IN THE SUPREME COURT OF THE STATE OF NEW MEXICO
February 23, 2011

NO. 32,604

CHARLES COX,

Plaintiff-Respondent,

v.

NEW MEXICO DEPARTMENT OF PUBLIC SAFETY and PETER OLSON, in his capacity as Communications Director of the New Mexico Department of Public Safety,

Defendants-Petitioners.

ORDER

WHEREAS, this matter came on for consideration upon motion of New Mexico Foundation for Open Government, for leave to file an amicus curiae brief, and the Court having considered said motion, and being sufficiently advised, Chief Justice Charles W. Daniels, Justice Patricio M. Serna, Justice Petra Jimenez Maes, Justice Richard C. Bosson, and Justice Edward L. Chávez concurring;

NOW, THEREFORE, IT IS ORDERED that the motion hereby is GRANTED.

IT IS SO ORDERED.

WITNESS, The Hon. Charles W. Daniels, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 23rd day of February, 2011.

(SEAL)

Madeline Garcia, Chief Deputy Clerk

ATTEST: A TRUE COPY
Madeline Garcia
Clerk of the Supreme Court
of the State of New Mexico

IN THE SUPREME COURT
OF THE STATE OF NEW MEXICO

CHARLES COX,

Plaintiff/Respondent,

Sup. Ct. No. 32,604

v.

THE NEW MEXICO DEPARTMENT OF PUBLIC SAFETY, JOHN DENKO, in his individual capacity and in his official capacity as Secretary of the New Mexico Department of Public Safety; CARLOS MALDONADO, in his individual capacity and in his official capacity as Deputy Secretary of the New Mexico Department of Public Safety; MARK ROWLEY, in his individual capacity and in his official capacity as Deputy Director, Motor Transportation Division; and LAWRENCE HALL, individually and PETER OLSON, in his capacity as Communications Director of the New Mexico Department of Public Safety.

Defendants/Petitioners.

NEW MEXICO FOUNDATION FOR OPEN GOVERNMENT'S MOTION FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFF – RESPONDENT

FOR *AMICUS CURIAE:*

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The New Mexico Foundation for Open Government ("NMFOG") through its undersigned counsel and pursuant to Rule 12-215 NMRA 2009, respectfully moves the Court for leave to appear in this matter as *amicus curiae* and file a brief in support of Plaintiff/Respondent Charles Cox. As grounds for this motion, NMFOG states that its members and the public have an important interest in this litigation, because should the Court of Appeals decision be reversed, not only will Plaintiff/Respondent be denied his rights to access public records under the New Mexico Inspection of Public Records Act ("IPRA"), but all citizens will be limited in their ability to monitor the job performance of public employees. NMFOG contends that reinstatement of the District Court decision will inappropriately restrict access rights under IPRA and have a chilling effect on future IPRA requests made by other persons or organizations in New Mexico. NMFOG thus requests leave to appear as *amicus curiae* in this matter and to file the brief attached as Exhibit A to this Motion.

Prior to filing this motion, counsel for NMFOG contacted counsel for Plaintiff/Respondent and for Defendants/Petitioners. Neither party opposes this motion to appear as amicus curiae.

WHEREFORE, NMFOG respectfully requests that the Court grant its motion.

Respectfully submitted,

CASSUTT, HAYS & FRIEDMAN, P.A.

By: Susan M Boe

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

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On this 21st day of February, 2011

CASSUTT, HAYS & FRIEDMAN

By: Susan M Boe
Susan M. Boe

EXHIBIT "A"

IN THE SUPREME COURT
OF THE STATE OF NEW MEXICO

CHARLES COX,

Plaintiff/Respondent,

Sup. Ct. No. 32,604

v.

THE NEW MEXICO DEPARTMENT OF PUBLIC SAFETY, JOHN DENKO, in his individual capacity and in his official capacity as Secretary of the New Mexico Department of Public Safety; CARLOS MALDONADO, in his individual capacity and in his official capacity as Deputy Secretary of the New Mexico Department of Public Safety; MARK ROWLEY, in his individual capacity and in his official capacity as Deputy Director, Motor Transportation Division; and LAWRENCE HALL, individually and PETER OLSON, in his capacity as Communications Director of the New Mexico Department of Public Safety.

Defendants/Petitioners.

MEMORANDUM BRIEF OF *AMICUS CURIAE*
NEW MEXICO FOUNDATION FOR OPEN GOVERNMENT
IN SUPPORT OF PLAINTIFF/RESPONDENT'S ANSWER BRIEF

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Certificate of Compliance

Pursuant to Rule 12-213(A), (F) & (G), Amicus Curiae New Mexico Foundation for Open Government states that the total word count contained in the body of the brief is 3992 words, using Microsoft Office Word 2003.

February 21, 2011
Dated

Susan M. Boe

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Introduction

The New Mexico Foundation for Open Government ("NMFOG") joins with Plaintiff/Respondent Charles Cox ("Cox") in asking this Court to uphold a decision of the Court of Appeals reversing the District Court's denial of a public records request under the New Mexico Inspection of Public Records Act, NMSA 1978, §14-2-1 *et. seq.* ("IPRA"). NMFOG agrees with Cox that the District Court improperly refused to allow disclosure of certain public records, and the Court of Appeals correctly interpreted the law in reversing that decision.

The primary issue before the Court is whether Defendants/Petitioners (the "State") can refuse to produce public records that are complaints against a specific state police officer. This is not a case about opening all personnel files to public scrutiny. Private, confidential employee information continues to stay closed under the Court of Appeals' decision. However, this is a case that recognizes, as do the State's own regulations, that public records cannot be stuffed inside personnel files so as to avoid public scrutiny. Cox is seeking public records of public acts by a public police officer as he interacted with members of the public.

IPRA creates a broad right of access to government records, and this Court has underscored the sound public policy reasons behind that right. "The citizen's right to know is the rule and secrecy is the exception[,]" *State ex rel. Newsome v. Alarid*, 90

N.M. 790, 797, 568 P.2d 1236, 1243 (1977). The Court of Appeals recognized this legislative and judicial mandate in ordering the State to release the complaints to Cox, reversing the District Court's narrow reading of IPRA which stretched the "letters of reference" and "matters of opinion" exceptions to embrace the requested records. The Court of Appeals held that the exceptions under NMSA 1978, § 14-2-1 (A) (2) and (3) (1993) (letters of reference and ...matters of opinion) were not meant to address external complaints in regard to a police officer's role as a public official. Any other reading of the exceptions would seriously undermine the public's right to be informed about the doings of state government:

> Recognizing that a representative government is dependent upon an informed electorate, the intent of the legislature in enacting the Inspection of Public Records Act [14-2-4 NMSA 1978] is to ensure, and it is declared to be the public policy of this state, that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees...

NMSA 1978, § 14-2-5 (1993). Thus, under IPRA access to complaints against a public employee, as was granted by the Court of Appeals here, helps ensure that the activities of government are not shrouded in secrecy. As Harry Truman once said, "I don't care what branch of the government is involved....Secrecy and a free, democratic government don't mix." Merle Miller, *Plain Speaking: An Oral Biography of Harry S. Truman* 392 (1974).

Interest of the Proposed Amicus Curiae

NMFOG is an educational and charitable organization dedicated to assisting New Mexico citizens with understanding, exercising and preserving their rights under the federal and New Mexico Constitutions, the New Mexico Open Meetings Act [NMSA 1978, §§ 10-15-1 *et seq.*], the Inspection of Public Records Act [NMSA 1978, §§ 14-2-1 *et seq.*], and the Arrest Record Information Act [NMSA 1978, §§ 29-10-1 *et seq.*], as well as their rights under the federal Freedom of Information Act [5 U.S.C. § 552]. NMFOG regularly assists citizens, businesses and news organizations in obtaining documents and information from government sources. From that vantage point, NMFOG has reason to believe that public scrutiny of the conduct of public employees will be seriously impeded should the Court of Appeals decision be reversed. On behalf of its members and all New Mexicans who value an open and accountable system of government, NMFOG urges the Court to let the Court of Appeals ruling stand.

Argument

New Mexicans rightly expect government accountability and openness, and the Legislature preserved this expectation through creation of statutory access rights under IPRA. Only by avoiding a strained extension of the minimal exceptions in IPRA can the judiciary vindicate the statutorily protected expectation of openness. The Court of Appeals reaffirmed the IPRA mandate and the public policy of full access to public

records. The District Court's ruling allowed a public employee to evade accountability under the guise of protecting the employee's personal privacy.

This Court's preservation of the Court of Appeals' decision is important for the continued strength of IPRA for the following reasons:

I. The Court of Appeals decision upholds the ability of all New Mexicans to access records about the conduct of public employees.

The State refuses to look at the broad public policy implications of this case for all New Mexicans and overemphasizes very fact-specific arguments. In particular, the State attempts to impugn Cox's motives for seeking the records of complaints lodged against a particular DPS officer. See, e.g., Petitioner's Brief in Chief, p.1 (reference to Cox's alleged "inappropriate racial comments about a subordinate officer"); p 2 (reference to production of complaints "about the subordinate officer that Cox targeted"); p. 24 (concern that Cox will use the complaints as some form of retaliation, "given Cox's past conduct against the officer"). These statements are irrelevant to the bigger issues at stake here.

Indeed, IPRA was amended in 1993 to clarify that the reasons a person seeks public records need not be disclosed. NMSA 1978, § 14-2-8 (C) (1993) ("No person requesting records shall be required to state the reason for inspecting the records.") Nor does the fact that Cox obtained the records through related litigation have any

bearing on the decision, and this Court should not be distracted from the larger policy arguments involved in this case.

Cox is not the first New Mexico citizen to encounter roadblocks in seeking complaints against public employees. In fact, several NMFOG members have been denied access to complaints because the custodian claimed the public records were exempt from disclosure as "confidential or personnel" matters. For example:

- In June 2009, the *Las Vegas Optic* requested all formal complaints against Las Vegas police officers filed over a two year period. **Request denied.** The Las Vegas city attorney alleged that complaints from citizens were from "confidential sources, methods and information" and were considered "internal affairs matters" and therefore protected from disclosure.

- In February 2009, a reporter for the *New Mexican* sought complaints filed by members of the public against Santa Fe police officers over a five-year period. **Request denied.** The City attorney cited both the *Newsome* case and the "opinion" exception of IPRA (NMSA 1978, § 14-2-1 (A)(3) (1993)).

- In November 2009, the *Albuquerque Journal* sought, among other items, written comments solicited from the public by New Mexico State University about five finalists for president of the university. **Request denied.** The university human resources services department labeled such comments "matters of opinion" under § 14-

2-1 (A)(3) (in addition to invoking the statutory exception of Section 14-2-1(A)(7)) even though the names of the five finalists already had been released to the public.

- In December, 2009, NMFOG sought information about salary increases paid to any employees in the State Personnel Office. **Request denied.** In initially denying the request, the records custodian for the State Personnel Office cited *Newsome* and the paragraph excepting personnel evaluations. NMFOG eventually pieced together the information by submitting a new request seeking the salaries of such employees at specific points in time.

A. The exceptions to IPRA have been carefully crafted and should not be unduly expanded.

In the IPRA statute, the New Mexico Legislature emphasized the right of every citizen to obtain "the greatest possible information regarding the affairs of government and the official acts of public officers and public employees." NMSA 1978, § 14-2-5 (1993). This free flow of information means openness is the rule and any exceptions to openness should be narrowly tailored. Any ambiguity in IPRA should be resolved in favor of disclosure.

To its credit, New Mexico has been slow to create exceptions to the rule of disclosure. While IPRA was enacted in 1947 (ch. 130, 1947 N.M. Laws 239), and was amended in 1973 (ch. 271 § 1, 1973 N.M. Laws 1222), only 12 exceptions have been tacked onto the statute in the intervening years – in contrast with the freedom-of-information statutes of other states, which have dozens of exceptions or intricate and

detailed formulas for hiding public information. See, e.g., Iowa Code § 22.7 (64 exceptions to disclosure); Colo. Rev. Stat. § 24-72-204 (21 exceptions); Wyo. Stat. Ann. § 16-4-203 (detailed lists and sublists of exceptions); Wash. Rev. Code § 42.56.230-470 (more than 100 exceptions).

In both *Newsome* and *Spadaro v. University of New Mexico*, 107 N.M. 402, 759 P.2d 189 (1988), this Court asked the Legislature to clarify the definition of public records. Finally in 1993, the Legislature approved a sweeping definition of public records, while declining to expand the exceptions suggested by this Court in *Newsome* or *Spadaro*. (Three exceptions for military records were enacted in 2005. See NMSA 1978, § 14-2-1(A)(8), (9), (10) (2005). This history demonstrates the Legislature's reluctance to undermine IPRA's fundamental guarantee of government openness.

B. The Court of Appeals decision followed precedent under *Newsome* while also considering sound public policy issues.

Overturning the District Court's erroneous ruling in favor of secrecy, the Court of Appeals correctly held that not all documents in personnel files can be kept hidden under either IPRA or earlier New Mexico cases. Indeed, in *Newsome* this Court noted distinctions between the various types of information sought by the petitioner therein and remanded the case to the trial court to carefully analyze each of the personnel records being requested. ("Newsome was entitled to a ruling that he be granted the right to inspect those portions of the personnel records that are not specifically

exempted by statute and are not considered to be confidential as defined herein" *Newsome*, 90 N.M. at 799, 568 P.2d at 1245.)

Also in *Newsome*, this Court developed the "rule of reason" under which a records custodian or the district court engages in a balancing of public interests in its determination of whether public records to which no specific exception applies, might yet be shielded from disclosure.

1. Public accountability of public employees requires a finding that complaints are neither "references" nor "matters of opinion."

As the Court of Appeals pointed out, a letter of reference is a "term of art" broadly understood to mean opinions sought in connection with the hiring of a prospective employee. Such letters may contain both positive and negative information about the job applicant. Plainly, however, a complaint from a member of the public about a state employee does not become a "letter of reference" under NMSA 1978, § 14-2-1(A)(2), merely because the complaint asserts that the employee should be fired.

Similarly, the Court of Appeals refused to allow public agencies to hide behind the IPRA provision exempting "letters or memorandums that are matters of opinion in personnel files." NMSA 1978, § 14-2-1(A)(3). A strong argument consistent with the policy undergirding IPRA can be made that this subsection is meant to be sui generis and does not embrace every piece of paper that mentions an opinion and later gets slipped into a personnel file. If "matters of opinion" were meant to be read in such a

sweeping manner, then why the need for a separate subsection (2) that exempts letters of reference, which *Newsome* and other cases have noted usually contain matters of opinion? Enactments of the Legislature are to be interpreted to accord with common sense and reason. *Westland Development Co. v. Saavedra*, 80 N.M. 615, 459 P.2d 141 (1969).

2. Under the "rule of reason," complaints against public employees are not exempt from disclosure.

In *Newsome,* this Court adopted the "rule of reason" to be applied in cases where a public records request involves a document that IPRA does not explicitly exempt. Under the rule of reason, the burden is placed on the records custodian to explain why a document which is clearly a public record (which the State finally seems to concede in its brief here) should not be released. The *Newsome* Court stated that information can only be withheld if its release "**would not be in the public interest,**" "**would damage the 'public interest,'**" or "**would be detrimental to the best interests of the state.**" 90 N.M. at 795, 568 P.2d at 1241 **(emphases added).**

In *City of Farmington v. The Daily Times*, 2009-NMCA-057, 146 N.M. 349, 210 P. 3d 246, the Court of Appeals noted that the rule of reason requires the district court to balance "the fundamental right of all citizens to have reasonable access to public records against countervailing public policy considerations which favor confidentiality and nondisclosure." Though the State waived the "rule of reason" argument in the

District Court as well as at the Court of Appeals and thus is precluded from raising the argument now, it attempts to bring the *Newsome* analysis in by the back door in its appeal. See Brief in Chief at 17-19. While claiming to balance the interests at stake here, the State undertakes to weigh the privacy interests of a state employee against the public's strong right to disclosure. Instead, the public interest should be placed on both sides of the scale. How can a police officer have a privacy expectation for public conduct occurring on public highways? Privacy interests of public employees in some cases may coincide with the public interest in nondisclosure, but this is not that case. If there is a public interest in nondisclosure here, the State has not made it.

3. The State's regulations and a related statute would permit release of complaints against employees.

The New Mexico Administrative Code also recognizes the general rule that employment records are subject to inspection by the general public. 1.7.1.12. B. NMAC. Confidential records are the exception to the rule and defined in the regulations as letters of reference concerning employment, licensing, or permits, records and documentation containing matters of opinion, documents concerning infractions and disciplinary actions,[1] performance appraisals, laboratory reports, political affiliation, race, color, religion or test results.

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[1] NMFOG does not mean to suggest that the regulations are correct in exempting disciplinary records from public disclosure. A majority of states allow disclosure of disciplinary proceedings provided, in some cases, the released information does not constitute a clearly unwarranted invasion of personal privacy. See, e.g., Ark.

The foregoing records are all documents typically found in any employee's personnel file—whether in the public or private sector. However, as a person who is paid by taxpayer funds and by law held accountable to the public, a government employee should expect a very narrow zone of privacy in regard to his or her public conduct. The purpose of IPRA is to allow the public the greatest possible information regarding the affairs of government and the official acts of public officers and employees. 1978 NMSA, § 14-2-5 (1993). What could be a more official act than a police officer's interactions with a member of the public he or she is pledged to serve and any complaints which arise from such interactions?

A related New Mexico law, the Open Meetings Act (Chapter 10, Article 15, 1978 NMSA) also seems to permit disclosure of complaints lodged against state employees. That act mandates that all meetings of a public body be opened to the public except for **consideration** of complaints or charges against any individual public employee. 1978 NMSA, § 10-15-1-H (2) (emphasis added). In this case only the complaints are sought not any action that may or may not ensue from the complaint.

Code Ann. §§ 25 19-105(b)(12)(2010); *Amoco Production Co. v. Landry*, 426 So. 2d 220 (La. Ct. App. 1982) (disciplinary records involving employee misconduct do not give rise to reasonable expectations of privacy). In Washington, information may be withheld to the extent that disclosure would violate employees' right to privacy, see Wash. Rev. Code § 42.17.310 (1)(b), recodified as Wash. Rev. Code § 42.56.230(2), which is defined as matters that would be "highly offensive to a reasonable person and are not of public concern," Wash. Rev. Code § 42.17.255, recodified as Wash. Rev. Code § 42.56.050.

In *Newsome*, this Court quoted with approval the Oregon Supreme Court's observation in *MacEwan v. Holm*, 226 Or. 27, 38, 359 P.2d 413, 418 (1961), that equally should apply here:

> Writings coming into the hands of public officers in connection with their official functions should generally be accessible to members of the public so that there will be an opportunity to determine whether those who have been entrusted with the affairs of government are honestly, faithfully and competently performing their function as public servants.

Further, why should public employees be allowed to perform their jobs in secret, while licensed professionals such as nurses, physicians, acupuncturists, and nursing home administrators are subject to public scrutiny by the New Mexico Regulation and Licensing Department pursuant to 1978 NMSA Chapter 61? Surely the public interest in exposing the misconduct of public employees, especially police officers, is at least as great as the public interest in bringing to light the untoward behavior of athletic trainers and tattoo artists. In all instances, the disclosure could potentially be embarrassing, but should be an expected byproduct of being a public actor. Mere embarrassment does not trump public access.

Therefore, the overriding interest that controls the result here is the legislative directive and goal of IPRA, which is designed to shed light upon the government. This is especially true when that light may reveal mismanagement, incompetence, or even worse, criminal activity.

II. Reversal of the Court of Appeals decision will severely limit the press and citizens' ability to examine and debate the official actions of public employees.

The hallmark of a democratic society is openness and transparency, especially in regard to review or criticism of our government officials. Both the press and citizens play an important watchdog role in our society, but that job cannot be performed without the ability to scrutinize the performance of public employees as they conduct their official duties. Complaints lodged against such employees is one indication of how well they are doing their jobs.

A. The Court of Appeals decision correctly distinguishes between the official actions and private lives of public officials.

In its brief, the State tries to make much of the so-called distinction referenced by the Court of Appeals between internal and external documents. Though this was an incorrect reading of the Court of Appeals' decision, at a minimum, all externally generated documents, unless explicitly excluded by IPRA, should be subject to release. Actually, a test distinguishing between internal and external documents would be clear cut and simple for a records custodian or district court to make.

However, the better test is to distinguish between an employee's role as a public servant and his or her relationship to his employer as an employee. Even the hypothetical examples cited in the State's brief could be readily addressed

under this formula. And note the earlier quote from *Newsome* that writings coming into the hands of public officials **in connection with their official functions** should generally be accessible to members of the public ... (emphasis added). For example, Illinois exempts information that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy, which does not include information that bears on the public duties of public employees. See 5 Ill. Comp. Stat. 140/7 (1)(b)(2009).

Courts have experience in distinguishing between private and public matters of a government employee, especially after the United States Supreme Court decision in *New York Times v. Sullivan,* 376 U.S. 254 (1964). In *Sullivan* the Supreme Court acknowledged the importance of open and robust debate in a democratic society and held that under the First Amendment a public official must prove "actual malice" in a libel action that results from comments made about the performance of his or her public or official duties. *Sullivan* was a ground-breaking case, recognizing that the official actions of public officials are of such great public concern that the Constitution may protect even false speech when public employees sue in their official capacity. Further, *Sullivan* pointed out that when individuals make the decision to serve the public, they are necessarily inviting public comments about their official actions and have a diminished interest

in keeping information about their conduct, such as the complaints at issue here, out of the public sphere.

Sullivan and its progeny require courts to determine whether the alleged libelous speech arose out of an individual's role as a public actor or in his or her private life. For example, if a county employee sued another employee over slanderous remarks made around the water cooler to other co-workers about that employee's sexual preferences, the *Sullivan* higher standard of proof would not apply. But if a public employee sued about alleged libelous statements in a complaint filed by a citizen, the *Sullivan* standard of actual malice would apply. These same distinctions can be made in regard to public records requests from personnel files, e.g., does the record discuss an employee's health, which is a private matter, or the fact that he shoved a citizen during a traffic stop?

B. Police officers' on-the-job activities are matters of legitimate public interest, not private, confidential facts.

Although NMFOG's position is that complaints against all public employees should be released under IPRA, the argument is particularly compelling in regard to police officers. Police officers are a unique type of public employee who require an enhanced level of independent scrutiny beyond that normally applicable to non-law enforcement civil servants. State police officers are authorized to detain, search, arrest and use force upon citizens, and thus courts, as in *Sullivan,*

have afforded citizens great constitutional liberties to freely criticize and debate their actions. Here the State seeks to restrain criticism of official police conduct and public oversight of such behavior by claiming the documents are personnel or opinion records – but public debate about the contents of these sorts of records is exactly what *Sullivan* and the First Amendment were designed to protect. [2]

The United States Supreme Court in *Foley v. Connelie,* 435 U.S. 291 (1978), discussed the great power police officers have over regular citizens. "The execution of broad powers vested in [police officers] affects members of the public significantly and often in the most sensitive areas of daily life that "calls for a very high degree of judgment and discretion, the abuse or misuse of which can have serious impact on individuals." *Id.* at 297-98. Though in its brief (Brief of Petititoner, pp. 16,17) the State laments that "rank and file" employees must relinquish their confidentiality rights under the Court of Appeals decision, police officers are not such garden variety civil servants. As the *Foley* court highlighted: "A policeman vested with the plenary discretionary powers we have described is not to be equated with a private person engaged in routine public employment or other 'common occupations of the community' who exercise no broad power over people generally." *Id* at 298. This observation has been made by other courts:

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[2] Obviously, the State lacks standing to raise the privacy concerns of citizens submitting complaints, though the State also mentions that red herring in its brief (Brief of Petitioner, p.23)

> The cop on the beat is the member of the department who is most visible to the public. He possesses both the authority and the ability to exercise force. Misuse of his authority can result in significant deprivation of constitutional rights and personal freedoms, not to mention bodily injury and financial loss. The strong public interest in ensuring open discussion and criticism of his qualifications and job performance warrant the conclusion that he is a public official. *Gray v. Udevitz,* 656 F. 2d 588, 591 (10th Cir. 1981).

NMFOG agrees with this analysis. Unfortunately, allegations of police abuse and misconduct are a growing concern around the nation, including here in New Mexico. The City of Albuquerque has created an Independent Review Office ("IRO") to address citizen complaints against the Albuquerque Police Department. According to the IRO website (www.cabq.gov/iro), the purpose of the office, among other things, is to oversee the full investigation and mediation of all citizen complaints and promote a spirit of accountability between citizens and the Albuquerque police. Created by city ordinance in 2000, the IRO opens its meetings to the public and provides televised broadcasts and online streaming of its sessions to create a very transparent process subject to public scrutiny. During the first two quarters of 2010, 129 complaints against city officers were submitted to the IRO. Under IPRA, complaints against state police officers should be no less available for public debate and review.

CONCLUSION

For the above-stated reasons, NMFOG supports Plaintiff/Respondent's request that the decision of the Court of Appeals be upheld and that the State be ordered to release the requested complaints against a particular state police officer. Such action will further the goal of transparency and openness in New Mexico public affairs.

Respectfully submitted,

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