipient, and/or (iii) otherwise provided with a copy.

19. All e-mails *from* JoAn Chesser, to any and all recipients, on any and all topics whatsoever, from January 1, 2014, to the date of the City of Jal's response to this request. This request includes any and all e-mails from JoAn Chesser (a) using an e-mail address from the URL cityofjal.us, and/or (b) using any and all other e-mail addresses for any and all communications that relate and/or arguably relate in any manner or to any degree to the business and/or operations of the City of Jal.

20. All e-mails *to* JoAn Chesser, from any and all recipients, on any and all topics whatsoever, from January 1, 2014, to the date of the City of Jal's response to this request. This request includes any and all e-mails from JoAn Chesser (a) using an e-mail address from the URL cityofjal.us, and/or (b) using any and all other e-mail addresses for any and all communications that relate and/or arguably relate in any manner or to any degree to the business and/or operations of the City of Jal. In addition, this request includes *all* communications to JoAn Chesser in any capacity, including as (i) the addressee, (ii) a carbon copy and/or blind copy recipient, and/or (iii) otherwise provided with a copy.

21. All e-mails *from* Lisa Johnson, to any and all recipients, on any and all topics whatsoever, from January 1, 2014, to the date of the City of Jal's response to this request. This request includes any and all e-mails from Lisa Johnson (a) using an e-mail address from the URL cityofjal.us, and/or (b) using any and all other e-mail addresses for any and all communications that relate and/or arguably relate in any manner or to any degree to the business and/or operations of the City of Jal.

22. All e-mails *to* Lisa Johnson, from any and all recipients, on any and all topics whatsoever, from January 1, 2014, to the date of the City of Jal's response to this request. This

request includes any and all e-mails from Lisa Johnson (a) using an e-mail address from the URL cityofjacksonville.com, and/or (b) using any and all other e-mail addresses for any and all communications that relate and/or arguably relate in any manner or to any degree to the business and/or operations of the City of Jacksonville. In addition, this request includes *all* communications to Lisa Johnson in any capacity, including as (i) the addressee, (ii) a carbon copy and/or blind copy recipient, and/or (iii) otherwise provided with a copy.

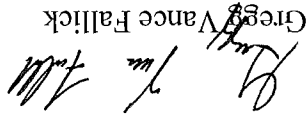
In accordance with Section 14-2-8(D), I request that the City of Jacksonville comply with this IPRA request immediately, or as soon thereafter as practicable under the circumstances, but not later than fifteen (15) days from today. In accordance with NMSA 1978, Section 14-2-9(B), I request that you provide copies of these public records in electronic format if they exist or are otherwise available to the City of Jacksonville in electronic format. To the extent that the documents exist in multiple electronic formats, I request that they be provided in all such formats. Alternatively, if the documents exist in multiple electronic formats, I request that you consult with me about the formats in which the documents shall be produced and produce them in the formats most accessible to me.

If the City of Jacksonville requires advance payment of any fees and/or costs due under NMSA 1978, Section 14-2-9, please let me know right away so that I can make the necessary arrangements without any delay in the process.

My name, address, and telephone number are printed above, as the person seeking access to the records under Section 14-2-8(C)(5).

Thank you.

Sincerely,


Greg Vance Fallick

Attachment

Exhibit A

Maralo Sholes Inj Survey Exrl.pdf >

Image002.jpg >

E-mail

Direct: 505.476.3466

1220 South St, Francis Drive, Santa Fe, NM 87505

Please contact me with any questions on this matter, PRG

The injection survey has not been completed. OWL requested and was granted an extension until September 2 for completion of the injection survey. I will be checking with District Supervisor for any paperwork filed with the District regarding this matter. The Division will attempt to have a representative present for witnessing a portion of the test. There will be more information available next week and will make it available to you when the District receives it.

Mr. Gallagher:

Maralo Sholes B Well No. 2 - API 30-025-09806; SWD-1127

On Aug 26, 2016, at 4:00 PM, Goetze, Phillip, EMNRD > wrote:

Sent from my

I look forward to a response from you concerning when the test has been

present for the entire test and a geologist or engineer paid for by the city to be present as well.

The ball is in your court on how you would like to proceed, but you have now been put on notice that the city will insist on having a divisional employee

overcome emotional or political involvement or

been held up in what appears to me to be a political arena. Please understand that those of us who insist on safe drinking water for our residents will always

6. Simply put, we are overwhelmed by your response and overwhelmed with the fact that this simple scientific test that could resolve all questions has now

is simply not acceptable nor does it show any concern from your division for the protection of the safe drinking water in the state of New Mexico.

5. Please allow me to make our position very clear. The city's original letter to the OCD was written on April 28, 2016 and solely focused on our concern that

the fresh water zone that we may be drawing drinking water from in the very near future was being compromised by this disposal well. We find ourselves now

close to 120 days since that letter with no other response from the division besides the one email from the director and your email received late last week. That

wishes to insist on having a divisional employee present for the entire test, to have a geologist or engineer of our choosing, at our expense, present for the entire

3. The city of Jar, who filed the original concern with your division, after receiving a substantial amount of documentation from an oil company in the area,

director until late last week when we received your

2. Mr. Carnach originally told us that a bureau employee would be present and observe the entire test. Your email seems to suggest that you may or may not

accepted, that they were too busy to schedule the simple injection survey test that you had

1. It is very difficult to understand how a company, with a single letter, could ask for a four week extension and be granted a three week extension, based solely

on the fact that they were busy with other operations. You have previously informed us that a well of theirs was under investigation in the Carlsbad area for

possibly contaminating a drinking water well, which is the same concern we asked your department to address in Lea County. But yet they stated, and you

I very much appreciate your timely response late last week in reference to the subject matter. But please allow me to express the city's disappointment and

disbelief at some of the comments that you made in your

From: Bob Gallagher <rbgallagher@cityofjar.us>
Subject: Maralo Sholes B Well No. 2 - Injection Survey
Date: August 29, 2016 at 8:32 PM
To: "Goetze, Phillip, EMNRD" <phillip.goetze@stateofnewmexico.gov>; EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT) <CN=RECIPIENTS/CN=DAVID.CATMANACH303@cityofjar.us>; Mike Orr, Melody Beckham, Carnach, David, EMNRD, Marks, Allison, EMNRD, Brown, Maxey, G, EMNRD, Cheryl, Chance, JoAnn, Chesser, Jim, Ellison, Dewey, Hader, Jennings, Amelie, Trevino, Ker
Mr. Goetze,


From: Melody Beckham
To: [Jenny Edwards](#)
Subject: Fwd: email
Date: Tuesday, June 7, 2016 2:23:54 PM

From: **Melody Beckham** <mbeckham16jcc@gmail.com>
>

All--

Please delete the old email address you have for me (mbeckham29@aol.com). I have created a new email account to be dedicated strictly to city council emails and information. We have way too much other stuff coming in on our personal email to be able to filter through! Please add this and give me a quick reply so that I know that I have everyone's contact information correct.

Thanks,
Melody

From: Gregg Vance Fallick GVF@FallickLaw.com 
Subject: Fwd: Desert Town Investments, LLC, d/b/a The Jal Record v. The City of Jal, et al.
Date: August 14, 2018 at 1:17 PM
To: Laura E. Sanchez-Rivet LSanchez-Rivet@cuddymccarthy.com



Message:

Laura — This forwarded e-mail likewise was presented to the Court at the April 3rd Hearing, and it was tab #10 of the binder. Next I will send you the e-mail that followed a few minutes later (and that pointed out the correct date was November 24th, not 14th). Again, I received no response to this e-mail, either before or after the Hearing. Plaintiff requests that Defendants promptly produce these requested IPRA documents as well. — Gregg

Gregg Vance Fallick
FallickLaw, LTD.
Suite 205
Gold Avenue Lofts
100 Gold Avenue, SW
Albuquerque, New Mexico 87102
(505) 842-6000 (Telephone)
(505) 842-6001 (Facsimile)
GVF@FallickLaw.com

Begin forwarded message:

From: Gregg Vance Fallick <GVF@FallickLaw.com>
Subject: Fwd: Desert Town Investments, LLC, d/b/a The Jal Record v. The City of Jal, et al.
Date: January 24, 2018 at 2:13:14 PM MST
To: "Laura E. Sanchez-Rivet" <LSanchez-Rivet@cuddymccarthy.com>
Cc: Gloria Williams <GWilliams@cuddymccarthy.com>

Message:

Laura —

With limited exceptions, the defendants declined to produce the documents requested the October 18, 2017 IPRA letter forwarded below.

I already asked Mr. Olson to reconsider, but defendants persisted in their position declining further production. Since you now are counsel of record and will be the lawyer required to defend this position at trial, however, I am writing to give you the opportunity to consider the issue as well.

Copies of Mr. Olson's communications are attached FYI. Next, I also will forward my November 14, 2017 e-mail in native format, with the attachments.

— Gregg



2017-11-01 REO
ltr to G...est.pdf



Olson 12.1.2017
e-mail.pdf

Gregg Vance Fallick
FallickLaw, LTD.
Suite 205
Gold Avenue Lofts
100 Gold Avenue, SW
Albuquerque, New Mexico 87102
(505) 842-6000 (Telephone)
(505) 842-6001 (Facsimile)
GVF@FallickLaw.com

Begin forwarded message:

From: Gregg Vance Fallick <GVF@FallickLaw.com>
Subject: Desert Town Investments, LLC, d/b/a The Jal Record v. The City of Jal, et al.
Date: October 18, 2017 at 4:23:00 PM MDT
To: Cheryl Chance <mayor@cityofjal.us>, Mike Newell <mnewell@newelllawnm.com>, "Richard E. Olson" <rolson@hinklelawfirm.com>
Cc: Sage Jones <sjones@newelllawnm.com>

Message:

Mayor Chance and Counsel — I am serving the attached IPRA request letter of this date. Mike, I would appreciate it if you or Sage would acknowledge receipt by reply e-mail. Thank you. — Gregg Fallick





Jal 10.18.2017
IPRA R...est.pdf

Gregg Vance Fallick
FallickLaw, LTD.
Suite 205
Gold Avenue Lofts
100 Gold Avenue, SW
Albuquerque, New Mexico 87102
(505) 842-6000 (Telephone)
(505) 842-6001 (Facsimile)
GVF@FallickLaw.com



HINKLE SHANOR LLP

ATTORNEYS AT LAW

400 PENN PLAZA, SUITE 640

PO BOX 10

ROSWELL, NEW MEXICO 88202

575-622-6510 (FAX) 575-623-9332

WRITER:
Richard E. Olson
rolson@hinklelawfirm.com

November 1, 2017

VIA E-MAIL AND SURFACE MAIL

Mr. Gregg Vance Fallick
FallickLaw, LTD
100 Gold Avenue SW, Suite 205
Albuquerque, NM 87102
GVF@FallickLaw.com

Re: Inspection of Public Records Act Request

Dear Mr. Fallick:

I am writing in response to your letter of October 18, 2017 making a request for records under the Inspection of Public Records Act. Please accept this as a response for the City, Mr. Newell and myself. I will respond to each enumerated item.

Request No. 1: Any and all documents constituting the entire report of investigation, including all comments, disclaimers, reservations, attachments, exhibits, and other components of each and every kind whatsoever.

Response to Request No. 1: These items constitute matters protected by the attorney-client privilege pursuant to § 14-2-1A(6) of the Inspection of Public Records Act. I was retained to represent the City of Jal in connection with pending or threatened litigation arising out of a complaint made by an employee. The documents requested in the enumerated request will not be produced for inspection or copying.

Request No. 2: Any and all drafts of the report of investigation referenced in paragraph 1, above, including but not limited to any and all drafts of any and all components thereof.

Response to Request No. 2: These items constitute matters protected by the attorney-client privilege pursuant to § 14-2-1A(6) of the Inspection of Public Records Act. I was retained to represent the City of Jal in connection with pending or threatened litigation arising out of a complaint made by an employee. The documents requested in the enumerated request will not be produced for inspection or copying. In addition, there are none. Therefore, not

Mr. Greg Vance Fallick
Re: Inspection of Public Records Act Request
November 1, 2017
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applicable.

Request No. 3: Any and all documents reviewed in connection with the investigation.

Response to Request No. 3: Without waiving the privilege, non-privileged documents that were reviewed will be produced for inspection.

Request No. 4: Any and all documents that relate in any manner and/or to any degree to any and all instructions and/or suggestions provided to Mr. Olson and/or any other person who participated in the investigation and/or assisted Mr. Olson and/or others in the investigation (hereinafter "the investigation team").

Response to Request No. 4 These items constitute matters protected by the attorney-client privilege pursuant to § 14-2-1A(6) of the Inspection of Public Records Act. I was retained to represent the City of Jal in connection with pending or threatened litigation arising out of a complaint made by an employee. The documents requested in the enumerated request will not be produced for inspection or copying.

Request No. 5: Any and all documents relating in any manner and/or to any degree to the scope of the investigation to be performed, including any limitations – actual or potential – in the scope of the investigation.

Response to Request No. 5: These items constitute matters protected by the attorney-client privilege pursuant to § 14-2-1A(6) of the Inspection of Public Records Act. I was retained to represent the City of Jal in connection with pending or threatened litigation arising out of a complaint made by an employee. The documents requested in the enumerated request will not be produced for inspection or copying.

Request No. 6: Any and all documents relating in any manner and/or to any degree to the goals and/or possible goals of the investigation.

Response to Request No. 6: These items constitute matters protected by the attorney-client privilege pursuant to § 14-2-1A(6) of the Inspection of Public Records Act. I was retained to represent the City of Jal in connection with pending or threatened litigation arising out of a complaint made by an employee. The documents requested in the enumerated request will not be

Mr. Greg Vance Fallick
Re: Inspection of Public Records Act Request
November 1, 2017
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produced for inspection or copying.

Request No. 7: Any and all documents suggesting in any manner and/or to any degree goals that were and/or may be beyond the scope of the investigation.

Response to Request No. 7: These items constitute matters protected by the attorney-client privilege pursuant to § 14-2-1A(6) of the Inspection of Public Records Act. I was retained to represent the City of Jal in connection with pending or threatened litigation arising out of a complaint made by an employee. The documents requested in the enumerated request will not be produced for inspection or copying.

Request No. 8: Any and all documents suggesting in any manner and/or to any degree that the investigation should not and/or might not include consideration of one and/or more documents.

Response to Request No. 8: These items constitute matters protected by the attorney-client privilege pursuant to § 14-2-1A(6) of the Inspection of Public Records Act. I was retained to represent the City of Jal in connection with pending or threatened litigation arising out of a complaint made by an employee. The documents requested in the enumerated request will not be produced for inspection or copying.

Request No. 9: Any and all documents suggesting in any manner and/or to any degree that the investigation should not and/or might not include consideration of one and/or more issues.

Response to Request No. 9: These items constitute matters protected by the attorney-client privilege pursuant to § 14-2-1A(6) of the Inspection of Public Records Act. I was retained to represent the City of Jal in connection with pending or threatened litigation arising out of a complaint made by an employee. The documents requested in the enumerated request will not be produced for inspection or copying.

Request No. 10: Any and all documents arguably suggesting in any manner and/or to any degree that the investigation should consider and/or might consider any particular conclusion.

Response to Request No. 10: These items constitute matters protected by

Mr. Greg Vance Fallick
Re: Inspection of Public Records Act Request
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the attorney-client privilege pursuant to § 14-2-1A(6) of the Inspection of Public Records Act. I was retained to represent the City of Jal in connection with pending or threatened litigation arising out of a complaint made by an employee. The documents requested in the enumerated request will not be produced for inspection or copying.

Request No. 11: Any and all documents – including all drafts – prepared, created, and/or revised by Mr. Olson, the investigation team, and/or any member thereof.

Response to Request No. 11: These items constitute matters protected by the attorney-client privilege pursuant to § 14-2-1A(6) of the Inspection of Public Records Act. I was retained to represent the City of Jal in connection with pending or threatened litigation arising out of a complaint made by an employee. The documents requested in the enumerated request will not be produced for inspection or copying. In addition, this request is breathtakingly broad as it does not appear to be limited, by its terms, to the “investigation”.

Request No. 12: Any and all documents relating in any manner and/or to any degree to the investigation.

Response to Request No. 12: These items constitute matters protected by the attorney-client privilege pursuant to § 14-2-1A(6) of the Inspection of Public Records Act. I was retained to represent the City of Jal in connection with pending or threatened litigation arising out of a complaint made by an employee. Non-privileged documents will be produced. Other documents requested in the enumerated request will not be produced for inspection or copying.

Request No. 13: Any and all documents relating in any manner and/or to any degree to the results of the investigation.

Response to Request No. 13: These items constitute matters protected by the attorney-client privilege pursuant to § 14-2-1A(6) of the Inspection of Public Records Act. I was retained to represent the City of Jal in connection with pending or threatened litigation arising out of a complaint made by an employee. The documents requested in the enumerated request will not be produced for inspection or copying.

Mr. Greg Vance Fallick
Re: Inspection of Public Records Act Request
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Request No. 14: Any and all documents relating in any manner and/or to any degree to any conclusion and/or potential conclusion – contemplated, tentative, potential, proposed, initial, final, partial, or total – reached and/or considered in connection with the investigation.

Response to Request No. 14: These items constitute matters protected by the attorney-client privilege pursuant to § 14-2-1A(6) of the Inspection of Public Records Act. I was retained to represent the City of Jal in connection with pending or threatened litigation arising out of a complaint made by an employee. The documents requested in the enumerated request will not be produced for inspection or copying.

Request No. 15: Any and all documents relating in any manner and/or to any degree to any follow-up work and/or analysis performed related to the investigation.

Response to Request No. 15: These items constitute matters protected by the attorney-client privilege pursuant to § 14-2-1A(6) of the Inspection of Public Records Act. I was retained to represent the City of Jal in connection with pending or threatened litigation arising out of a complaint made by an employee. The documents requested in the enumerated request will not be produced for inspection or copying.

Request No. 16: Any and all documents relating in any manner and/or to any degree to potential follow-up work and/or analysis considered and rejected related to the investigation.

Response to Request No. 16: These items constitute matters protected by the attorney-client privilege pursuant to § 14-2-1A(6) of the Inspection of Public Records Act. I was retained to represent the City of Jal in connection with pending or threatened litigation arising out of a complaint made by an employee. The documents requested in the enumerated request will not be produced for inspection or copying. There are no such documents. Therefore, in addition, not applicable.

Request No. 17: Any and all documents relating in any manner and/or to any degree to potential follow-up work and/or analysis currently in process related to the investigation.

Mr. Greg Vance Fallick
Re: Inspection of Public Records Act Request
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Response to Request No. 17: These items constitute matters protected by the attorney-client privilege pursuant to § 14-2-1A(6) of the Inspection of Public Records Act. I was retained to represent the City of Jal in connection with pending or threatened litigation arising out of a complaint made by an employee. The documents requested in the enumerated request will not be produced for inspection or copying. There are no such documents. Therefore, in addition, not applicable.

Request No. 18: Any and all documents relating in any manner and/or to any degree to potential follow-up work and/or analysis currently under consideration related to the investigation.

Response to Request No. 18: These items constitute matters protected by the attorney-client privilege pursuant to § 14-2-1A(6) of the Inspection of Public Records Act. I was retained to represent the City of Jal in connection with pending or threatened litigation arising out of a complaint made by an employee. The documents requested in the enumerated request will not be produced for inspection or copying. There are no such documents. Therefore, in addition, not applicable.

Request No. 19: Any and all documents identifying the names, home addresses, work addresses, home telephone numbers, work telephone numbers, employers, educational background, professional certifications, licenses, and/or titles of each and every person contacted as a witness and/or potential witness in this investigation.

Response to Request No. 19: These items constitute matters protected by the attorney-client privilege pursuant to § 14-2-1A(6) of the Inspection of Public Records Act. I was retained to represent the City of Jal in connection with pending or threatened litigation arising out of a complaint made by an employee. The documents requested in the enumerated request will not be produced for inspection or copying.

Request No. 20: Any and all documents identifying the names, home addresses, work addresses, home telephone numbers, work telephone numbers, employers, educational background, professional certifications, licenses, and/or titles of each and every person identified as a witness and/or potential witness in this investigation who was not contacted.

Mr. Greg Vance Fallick
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Response to Request No. 20: These items constitute matters protected by the attorney-client privilege pursuant to § 14-2-1A(6) of the Inspection of Public Records Act. I was retained to represent the City of Jal in connection with pending or threatened litigation arising out of a complaint made by an employee. The documents requested in the enumerated request will not be produced for inspection or copying.

Request No. 21: Any and all documents constituting, reporting, memorializing, and/or confirming any and/or all information obtained from Jenny Edwards, including but not limited to any and all recordings of interviews of Jenny Edwards.

Response to Request No. 21: These items constitute matters protected by the attorney-client privilege pursuant to § 14-2-1A(6) of the Inspection of Public Records Act. I was retained to represent the City of Jal in connection with pending or threatened litigation arising out of a complaint made by an employee. The documents requested in the enumerated request will not be produced for inspection or copying.

Request No. 22: Any and all documents constituting, reporting, memorializing, and/or confirming any and/or all information obtained from Bob Gallagher, including but not limited to any and all recordings of interviews of Bob Gallagher.

Response to Request No. 22: These items constitute matters protected by the attorney-client privilege pursuant to § 14-2-1A(6) of the Inspection of Public Records Act. I was retained to represent the City of Jal in connection with pending or threatened litigation arising out of a complaint made by an employee. The documents requested in the enumerated request will not be produced for inspection or copying.

Request No. 23: Any and all documents constituting, reporting, memorializing, and/or confirming any and/or all information obtained from any and all other persons with knowledge relevant to and/or potentially relevant to the investigation, including but not limited to any and all recordings of interviews of any and all such persons.

Response to Request No. 23: These items constitute matters protected by the attorney-client privilege pursuant to § 14-2-1A(6) of the Inspection of Public Records Act. I was retained to represent the City of Jal in connection with pending or threatened litigation arising out of a complaint made by an

Mr. Greg Vance Fallick
Re: Inspection of Public Records Act Request
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employee. The documents requested in the enumerated request will not be produced for inspection or copying.

Request No. 24: Any and all documents constituting, reporting, memorializing, and/or confirming any and/or all disclosures, explanations, and/or warnings to Jenny Edwards regarding the investigation, her role in the investigation, and/or her rights with regard to the investigation, including but not limited to any and all written acknowledgments of such disclosures, explanations, and/or warnings.

Response to Request No. 24: These items constitute matters protected by the attorney-client privilege pursuant to § 14-2-1A(6) of the Inspection of Public Records Act. I was retained to represent the City of Jal in connection with pending or threatened litigation arising out of a complaint made by an employee. The documents requested in the enumerated request will not be produced for inspection or copying.

Request No. 25: Any and all documents constituting, reporting, memorializing, and/or confirming any and/or all disclosures, explanations, and/or warnings to Bob Gallagher regarding the investigation, his role in the investigation, and/or his rights with regard to the investigation, including but not limited to any and all written acknowledgments of such disclosures, explanations, and/or warnings.

Response to Request No. 25: These items constitute matters protected by the attorney-client privilege pursuant to § 14-2-1A(6) of the Inspection of Public Records Act. I was retained to represent the City of Jal in connection with pending or threatened litigation arising out of a complaint made by an employee. The documents requested in the enumerated request will not be produced for inspection or copying.

Request No. 26: Any and all documents constituting, reporting, memorializing, and/or confirming any and/or all disclosures, explanations, and/or warnings to all other persons regarding the investigation, his or her role in the investigation, and/or his or her rights with regard to the investigation, including but not limited to any and all written acknowledgements of such disclosures, explanations, and/or writings.

Response to Request No. 26: These items constitute matters protected by the attorney-client privilege pursuant to § 14-2-1A(6) of the Inspection of Public Records Act. I was retained to represent the City of Jal in connection

Mr. Greg Vance Fallick
Re: Inspection of Public Records Act Request
November 1, 2017
Page 9

with pending or threatened litigation arising out of a complaint made by an employee. The documents requested in the enumerated request will not be produced for inspection or copying.

If in electronic format, we will produce in electronic format by separate cover.

Very truly yours,

HINKLE SHANOR LLP



Richard E. Olson

REO:kb

xc: Mike Newell (via e-mail mnewell@newelllawnm.com)
Cheryl Chance (via e-mail mayor@cityofjal.us)

From: Richard Olson rolson@hinklelawfirm.com
Subject: RE: Inspection of Public Records Act Request
Date: December 1, 2017 at 5:00 PM
To: Gregg Vance Fallick GVF@FallickLaw.com
Cc: MICHAEL T. NEWELL mnewell@newellawnm.com, Kay Brown kbrown@hinklelawfirm.com, Sage Jones sjones@newellawnm.com

RO

Mr. Fallick-

We will stand on our assertion of privilege.

From: Gregg Vance Fallick [<mailto:GVF@FallickLaw.com>]
Sent: Friday, November 24, 2017 10:51 AM
To: Richard Olson <rolson@hinklelawfirm.com>
Cc: MICHAEL T. NEWELL <mnewell@newellawnm.com>; Kay Brown <kbrown@hinklelawfirm.com>; Sage Jones <sjones@newellawnm.com>
Subject: Re: Inspection of Public Records Act Request

Message:

Mr. Olson —

I am writing to request that the City of Jal reconsider the refusals to disclose documents set forth in your November 1, 2017 IPRA response. The grounds for this request to reconsider are as follows:

1. The statements by Mr. Newell as City Attorney requesting that the citizens of Jal wait for and then accept the investigation demonstrate that it was not intended as confidential, and therefore not protected from disclosure. See attached video clip and newspaper article.

[Attachments sent separately; see below.]

2. Even assuming incorrectly and for argument's sake that the investigation had been intended to be confidential, the selective disclosures at the October 16, 2017 City Council meeting waived confidentiality. See, e.g., *Gingrich v. Sandia Corp.*, 2007-NMCA-101, ¶¶ 12-13, 142 N.M. 359, 363 (holding that disclosures from investigative report written by attorney waived attorney-client privilege).

3. Completely aside from grounds 1 and 2, above, no privilege applies "where the lawyer's primary function is as detective," Rule 11-511 NMRA; 24 *Wright & Graham, Federal Practice and Procedure: Evidence* § 5478 at 229 (1986), and the attorney-client privilege and work product doctrine do not protect against the disclosure of facts. See *Upjohn Co. v. United States*, 449 U.S. 383, 395-396 (1981) ; *Gingrich v. Sandia Corp.*, 2007-NMCA-101, ¶¶ 12-13, 142 N.M. 359, 363; and *Nat'l Farmers Union Prop. and Cas. Co., Petitioner, v. Dist. Ct.*, 718 P.2d 1044, 1049-50 (Colo. 1986).

4. And finally, given that the assertion of privilege in general is "in derogation of the

search for truth,” United States v. Nixon, 418 U.S. 683, 710, 94 S. Ct. 3090, 3108, 41 L. Ed. 2d 1039 (1974), and particularly in the IPRA context given the public policy underlying New Mexico’s Sunshine Laws, any assertion of privilege must be strictly construed and therefore cannot properly be applied here. See, e.g., Hartman v. El Paso Natural Gas Co., 1988-NMSC-080, ¶¶ 31-38, 107 N.M. 679, 686-88 (“[n]otwithstanding its ancient roots and modern necessity, the [attorney-client] privilege must be strictly construed to ensure that it does not unduly impinge on the more general, overriding duty of insisting that investigations and decisions be based on truth and reality as opposed to fiction or fabrication,” ¶ 35 (citation omitted and bracket in original)).

If the City of Jal reconsiders its refusal and discloses the requested documents by Friday, December 1, 2017, at the latest, The Jal Record will accept that disclosure as if it were timely under IPRA.

— Gregg Fallick

PS — I will be transmitting a second copy of this e-mail without attachments, in case the attachments are too large for your server. Please let me know if you do not receive the attachments, in which case I will make other arrangements to provide those to you.
Thank you.

Gregg Vance Fallick
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(505) 842-6001 (Facsimile)
GVF@FallickLaw.com

On Nov 1, 2017, at 2:17 PM, Kay Brown <kbrown@hinklelawfirm.com> wrote:

Mr. Fallick:

Attached is Mr. Olson’s letter regarding the above matter. A hard copy is also being mailed to you. If you should have difficulty opening the attachment, please let me know. Thank you.

<image001.jpg> Kay Brown
Legal Assistant
Hinkle Shanor LLP
P.O. Box 10
Roswell, New Mexico 88202-

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<2017-11-01 REO ltr to Gregg Fallick re IPRA request.pdf>

GREGG VANCE FALICK

ATTORNEY AT LAW
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October 18, 2017

Cheryl Chance, Mayor
City of Jal
PO Drawer 340
Jal, New Mexico 88252
(VIA E-MAIL)

Michael Newell, Esquire
Newell Law Firm
10 W. Adams Avenue, Suite E
Lovington, New Mexico 8826
(VIA E-MAIL)

Richard E. Olson, Esquire
Hinkle Shanor LLP
P.O. Box 10
Roswell, New Mexico 88202-0010
(VIA E-MAIL)

Re: **Inspection Of Public Records Act Request**

Dear Mayor Chance and Counsel:

I am writing as counsel for *The Jal Record* to each of you in your capacity as custodians of records for the City of Jal and/or as agents of the City of Jal in possession of documents within the possession, custody, and/or control of the City.

Pursuant to NMSA 1978, Section 14-2-8 of the Inspection of Public Records Act ("IPRA"), I hereby request the right under IPRA to inspect and receive copies of *all* of the public records described below, as defined in Section 14-2-6(G).

All of the documents requested herein constitute, refer to, and/or relate to the investigation referenced by Mr. Newell at the Jal City Council Meeting held on or about October 10, 2017, and reported to the City of Jal by Mr. Olson and possibly others at the Jal City Council meeting on or about October 16, 2017. Regarding the October 10th meeting, I note that Mr. Newell stated to the Council and the public that Mr. Newell hoped they would accept the results of the investigation because it is coming from an outside third party, or other words to that effect. Regarding the October 16th meeting, Mr. Olson reported the results of the investigation to the City Council and in the course of doing so read directly from the report, although Mr. Olson may not have left a copy with the Council. In addition, I believe and therefore aver that Mr. Olson did provide Mr. Newell with a copy of the report for Mr. Newell's review, and may or may not have left Mr. Newell with a copy.

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For the reasons acknowledged by the City of Jal in connection with *The Jal Record's* pending IPRA lawsuit against the City of Jal, a governmental entity cannot play “now you see it, now you don't” with public records. That is, when a public record has been disclosed to a public entity, and when its disclosure has been promised to the public, the record must be disclosed under IPRA. Similarly, when the results of an internal investigation of a public body have been disclosed to the public body, then all of the supporting documentation relating to that investigation likewise must be disclosed under IPRA.

Accordingly, I hereby request the right under IPRA to inspect and receive copies of *all* of the following public records:

1. Any and all documents constituting the entire report of investigation, including all comments, disclaimers, reservations, attachments, exhibits, and other components of each and every kind whatsoever.
2. Any and all drafts of the report of investigation referenced in paragraph 1, above, including but not limited to any and all drafts of any and all components thereof.
3. Any and all documents reviewed in connection with the investigation.
4. Any and all documents that relate in any manner and/or to any degree to any and all instructions and/or suggestions provided to Mr. Olson and/or any other person who participated in the investigation and/or assisted Mr. Olson and/or others in the investigation (hereinafter “the investigation team”).
5. Any and all documents relating in any manner and/or to any degree to the scope of the investigation to be performed, including any limitations – actual or potential – in the scope of the investigation.
6. Any and all documents relating in any manner and/or to any degree to the goals and/or possible goals of the investigation.
7. Any and all documents suggesting in any manner and/or to any degree goals that were and/or may be beyond the scope of the investigation.
8. Any and all documents suggesting in any manner and/or to any degree that the investigation should not and/or might not include consideration of one and/or more documents.
9. Any and all documents suggesting in any manner and/or to any degree that the investigation should not and/or might not include consideration of one and/or more issues.
10. Any and all documents arguably suggesting in any manner and/or to any degree that the investigation should consider and/or might consider any particular conclusion.

11. Any and all documents – including all drafts – prepared, created, and/or revised by Mr. Olson, the investigation team, and/or any member thereof.
12. Any and all documents relating in any manner and/or to any degree to the investigation.
13. Any and all documents relating in any manner and/or to any degree to the results of the investigation.
14. Any and all documents relating in any manner and/or to any degree to any conclusion and/or potential conclusion – contemplated, tentative, potential, proposed, initial, final, partial, or total – reached and/or considered in connection with the investigation.
15. Any and all documents relating in any manner and/or to any degree to any follow-up work and/or analysis performed related to the investigation.
16. Any and all documents relating in any manner and/or to any degree to potential follow-up work and/or analysis considered and rejected related to the investigation.
17. Any and all documents relating in any manner and/or to any degree to potential follow-up work and/or analysis currently in process related to the investigation.
18. Any and all documents relating in any manner and/or to any degree to potential follow-up work and/or analysis currently under consideration related to the investigation.
19. Any and all documents identifying the names, home addresses, work addresses, home telephone numbers, work telephone numbers, employers, educational background, professional certifications, licenses, and/or titles of each and every person contacted as a witness and/or potential witness in this investigation.
20. Any and all documents identifying the names, home addresses, work addresses, home telephone numbers, work telephone numbers, employers, educational background, professional certifications, licenses, and/or titles of each and every person identified as a witness and/or potential witness in this investigation who was not contacted.
21. Any and all documents constituting, reporting, memorializing, and/or confirming any and/or all information obtained from Jenny Edwards, including but not limited to any and all recordings of interviews of Jenny Edwards.
22. Any and all documents constituting, reporting, memorializing, and/or confirming any and/or all information obtained from Bob Gallagher, including but not limited to any and all recordings of interviews of Bob Gallagher.
23. Any and all documents constituting, reporting, memorializing, and/or confirming any and/or all information obtained from any and all other persons with knowledge relevant to

and/or potentially relevant to the investigation, including but not limited to any and all recordings of interviews of any and all such persons.

24. Any and all documents constituting, reporting, memorializing, and/or confirming any and/or all disclosures, explanations, and/or warnings to Jenny Edwards regarding the investigation, her role in the investigation, and/or her rights with regard to the investigation, including but not limited to any and all written acknowledgements of such disclosures, explanations, and/or warnings.

25. Any and all documents constituting, reporting, memorializing, and/or confirming any and/or all disclosures, explanations, and/or warnings to Bob Gallagher regarding the investigation, his role in the investigation, and/or his rights with regard to the investigation, including but not limited to any and all written acknowledgements of such disclosures, explanations, and/or warnings.

26. Any and all documents constituting, reporting, memorializing, and/or confirming any and/or all disclosures, explanations, and/or warnings to any and all other persons regarding the investigation, his or her role in the investigation, and/or his or her rights with regard to the investigation, including but not limited to any and all written acknowledgements of such disclosures, explanations, and/or warnings.

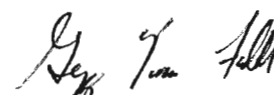
In accordance with Section 14-2-8(D), I request that the City of Jal comply with this IPRA request immediately, or as soon thereafter as practicable under the circumstances, but not later than fifteen (15) days from today. In accordance with NMSA 1978, Section 14-2-9(B), I request that you provide copies of these public records in electronic format if they exist or are otherwise available to the City of Jal in electronic format. To the extent that the documents exist in multiple electronic formats, I request that they be provided in all such formats. Alternatively, if the documents exist in multiple electronic formats, I request that you consult with me about the formats in which the documents shall be produced and produce them in the formats most accessible to me.


If the City of Jal requires advance payment of any fees and/or costs due under NMSA 1978, Section 14-2-9, please let me know right away so that I can make the necessary arrangements without any delay in the process.

My name, address, and telephone number are printed above, as the person seeking access to the records under Section 14-2-8(C)(5), as counsel for *The Jal Record*.

Thank you.

Sincerely,


Gregg Vance Fallick

From: Gregg Vance Fallick GVF@FallickLaw.com 
Subject: Fwd: Inspection of Public Records Act Request
Date: August 14, 2018 at 4:55 PM
To: Laura E. Sanchez-Rivet LSanchez-Rivet@cuddymccarthy.com



Message:

Laura — Per my prior e-mail at 1:17 p.m. — Gregg

Gregg Vance Fallick
FallickLaw, LTD.
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Gold Avenue Lofts
100 Gold Avenue, SW
Albuquerque, New Mexico 87102
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(505) 842-6001 (Facsimile)
GVF@FallickLaw.com

Begin forwarded message:

From: Gregg Vance Fallick <GVF@FallickLaw.com>
Subject: Fwd: Inspection of Public Records Act Request
Date: January 24, 2018 at 2:17:29 PM MST
To: "Laura E. Sanchez-Rivet" <LSanchez-Rivet@cuddymccarthy.com>
Cc: Gloria Williams <GWilliams@cuddymccarthy.com>

Message:

The relevant e-mail actually is dated November 24, 2017; not November 14th (see below).

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Gold Avenue Lofts
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(505) 842-6001 (Facsimile)
GVF@FallickLaw.com

Begin forwarded message:

From: Gregg Vance Fallick <GVF@FallickLaw.com>
Subject: Re: Inspection of Public Records Act Request
Date: November 24, 2017 at 10:47:28 AM MST
To: "Richard E. Olson" <rolson@hinklelawfirm.com>
Cc: "MICHAEL T. NEWELL" <mnewell@newelllawnm.com>, Kay Brown <kbrown@hinklelawfirm.com>, Sage Jones <sjones@newelllawnm.com>

Message:

Mr. Olson —

I am writing to request that the City of Jal reconsider the refusals to disclose documents set forth in your November 1, 2017 IPRA response. The grounds for this request to reconsider are as follows:

1. The statements by Mr. Newell as City Attorney requesting that the citizens of Jal wait for and then accept the investigation demonstrate that it was not intended as confidential, and therefore not protected from disclosure. See attached video clip and newspaper article.



NHN_2017_10_12
.pdf

2. Even assuming incorrectly and for argument's sake that the investigation had been intended to be confidential, the selective disclosures at the October 16, 2017 City Council meeting waived confidentiality. See, e.g., *Gingrich v. Sandia Corp.*, 2007-NMCA-101, ¶¶ 12-13, 142 N.M. 359, 363 (holding that disclosures from investigative report written by attorney waived attorney-client privilege).

3. Completely aside from grounds 1 and 2, above, no privilege applies "where the lawyer's primary function is as detective," Rule 11-511 NMRA; 24 Wright & Graham, *Federal Practice and Procedure: Evidence* § 5478 at 229 (1986), and the attorney-client privilege and work product doctrine do not protect against the

the attorney-client privilege and work product doctrine do not protect against the disclosure of facts. See *Upjohn Co. v. United States*, 449 U.S. 383, 395-396 (1981) ; *Gingrich v. Sandia Corp.*, 2007-NMCA-101, ¶¶ 12-13, 142 N.M. 359, 363; and *Nat'l Farmers Union Prop. and Cas. Co., Petitioner, v. Dist. Ct.*, 718 P.2d 1044, 1049-50 (Colo. 1986).

4. And finally, given that the assertion of privilege in general is “in derogation of the search for truth,” *United States v. Nixon*, 418 U.S. 683, 710, 94 S. Ct. 3090, 3108, 41 L. Ed. 2d 1039 (1974), and particularly in the IPRA context given the public policy underlying New Mexico’s Sunshine Laws, any assertion of privilege must be strictly construed and therefore cannot properly be applied here. See, e.g., *Hartman v. El Paso Natural Gas Co.*, 1988-NMSC-080, ¶¶ 31-38, 107 N.M. 679, 686-88 (“[n]otwithstanding its ancient roots and modern necessity, the [attorney-client] privilege must be strictly construed to ensure that it does not unduly impinge on the more general, overriding duty of insisting that investigations and decisions be based on truth and reality as opposed to fiction or fabrication,” ¶ 35 (citation omitted and bracket in original)).

If the City of Jal reconsiders its refusal and discloses the requested documents by Friday, December 1, 2017, at the latest, The Jal Record will accept that disclosure as if it were timely under IPRA.

— Gregg Fallick

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(505) 842-6001 (Facsimile)
GVF@FallickLaw.com

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Mr. Fallick:

Attached is Mr. Olson’s letter regarding the above matter. A hard copy is also being mailed to you. If you should have difficulty opening the attachment, please let me know. Thank you.

<image001.jpg>

Kay Brown
Legal Assistant
Hinkle Shanor LLP
P.O. Box 10
Roswell, New Mexico 88202-0010
(575) 622-6510 telephone
(575) 623-9332 facsimile
kbrown@hinklelawfirm.com

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<2017-11-01 REO ltr to Gregg Fallick re IPRA request.pdf>

Eunice council oks mini pigs as pets inside city limits

Page 2

News-Sun

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Community News

The **LEA COUNTY WOMEN'S NETWORK** will hold its annual awards banquet Nov. 6 from 6-9 p.m. at the Hobbs County Club. The cost is \$25 per person (meal is included).

HOBBS EAGLES FOOTBALL FANS are encouraged to wear white to Friday night's Eagles game against Gadsden at Watson Stadium. As part of their "White Out" theme, HHS players will be dressed in their white jerseys and pants and ask the crowd to show support by joining them.

Cissy Food Ministry — which annually hands out **SENIORS' CHRISTMAS BAGS**, which are delivered to seniors throughout Lea County — is asking for food donations. The items can be individual bags of food: pretzels, peanut butter and crackers, fruit cups, regular and sugar free Pudding & Candy, and Raisins. And personal items like notepads, small bottles of lotions, shampoos, conditioners and hand cleaners) or purse size tissue paper. Monetary donations are accepted. To donate or volunteer, call 575-390-4200 or 575-631-3958.

The Hobbs Community **ALZHEIMER'S SUPPORT WALK** will take place October 21 at Green Meadow Park. Call these local Edward Jones offices (575) 393-0992 or (575) 397-0661 for more information. Donations accepted online at: www.alz.org.



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Lovington schools adopt DACA resolution

DOROTHY N. FOWLER
NEWS-SUN

Despite several wording changes, a much debated DACA resolution supporting undocumented students and teachers narrowly passed the Lovington School Board Tuesday night in a three-to-two vote.

DACA, the acronym for Deferred Action for Childhood Arrivals, is a program announced by President Barack Obama in June of 2012. Under its terms, youngsters who were brought to the United States illegally can register with the government, thus

See the full resolution at hobbsnews.com

assuring they will be free from fear of deportation for two years and can obtain a work permit. They can renew their status under DACA.

However, President Donald Trump announced in March of this year that he would rescind the DACA program and challenged Congress to enact legislation reforming the nation's immigration policy within six months.

The move has left many school districts across the

nation debating on how best to protect their DACA students and teachers. Some districts have gone as far as to state they would chain their doors shut against federal agents seeking to carry out deportation orders.

Fears, that such measures may be on the table in Lovington led many to hotly debate the issue when the school board first discussed a possible resolution at its Sept. 17 meeting.

Objections to the resolution

SEE DACA, Page 5



DOROTHY N. FOWLER/NEWS-SUN

Marina Pina speaks in favor of a resolution asking the New Mexico delegation to Congress to expedite immigration legislation protecting DACA students at Tuesday night's meeting of the Lovington School Board.

Fowler gets new surface



KIMBERLY RYAN/NEWS-SUN

Dustrol Inc. has begun to hot asphalt recycle of pavement along Fowler Street between Bender and Sanger Streets. All motorists are asked to observe all traffic control while driving through construction area. Construction is scheduled to be completed by October 13 depending on weather and mechanical issues.

JAL CITY COUNCIL

Jal manager focus of sexual harassment complaint

LEVI HILL
NEWS-SUN

A sexual harassment complaint filed against embattled Jal City Manager Bob Gallagher drew the spotlight at Tuesday night's Jal City Council meeting as the community continues to be divided along lines of support either for or against the sitting council.

The complaint, which has been filed with the Equal Employment Opportunity Commission, is being reviewed by a third party and despite cries from Jal residents wanting "story time," as one Jal resident posted on Facebook, city officials remain mum.

Jal resident Jania Pearce, speaking on behalf of a group calling themselves the Jal Concerned Citizens, admonished the city council Tuesday night for failing to publicly address the allegations and stand with its employee.

Specifically, she called the city to task for failing to meet in executive session at its regular meeting in September

SEE COMPLAINT, Page 5



Gallagher

Third generation firefighter promoted to battalion chief

DENISE MARQUEZ
NEWS-SUN

A third generation Hobbs Fire Department firefighter has moved up the ranks in the past 17 years from firefighter to driver engineer to captain and recently was promoted to battalion chief.

Mark Ray is the new HFD battalion chief for the department's B Shift. Ray said with

his family history the promotion was something he was proud to accept, since his father Rick Ray was also a battalion chief when he worked for HFD.

"My dad was a shift commander for C Shift and I'm now the battalion chief for B Shift," Ray said. "Back then they called them a shift commander they didn't have the word bat-

alion chief. It's been weighing on my shoulders because it's kind of a tradition to uphold in my family. I was very lucky and fortunate to be able to take this opportunity."

Ray said his family has been involved with HFD for 37 years. His grandfather was a firefighter in El Paso.

SEE PROMOTED, Page 3



Mark Ray, was honored with a certificate from Hobbs Fire Department Chief Manny Gomez, for his recent promotion to HFD battalion chief of the department's B Shift.

SUBMITTED PHOTO

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Arts & Entertainment

---THEATER---

Monday-Tuesday — The Hobbs High School Theatre club presents “Why do we Laugh?” in the HHS Little Theatre (Room 203) at 7 p.m. Tickets are \$5 and can be purchased at the door. For more information, visit the club’s Facebook page: Hobbs High Theatre.

Oct. 20-21, 27-28, 31 — The Community Players of Hobbs presents its Haunted House at 8 p.m. Oct. 20-21, 27-28 and 31. Admission is \$10 and tickets can be purchased online or at the door. www.communityplayersofhobbs.com.

---MUSEUM---

Sundays-Nov. 12 — The Western Heritage Museum, 1 Thunderbird Circle in Hobbs, hosts a Classic Film Series on movies about the oil industry. The movies are on Sundays through Nov. 12 and 2 p.m. Admission, beverages and popcorn are free. The movies are, Oct. 15 “Hellfighters” (1968); Oct. 22 “The Wages of Fear” (1953); Oct. 29 “Local Hero” (1983); Nov. 5 “Stars Fell on Henrietta” (1995); Nov. 12 “There Will be Blood” (2007).

Oct. 28 — The Western Heritage Museum hosts a Dia de los Muertos Free Family Fun Day from 10 a.m.-5 p.m. Families will learn about the cultural significance of this tradition. Craft stations include sugar skull decorating; paper flower construction; face painting; and the 2016 animated film Day of the Dead. The event is free and open to the public. For more information, call 575-492-2781.

Oct. 28 — The Western Heritage Museum hosts a viewing of “The Rocky Horror Picture Show” at 9 p.m. The event is free and open to anyone 18 years and older. Attendees are welcome to wear costumes, bring ‘props’ for the movie. No alcohol will be allowed. For more information, call 575-492-2781.

June 1-Nov. 5 — “The Beauty in Energy” is a new photography exhibit of oil and gas landscapes, at the Western Heritage Museum and Lea County Cowboy Hall of Fame. The photographer, Bob Callender, an internationally-recognized oilfield photographer, will speak about his photographs of the energy world. The exhibit is on display through Nov. 5. For more information, call 575-492-2781.

June 23-Nov. 5. — The Western Heritage Museum hosts the “Walk A Mile” Exhibit with an opening reception at 5:30 p.m. The exhibit tells the story of famous New Mexicans through their shoes. The event is free and open to the public. For more information, call 575-492-2781.

---ART---

Fourth Fridays — The Llano Estacado Art Association hosts Drink and Draw at Undergrounds Coffee,

3421 N. Grimes from 6-8 p.m. Bring your drawing materials and join LEAA members. For more information, visit www.llanoestacadoartassociation.com.



Saturday-Nov. 10 — The Llano Estacado Art Association Fall Open Art Show is on display until Nov. 10 at the Center for the Arts, 122 W Broadway, Hobbs. For more information visit www.llanoestacadoartassociation.com.

---ENTERTAINMENT---

Saturdays — The Hobbs Farmers’ Market will be open from 9 a.m.-1 p.m. at the front of Green Meadow Lake, 4300 North Lovington Highway. The market is open every Saturday through October. For more information, visit www.hobbsfarmersmarket.com.

Saturdays — The Lovington Farmers Market is from 9 a.m.-1 p.m. at the Lea County Courthouse through October.

Oct. 21 — Downtown Lovington hosts Oktober Fiesta from 11 a.m.-midnight. The event features Baja Grill’s Posole cook-off, kids’ pumpkin painting, battle corn hole tournament and Drylands’ Homebrew competition. Entry fee for the cornhole tournament is \$20 and the fee for the cook-off is \$25 (either red or green chile flavored) for one category or \$30 for both entries. There is no fee for the home brew, but forms are at Drylands. The winner will be featured at the brewery for a month. There will be four concert performances featuring live music from Texwestus, La Vimada Nortena, Justin Kemp Band, Los Jilgueros Del Arroyo. For more information, call 575-396-1418.

---MUSIC---

Monday — The Southwest Symphony Orchestra will perform a “Night of Creepy Classics” music at Tidyons Auditorium on the HHS campus at 7 p.m.

Season tickets are \$50 per adults and individual tickets are \$20 and can be purchased at Music World or The Center for the Arts or at the door. Free admission to college students with IDs and children under the age of 18. For more information, call 575-738-1041. The orchestra will also hold its annual Tour of Schools for two days, which is a program devised to introduce and educate elementary students in Lea County about the wonderful world of symphonic orchestra through a creative, interactive experience of music performance.

Oct. 22 — The New Mexico Junior College Community Band presents its annual Classical Music Concert in Watson Hall on the NMJC campus. Admission is free to all students, \$5 adults, \$3 seniors.

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SUBMITTED PHOTO

Courtney Markwell stands next to her acrylic painting “Marry Frida Marry.” The artwork earned Best of Show at the Llano Estacado Art Association’s 2017 Fall 2017 Fall Open Art Show. The show’s works of art is on display at the Lea County Center for the Arts until Nov. 10.

LEAA Fall Open Art Show award winners

Below is a listing of the award winners from the Llano Estacado Art Association’s 2017 Fall 2017 Fall Open Art Show. The show’s judge was Patrick Schneider, art instructor at Western Texas College, Snyder, Texas. There were 25 artists who presented 90 entries for the competition. The show’s works of art is on display at the Lea County Center for the Arts until Nov. 10.

Best of Show — “Marry Frida Marry,” Acrylic Painting by Courtney Markwell

Oil and Acrylic — 1. “On the Wings of an Angel,” Jannett Evans; 2. “Abandoned Homestead,” Olin Rapp; 3. “Tree Line,” Carol Hammond; Honorable Mentions “Guadalupe Mountain,” Mary Odette Osborne; “The Falls,” Lynda Newman; “Venice Waterway,” Ann Hartman; “Curiosity,” Kerry Romine

Watercolor — 1. “Life Blood of Lea County,” Carol Hammond; 2. “Papaver Californicum,” Bozena Kaczan; 3. “Waiting,” Lynda Newman; Honorable Mentions “Copters over Dunes,” Shirley Friday; “Erosion,” Taylor Arnold; “Close,” Joan McMahon

Pastels, graphite, drawing, pen and ink, digital art — 1. “Manatee Insanity,” Taylor Arnold; 2. “Everyone has a Story,” Melissa G. Anchondo; 3. “Sarafina,” Ann Hartman; “Lana,” Taylor Grincer.

Sculpture, pottery, turnings, 3-Dimensional art — 1. “Who,” David Lynn Sadler; 2. “Fluffy,” Nancy Powell; 3. “Tradescantia Flower,” Bozena Kaczan; Honorable Mentions “Thrown and Altered Green Pot,” John Lathrop; “Lidded Jar No. 1,” Britt Kerby; “Double Diamonds,” Diana Cochran.

Graphics
Silk screen, mixed media, collage — 1. “Different but Compatible,” Nancy Sexton; 2. “Another World,” Jean Peter; 3. “The Mighty Eagle,” Joyce Walker; Honorable Mention, “A Wave of Happiness,” Nancy Sexton.

Other artwork
Enameling, Glass, Metal, Jewelry, Plastic, Mosaic, Wood, Fiber — 1. “Boho Bead Wall Hanging,” Carol Hammond; 2. “Kuro Tomesode-Kaftan,” Bozena Kaczan; 3. “Fan Necklace,” Nancy Skiles. Honorable Mention “Slipping Gears,” Kerry Romine

Photography — 1. First Place, “The Beggar,” Ann Hartman; 2. “Lovely Longhorn,” Joe Griffin; 3. “Mountain Splendor,” Debbie Steffins; Honorable Mention, “Golden Lift-Off,” Joe Griffin; “Hill Country,” Ann Hartman.

Complaint

from PAGE 1

where Mayor Cheryl Chance had put an item on the executive session agenda to discuss possible termination of Gallagher’s contract.

“We are asking for Bob to be placed on administrative leave until this issue is resolved,” Pearce said.

Another Jal resident, Doug Harrison, asked Chance when the employee first brought the harassment forward.

Jal City Attorney Mike Newell stepped in and limited discussion of the issue.

“This has been turned over for review to a third party attorney picked by the municipal league,” Newell said. “These people acted on my recommendations to have a third party look at this who are not influenced by any of the personalities or pros and cons going on in this community.”

Harrison, a voice of support for the council, called for Jal residents to get the whole story.

“Everyone has been attacking the city councilmen and if you look at everything, you might be surprised to find they are not at fault,” he said.

The complaint, filed earlier this year, stems back to the beginning of Gallagher’s employment with the city in 2015.

The allegations came to light at the Aug. 9 deposition of a city employee, who was being interviewed by attorney Gregg Fallick on behalf of an Inspection of Public Records Act lawsuit filed by The Jal Record against

the city.

In the deposition, Fallick asked the woman if Gallagher had “ever done anything that was an abuse of his authority over you as your employer?”

Unsure of what he was asking, the woman, according to the transcript of the deposition, sought clarification and Jal City Attorney Mike Newell suggested sexual harassment as an example of what Fallick was looking for.

“That certainly would be one type,” Fallick said. “Anything that might get an employer sued, and that would certainly be one of them. Is there anything like that?”

According to the woman’s deposition, there were numerous instances of alleged sexual misconduct in which Gallagher made suggestive statements going back to “when he first started.”

“Just little wordings here and there that would make anybody feel uncomfortable as far as what he meant by them,” she said in her testimony.

The employee was able to produce as well a copy of a text message between herself and Gallagher where she asked if she should get one room or two for herself and another female coworker while attending a conference in Albuquerque.

The alleged response from Gallagher was, “No, you can get separate rooms. That way, I can visit you.”

She said she took his meaning as being he wanted to visit her

in her room.

She described other incidents as well where Gallagher allegedly make inappropriate remarks about the meaning of certain emojis in text messages and that inappropriate remarks have been made “off and on” since his employment began with the city.

The woman said she mentioned the issue to Mayor Chance and City Councilor Mike Orr but it was unclear when she discussed the issue with them from the deposition.

Newell said in closing at Tuesday’s meeting he hopes the findings of the third-party investigation will be accepted by the community.

“Hopefully, it can be accepted because it is coming from an outside, third-party source,” he said.

The employee did not wish to comment publicly on the allegations and in her deposition said she did not file a complaint sooner because of fear of retaliation.

“It’s not only from Mr. Gallagher,” she said. “What you see in general is anybody that makes a sexual harassment lawsuit, my feeling, it’s almost like it follows them in any other employment, and I didn’t want that to be what I was remembered as.”

When contacted on Wednesday Gallagher had no comment on the issue.

Levi Hill can be reached at managingeditor@hobbsnews.com.



HMS PHOTO

“Why do we laugh?”

Portraying high school sweethearts in the play, “Why do we Laugh?,” Elizabeth Honigmann and Stratton Davis have a confused phone conversation during a flashback in the multi-generational play. Hobbs High School will present the play at 7 p.m. Monday and Tuesday in the school’s Little Theatre. The drama is directed by seniors Stephanie Haggerton and Amine Tiguie. Tickets are \$5 at the door.

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DACA

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were primarily focused on the resolution becoming a political statement by a board that is supposed to be non-partisan.

Board member Dymorie Maker renewed her objection on that basis at Tuesday’s meeting.

“Everyone knows someone who will be affected by this,” Maker said. “Many are empathetic to the people who are concerned. But often times we have become frustrated by [government] over-reaching. This is a federal and state issue that should be addressed by state and federal governments. Every reference to pulling out the DACA students is inappropriate. My concern is for all students.”

Board member Zac Zimmerman also objected to the resolution on the grounds that the board was stepping into politics.

“School boards are designed to be non-political. I don’t like the way DACA was enacted and I don’t like the way it’s being rolled back. For us to step into it, we are stepping into a political agenda. I don’t know that there is a way to step into this. The sad things is that through all the

political talk, there are kids and families. I’m for the kids and I want to support the kids,” Zimmerman said.

However, the general outline of the resolution adopted Tuesday was worded as a plea to New Mexico’s Congressional delegation to expedite legislation protecting DACA’s “dreamers” — some 800,000 people nationally protected under DACA.

Board member Mara Salcido-Alcantar countered the political statement arguments, saying the board has passed other resolutions of similar nature.

“We have approved resolutions against bullying,” Salcido-Alcantar said, “and this is the same kind of thing.”

Board member Paul Campos said that removing mention of DACA could weaken the intent of the resolution.

“We have to be very careful with this resolution,” Campos said. “If we make too many changes, DACA will be washed away.”

Before the board began its discussion, three members of the Hispanic communi-

ty spoke to the board about how important DACA is to their community and their families.

Marina Pina, a community organizer with SOMOS Lea County, spoke about the need for children and their families to feel secure in the community and at school.

Pina, who speaks fluent English, served as translator for Lorena Murillo and Luz Gardea, both of whom have children who have either already graduated from Lovington High School or are still in school. They urged the board to adopt the resolution, pointing out that their families either owns businesses in Lovington or work in the area and are taxpaying “good citizens.”

The board approved the resolution three-to-two asking New Mexico’s delegation to Congress “to deliver an expedient legislative solution that provides all DACA recipients with certainty in fulfilling all of their potential.”

A full copy of the resolution can be read on the News-Sun website, www.hobbsnews.com.

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From: Gregg Vance Fallick GVF@FallickLaw.com

Subject: Jal Record v. Jal

Date: November 8, 2018 at 11:40 AM

To: Laura E. Sanchez-Rivet LSanchez-Rivet@cuddymccarthy.com, Carlos J. Padilla cpadilla@cuddymccarthy.com



Message:

Laura and Carlos —

While the October 30, 2018 cover letter from Carlos accompanying the City's document production of that date states "we have verified that the documents were provided for you by the office of Mike Newell," my review (including electronic review) of both sets of documents reveals that this statement is not accurate.

Please investigate this representation further and either confirm that it is inaccurate, or (i) identify the date(s) of the claimed prior production, (ii) provide me with copies of the cover letter(s) and/or e-mail(s) accompanying the claimed production, (iii) produce duplicates of the media containing the claimed production, and (iv) disclose any and all other evidence you have of the claimed production.

Finally, if you intend to persist in the contention that these documents all were produced by Mike Newell and you are unable to show me that I am mistaken, please include Mr. Newell on your witness list and be prepared to present his testimony supporting your contention of the prior production. The Jal Record currently does not intend to include Mr. Newell on its witness list, because plaintiff is not inclined to ask him to testify against his former client. But if the City does intend to rely on a disputed claim of prior production that the City claims Mr. Newell's testimony would support, then it has the obligation to present his testimony at trial. If the City does not do so under those circumstances, plaintiff would be entitled to the benefit of the inference that his testimony would rebut the City's disputed contention.

— Gregg

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