

**SUMMONS**

STATE OF NEW MEXICO COUNTY OF SANDOVAL THIRTEENTH JUDICIAL DISTRICT COURT Court Address: 1500 Idalia Road, Building A PO Box 600 Bernalillo, New Mexico 87004 Court Telephone No.: (505) 867-2376	Case Number: D-1329-CV-2022-00259  Judge: <b>Noel, James A.</b>
THE NEW MEXICAN, INC., d/b/a THE SANTA FE NEW MEXICAN, and NEW MEXICO FOUNDATION FOR OPEN GOVERNMENT,  Plaintiff(s):  v.  CITY OF RIO RANCHO and DANIEL VALENZUELA,  Defendant(s).	Defendant Name: CITY OF RIO RANCHO Address: c/o Rebecca Martinez, City Clerk 3200 Civic Center Circle NE Rio Rancho, New Mexico 87144

**TO THE ABOVE NAMED DEFENDANT(S):** Take notice that

1. A lawsuit has been filed against you. A copy of the lawsuit is attached. The Court issued this Summons.
2. You must respond to this lawsuit in writing. You must file your written response with the Court no later than thirty (30) days from the date you are served with this Summons. (The date you are considered served with the Summons is determined by Rule 1-004 NMRA.) The Court's address is listed above.
3. You must file (in person or by mail) your written response with the Court. When you file your response, you must give or mail a copy to the person who signed the lawsuit.
4. If you do not respond in writing, the Court may enter judgment against you as requested in the lawsuit.
5. You are entitled to a jury trial in most types of lawsuits. To ask for a jury trial, you must request one in writing and pay a jury fee.
6. If you need an interpreter, you must ask for one in writing.
7. You may wish to consult a lawyer. You may contact the State Bar of New Mexico for help finding a lawyer at [www.nmbar.org](http://www.nmbar.org); 1-800-876-6227; or 1-505-797-6066.

o, New Mexico, this 14 day of March, 2022.



**Audrey Garcia**  
\_\_\_\_\_  
CLERK OF COURT

By: **M.T**  
\_\_\_\_\_  
Deputy

Attorneys for Plaintiffs:

By: /s/ Charles K. Purcell  
Charles K. Purcell  
Rodey, Dickason, Sloan, Akin & Robb, P.A.  
P.O. Box 1888  
Albuquerque, NM 87103-1888  
Phone: (505) 765-5900 / Fax: (505) 768-7395  
E-mail: [kpurcell@rodey.com](mailto:kpurcell@rodey.com)

THIS SUMMONS IS ISSUED PURSUANT TO  
RULE 1-004 OF THE NEW MEXICO RULES OF  
CIVIL PROCEDURE FOR DISTRICT COURTS.

**RETURN**

STATE OF NEW MEXICO            )  
  )ss  
COUNTY OF \_\_\_\_\_ )

I, being duly sworn, on oath, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this Summons in \_\_\_\_\_ County on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by delivering a copy of this Summons, with a copy of complaint attached, in the following manner:

**(check one box and fill in appropriate blanks)**

to the Defendant \_\_\_\_\_

to the Defendant by \_\_\_\_\_ [mail] [courier service] as provided by Rule 1-004 NMRA.

After attempting to serve the Summons and complaint on the Defendant by personal service or by mail or commercial courier service, by delivering a copy of this Summons, with a copy of complaint attached, in the following manner:

to \_\_\_\_\_, a person over fifteen (15) years of age and residing at the usual place of abode of defendant \_\_\_\_\_, and by mailing by first class mail to the defendant at \_\_\_\_\_ a copy of the summons and complaint.

to \_\_\_\_\_, the person apparently in charge at the actual place of business or employment of the defendant and by mailing by first class mail to the defendant at \_\_\_\_\_ and by mailing the summons and complaint by first class mail to the defendant at \_\_\_\_\_.

to \_\_\_\_\_, an agent authorized to receive service of process for defendant \_\_\_\_\_.

to \_\_\_\_\_, [parent] [guardian] [custodian] [conservator] [guardian ad litem] of defendant \_\_\_\_\_.

to \_\_\_\_\_ (*name of person*), \_\_\_\_\_, (*title of person authorized to receive service.*).

Fees: \_\_\_\_\_

\_\_\_\_\_  
Signature of person making service

\_\_\_\_\_  
Title (*if any*)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Judge, notary or other officer authorized to administer oaths

My commission expires: \_\_\_\_\_

STATE OF NEW MEXICO  
COUNTY OF SANDOVAL  
THIRTEENTH JUDICIAL DISTRICT

THE NEW MEXICAN, INC.,  
d/b/a THE SANTA FE NEW MEXICAN, and  
NEW MEXICO FOUNDATION FOR  
OPEN GOVERNMENT,

Plaintiffs,

v.

No. D-1329-CV-2022-00259  
Noel, James A.

CITY OF RIO RANCHO and  
DANIEL VALENZUELA,

Defendants.

**COMPLAINT TO ENFORCE THE INSPECTION OF PUBLIC RECORDS ACT**

Plaintiffs The New Mexican, Inc., doing business as the Santa Fe New Mexican (“the New Mexican”), and New Mexico Foundation for Open Government (“NMFOG”), for their complaint against Defendants City of Rio Rancho (“the City”) and Daniel Valenzuela (“Valenzuela”), allege and state as follows:

**Introduction**

1. This case concerns denial of the public’s right, under the Inspection of Public Records Act (“IPRA”), to examine law-enforcement records – in particular, police reports and audio recordings of 911 calls – on the ground that the Children’s Code makes them entirely confidential.

2. These documents and recordings have traditionally and routinely been made available for public inspection, subject to occasional redaction to honor specific IPRA exemptions. The asserted justification for wholesale denial of the records requests at issue here was plainly erroneous as a matter of law. Should it go uncorrected by a court in this widely

publicized case, it threatens to curtain from public view vast swaths of previously public information at the intersection of public safety and child welfare. The upshot would be to render invisible many important activities of law-enforcement agencies and child-protective services alike, and to undermine the accountability of public servants charged with investigating suspected violations of New Mexico’s criminal statutes and safeguarding its most vulnerable citizens.

### **Parties**

3. Plaintiff New Mexican is a daily newspaper broadly circulated and widely read in Santa Fe County and elsewhere, particularly in the northern half of New Mexico, but also in Albuquerque and Rio Rancho. Its principal place of business is in Santa Fe County.

4. Plaintiff NMFOG is a New Mexico nonprofit, nonpartisan organization whose mission is to help individuals, businesses, students, educators, journalists, lawyers, and other engaged citizens understand, obtain, and exercise their rights under IPRA, the Open Meetings Act, the Arrest Record Information Act, the federal Freedom of Information Act, and the First Amendment, as well as to help public officials understand and discharge their obligations under those statutes and constitutional provisions. NMFOG has its principal place of business in Bernalillo County.

5. Defendant City, located within Sandoval County, is a political subdivision of the State of New Mexico, see, e.g., Yurcic v. City of Gallup, 2013-NMCA-039, ¶ 8, 298 P.3d 500, and thus a “public body” within the meaning of IPRA, NMSA 1978, § 14-2-6(F) (2018). It operates the Rio Rancho Police Department.

6. Defendant Valenzuela is the designated custodian of the City’s public records. On information and belief, he is a resident of Sandoval County.

### **Jurisdiction and Venue**

7. The Court has jurisdiction over the parties and subject matter of the action under NMSA 1978, § 38-3-1.1 (1988), as well as under IPRA and other applicable statutes.

8. Venue is proper under NMSA 1978, § 38-3-1(A) (1988).

### **General Allegations**

9. IPRA declares that “all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees” and that “provid[ing] persons with such information is an essential function of a representative government.” NMSA 1978, § 14-2-5 (1993). Under IPRA, “[t]he citizen’s right to know is the rule and secrecy is the exception.” Republican Party of N.M. v. N.M. Taxation & Revenue Dep’t, 2012-NMSC-026, ¶ 12, 283 P.3d 953.

10. On or around December 10, 2021, New Mexican reporter Victoria Traxler e-mailed the Rio Rancho Police Department to inquire about the rumored fatal shooting two days earlier of a two-year-old family member of a Santa Fe Police Department officer who lived in Rio Rancho. Captain Joel Holt replied that

[o]n December 8th at 8:37 AM, officers from the Rio Rancho Police Department responded to a call of a shooting in Enchanted Hills. Upon the arrival of our officers, they discovered a two year old child with a gunshot wound. Despite life saving measures of our officers and Rio Rancho Fire Rescue paramedics, the gunshot wound was fatal. This was a tragic accident involving the family of a Santa Fe Police Department officer. It is an open and ongoing investigation and we appreciate the public’s patience as no further details can be released at this time.

11. In response to Traxler’s follow-up request, Captain Holt provided her with a case number – 21008918 – but reiterated that “we have released everything we can at this time.”

12. On December 13, 2021, acting on behalf of the New Mexican, see, e.g., San Juan Agric. Water Users Ass’n v. KNME-TV, 2011-NMSC-011, 150 N.M. 64, 257 P.3d 884, Traxler

made two written requests to the City for public records. The first request was for “any and all available reports for RRPD case #21008918.” The second was for “[a]ny and all 911 audio on Dec. 7 and Dec. 8 related to an incident at the address of 5748 Sandoval Dr. NE, Rio Rancho,” and for “[a]ny and all 911 on Dec. 8 related to the accidental shooting death of a 2-year-old child in the area of Enchanted Hills.”

13. On December 16, 2021, Defendant Valenzuela responded identically to both requests as follows: “[I]n accordance with the Inspection of Public Records Act Section 14-2-1(H) ‘As otherwise provided by law’ and NMSA § 32A, the Children’s Code the records are excepted from disclosure, therefore your request has been denied.”

14. Meanwhile – on December 14, 2021 – Traxler had traveled to the Sandoval County Judicial Complex, where she had been given access to a search warrant pertaining to 5748 Sandoval Drive NE in Rio Rancho, the materials proffered in support of the warrant, and the property inventory resulting from its execution. Among the materials that Traxler had viewed that day was an affidavit given by a Rio Rancho Police Department investigator to provide probable cause for the warrant. The affidavit stated in pertinent part that

[o]n December 8, 2021 at 0831 A.M[.] the Sandoval County Regional Emergency Communication Center received a 911 call from Courtney Harmon stating they needed an ambulance. After confirming the address of 5748 Sandoval Drive NE, Courtney informed the Dispatcher her two-year-old son fell off a chair and there was blood everywhere. Courtney confirmed he was not awake.

While speaking with Courtney the Dispatcher learned, Courtney’s husband, John was performing CPR on their two-year-old son, “L.H”. John informed the Dispatcher he knew how to perform CPR because he was a Police Officer. John confirmed with the Dispatcher their son had been “down” a couple of minutes. The Dispatcher asked John if he saw “LH” go unconscious and John said, “I did not see him go unconscious, no”. When asked, John was unsure of where the blood was coming from but confirmed there was a lot of blood coming from his son’s mouth and his son must have hit his teeth because a couple of teeth were missing.

Courtney was distraught, crying, pleading with John and noted there was “blood everywhere”. John confirmed he could not hear any breathing as Courtney was begging for the child, “L.H.” to breath[e].

As the ambulance arrived on scene Courtney confirmed her son and husband were in the kitchen.

Initial Officers on scene (Officer A. Blake and C. Misbach) observed a shell casing and projectile on the kitchen floor next to “L.H”. Additionally, Officers observed a tan in color Kydex firearm holster on the kitchen countertop/island.

Upon the arrival of Corporal A. Hertz, he inquired about firearms and Courtney informed him the gun was placed in a kitchen cabinet.

Affiant is aware through training and experience that people involved in the commission of crime(s) often attempt to conceal, tamper with, or dispose of evidence, including but not limited to the herein-described item(s), to be seized. They may attempt to give aid or assistance to victim(s) after an act of violence.

Among the items listed on the inventory of property seized from the home were two Glock handguns and two AR-15 rifles. The inventory identified Jonathan Harmon as the owner of the firearms and Lincoln Harmon as the “victim.”

15. The day after her IPRA requests were denied, Traxler e-mailed Rio Rancho City Attorney Greg Lauer “seeking further clarification” of the rationale for the denial. On December 27, 2021, Lauer replied with an e-mail that attached two provisions from the Children’s Code – NMSA 1978, § 32A-2-32 (2009), and NMSA 1978, § 32A-4-33 (2016) – and that declared:

Using plain language, the Children’s Code prescribes that matters referred to CYFD are confidential and only a narrow list of exceptions exists for persons who are authorized to have access to, distribute, or disclose the details of such reports, documents, or information pertaining to applicable cases involving children. Broadcasters or other media-types are not included amongst excepted persons who have lawful access to records or files which the Children’s Code shields as being confidential.

16. On January 14, 2022, NMFOG Executive Director Shannon Kunkel wrote a letter to Lauer urging him to reconsider his denial of Traxler’s IPRA requests, as communicated through Defendant Valenzuela. While conceding that the Children’s Code “protects a wide

range of information ... from disclosure by [the Children, Youth and Families Department ('CYFD')],” Kunkel emphasized that Traxler had requested “basic police information.” “Nothing in the Children’s Code,” she observed, “states that original records of entry, such as 911 records and police reports generated by other agencies such as the city of Rio Rancho, are covered by some unwritten yet sweeping protective umbrella of the Children’s Code.” And she added that the City’s position on the issue was contrary to “a long-standing legal interpretation by both CYFD and various records custodians.”

17. At the same time, on behalf of Plaintiff NMFOG, Kunkel submitted written IPRA requests mirroring the ones that Traxler had made.

18. Lauer replied to Kunkel’s letter by e-mail that afternoon. Thanking Kunkel for her “opinions,” he argued that the Children’s Code’s “special, elevated confidentiality provisions” were sufficient to “nullify the public’s general ... right to inspect records or documents which may exist.” He professed to find in Kunkel’s letter “no legal, statutory, or any other authority which one may conclude reasonably to render the Children’s Code confidentiality provisions to mean nothing actually.” And he accused Kunkel, Traxler, and “other media-types” of trying to “access and exploit children’s confidential files and information.”

19. On January 20, 2022, Defendant Valenzuela formally denied NMFOG’s IPRA request for the police reports and 911 materials that the City had previously refused to release to Traxler and the New Mexican.

20. On March 7, 2022, as the New Mexican and NMFOG were preparing to file this lawsuit, the Office of the Attorney General (“OAG”) issued a determination letter in response to a complaint filed with the OAG by T.J. Wilham. Wilham, on behalf of KOAT-TV, had submitted an IPRA request to the City on December 17, 2021, for several categories of



documents concerning the December 8 incident – including incident reports and 911 recordings – and the City had denied his request, too. The OAG determination letter rejected the City’s reliance on the Children’s Code, explaining that Section 32A-2-32 “almost certainly does not exempt from disclosure any of the records responsive to Mr. Wilham’s request” because “the December 8, 2021 incident does not appear to have involved either a delinquent act or a delinquent child,” and that Section 32A-4-33 does not pertain to “police reports ... or other types of routinely generated law enforcement records.” And the letter recommended that the City honor Wilham’s December 17 request for the materials “as soon as possible.”

21. Wilham sent a follow-up e-mail to Lauer the same day to ask “if the city plans to release the records.” Kunkel likewise asked that NMFOG’s previous IPRA request be reopened “with the expectation that the records will now be made available.” Phill Casaus made a similar request on behalf of the New Mexican. Replying to Kunkel’s e-mail, Lauer instructed her “not [to] submit IPRA requests to [him]” but to “use the City’s website and portal for that purpose.” Casaus received the same message. Kunkel and Casaus complied with Lauer’s instruction.

22. Lauer replied to Wilham by e-mail later that afternoon. He dismissed the OAG determination letter as “merely an opinion that has no legal bearing”; he theorized that the OAG had “violated the New Mexico Constitution’s anti-donation prohibition by sending what is essentially a demand or collection letter on behalf of a private sector individual ... who is not entitled to such public resources”; he characterized the determination letter as a series of “narrow, attenuated arguments ... embrac[ing] an illogical and myopic view of the law”; he questioned the legitimacy of the “purported public interest” in which Wilham and other “media types” were acting; he insinuated that “a more prurient motivation” often underlay records requests of the sort they had made; and he declared that the City had “reject[ed]” the OAG

determination letter as “irrelevant to what New Mexico Law actually states and prescribes about this subject.”

23. On March 9, 2022, Casaus and Kunkel received e-mails from Defendant Valenzuela indicating that the City would treat their follow-up inquiries about the New Mexican’s December 2021 IPRA request and NMFOG’s January 2022 IPRA request as brand-new requests, would “require additional time to respond to [those] request[s],” and would therefore “be in contact with [Casaus and Kunkel] by 3/22/22.”

24. Meanwhile, Kunkel learned that in response to Wilham’s complaint, the City had produced to the OAG – but not to Wilham – a December 8, 2021 e-mail colloquy between members of the Rio Rancho Police Department. The e-mail string, marked “Confidential / Not approved for Public Release” and “DO NOT RELEASE PLEASE!!!!”, indicated that Lincoln Harmon had “found a firearm in the home and discharged it himself.”

**COUNT I –  
VIOLATIONS OF THE INSPECTION OF PUBLIC RECORDS ACT**

25. Plaintiffs incorporate the foregoing allegations of their complaint as if the same were fully set forth herein.

26. IPRA gives “[e]very person ... a right to inspect public records of this state” except for seven specified categories of records – none of which the City has placed at issue in this case – and except “as otherwise provided by law.” NMSA 1978, § 14-2-1(H) (2019).

27. The only “other[] ... law” cited in the City’s denials of the IPRA requests made by the New Mexican and NMFOG is the Children’s Code – specifically, as Lauer’s e-mails have made clear, Sections 32A-2-32 and 32A-4-33.

28. Section 32A-2-32 provides in pertinent part:

All records pertaining to the child, including all related social records, behavioral health screenings, diagnostic evaluations, psychiatric reports, medical

reports, social studies reports, records from local detention facilities, client-identifying records from facilities for the care and rehabilitation of delinquent children, pre-parole or supervised release reports and supervision histories obtained by the juvenile probation office, parole officers and the juvenile public safety advisory board or in possession of the department, are confidential and shall not be disclosed directly or indirectly to the public.

§ 32A-2-32(A).

29. Presumably the City has invoked this provision on the theory that at least one other child besides the “victim,” Lincoln Harmon, lived in the Harmon household at the time of the shooting and now faces potential charges as a “delinquent” – perhaps for having pulled the trigger, whether intentionally or accidentally. It is difficult to understand how the City could rely on the statute in good faith, given the Rio Rancho Police Department’s documented belief that Lincoln Harmon shot himself.

30. Section 32A-4-33 provides in pertinent part:

All records or information concerning a party to a neglect or abuse proceeding, including social records, diagnostic evaluations, psychiatric or psychological reports, videotapes, transcripts and audio recordings of a child’s statement of abuse or medical reports incident to or obtained as a result of a neglect or abuse proceeding or that were produced or obtained during an investigation in anticipation of or incident to a neglect or abuse proceeding shall be confidential and closed to the public.

§ 32A-4-33(A).

31. Presumably the City has invoked this provision on the theory that Jonathan and Courtney Harmon, or another child in their home, is or will become “a party to a neglect or abuse proceeding.”

32. The Children’s Code, of which both provisions are a part, generally prescribes the duties of the Children’s Court and the participants in its proceedings, including CYFD. In this case, however, the City claims that Sections 32A-2-32 and 32A-4-33 control the disclosure of

information by government agencies other than CYFD, including the Rio Rancho Police Department.

33. That contention is wrong, for multiple reasons.

34. In the first place, the appellate courts of New Mexico have never read the provisions that way. To the contrary, they have observed that Section 32A-4-33 exempts “CYFD’s abuse and neglect records ... from inspection by the public.” Dunn v. Children, Youth & Families Dep’t, No. A-1-CA-35642, mem. op. ¶ 12 (Nov. 5, 2018) (Vargas, J.) (non-precedential; emphasis added); accord, e.g., State v. Garcia, 2013-NMCA-064, ¶¶ 1, 25, 302 P.3d 111 (holding that defendant “had no right to CYFD records under Section 32A-4-33[.]”); see also State v. Green, No. 31,885, mem. op. ¶ 14 (N.M. Ct. App. Apr. 18, 2013) (non-precedential) (“As an employee of CYFD, Salazar’s testimony was constrained by confidentiality requirements contained in ... Section 32A-4-33 ....” (emphasis added)).

35. Were the reach of Sections 32A-2-32 and 32A-4-33 not limited to CYFD records, it would logically extend not only to the City’s records, but also to the records of this Court – and the Court personnel who afforded Traxler access to the search-warrant materials would thus be guilty of petty misdemeanors. See §§ 32A-2-32(E), 32A-4-33(D).

36. Nor would it be possible to square the City’s expansive interpretation of these provisions with basic rules of criminal procedure, under which the state must disclose to a criminal defendant “any ... documents ... which are within the possession, custody, or control of the state, and which are material to the preparation of the defense.” Rule 5-501(A)(3) NMRA. Documents “material to the preparation of the defense” include police reports, which criminal defendants are “entitled to see and examine ... in accord with right, justice and ... decisions of the United States Supreme Court.” State v. Gomez, 1965-NMSC-128, ¶ 12, 75 N.M. 545, 408

P.2d 48. But if Section 32A-4-33 applied to police reports in the hands of the law-enforcement agencies that generated them, it would collide with “right, justice and ... United States Supreme Court [precedent]” by making those reports inaccessible to defendants criminally charged with assaulting, abusing, injuring, or killing minors who were not their own children. See, e.g., State v. Garcia, 2013-NMCA-064, ¶¶ 1, 25 (holding that defendant charged with criminal sexual penetration of a minor “had no right to CYFD records under Section 32A-4-33(C) because he was not a parent, guardian, or legal custodian”).

37. Indeed, adult criminal defendants accused of harming minors other than their own children would not even be able to obtain police reports through subpoenas or orders issued by the courts in which they were being prosecuted, because – although Section 32A-4-33 provides for disclosure to “court personnel,” § 32A-4-33(B)(1) – the Children’s Code defines “court” to mean Children’s Court, see NMSA 1978, § 32A-1-4(D) (2019).

38. In addition, the City’s interpretation of these provisions conflicts with standard canons of statutory construction.

39. Consider, to begin with, the structure of each statute’s confidentiality provision. Although each statute speaks broadly of “[a]ll records,” each goes on to provide a laundry list of the kinds of documents “includ[ed]” within this command, none of which are remotely analogous to police reports or 911 calls placed by adults. See §§ 32A-2-32(A), 32A-4-33(A).

40. “The age-old Latin phrase inclusio unius est exclusio alterius is applicable here. It means the inclusion of one thing is the exclusion of the other. The legislature did not see fit to include it in the statute, therefore it is excluded.” State v. Nick R., 2009-NMSC-050, ¶ 23, 147 N.M. 182, 218 P.3d 868 (internal quotation marks omitted). “No maxim of law is of more general and uniform application,” and it is “never more applicable than when applied to the

interpretation of a statute.” Jung v. Myer, 1902-NMSC-013, ¶ 14, 11 N.M. 378, 68 P. 933 (internal quotation marks omitted); see, e.g., Nick R., 2009-NMSC-050, ¶¶ 1-3 (holding that statute defining “deadly weapon” as “any weapon which is capable of producing death or great bodily harm, including but not restricted to” a lengthy list of weapons “or any other weapons with which dangerous wounds can be inflicted” did not encompass pocket knives).

41. The City’s interpretation of these provisions likewise clashes with the “long recognized ... principle” of ejusdem generis: when a statute uses both “general words [and] words of a more specific meaning, the general words are not construed in their widest extent but are instead construed as applying to persons or things of the same kind or class as those specifically mentioned.” Nick R., 2009-NMSC-050, ¶ 21 (internal quotation marks omitted). Police reports and 911 tapes are not “of the same kind or class” as the documents that Sections 32A-2-32(A) and 32A-4-33(A) “specifically mention[s].”

42. Nor does the City’s reading of the statutes make sense in light of their other subsections. For example, each statute provides for disclosure of records to “law enforcement officials.” See §§ 32A-2-32(C)(6), 32A-4-33(B)(7). But why would law enforcement officials need to seek access to their own records? See, e.g., State v. Julg, 2021-NMCA-058, ¶ 10, 497 P.3d 678 (“We must ... read the statute in its entirety and construe each part in connection with every other part to produce a harmonious whole.” (internal quotation marks omitted)).

43. Each statute additionally provides that “[t]he department” – meaning CYFD, see § 32A-1-4(G) – “shall promulgate rules for implementing disclosure of records pursuant to this section and in compliance with state and federal law and Children’s Court rules,” see §§ 32A-2-32(F), 32-4-33(E). But CYFD’s rulemaking power is confined to what is necessary to carry out CYFD’s own duties, see NMSA 1978, § 9-2A-7(D) (1993), and CYFD has accordingly

promulgated rules directing “[Protective Services Division] staff and CYFD contractors” to maintain the statutorily required confidentiality of certain records, see 8.8.2.15 NMAC (2012). Rules governing other agencies – such as the Rio Rancho Police Department – are entirely outside CYFD’s purview.

44. But the City’s reading of Sections 32A-2-32 and 32A-4-33 is not only unprecedented in New Mexico jurisprudence and untenable under well-established principles of statutory construction; it is unpalatable as a matter of public policy.

45. In the last five years alone, the shocking deaths of Omaree Varela, Victoria Martens, Jeremiah Valencia, and other children at the hands of their parents or their parents’ associates have shone a spotlight on the ways in which police departments and child welfare agencies have failed to protect New Mexico’s most precious resource. They have put names and faces on the victims of unimaginable parental brutality and have galvanized public demands for repair of the fraying safety nets through which these children have fallen. We know about them because law-enforcement officials have responsibly released investigative reports, lapel-camera video, and other information about them – and because “media-types” (as the City’s attorney disparagingly referred to the IPRA requesters in this case) have publicized them. They might never have seen the light of day under the interpretation of Sections 32A-2-32 and 32A-4-33 advocated by the City in this case. Systemic reform might never have been proposed – and individual accountability might never have been possible – had they remained shrouded from public view. That is why “[s]ecrecy ... is the exception not the rule. The policy that exempts abuse and neglect proceedings from the requirement that government records be open exists to protect the child and the family, not [CYFD].” In re George F., 1998-NMCA-119, ¶ 17 n.1, 125 N.M. 597, 964 P.2d 158.

46. At the same time, juvenile delinquency – much of it undoubtedly learned behavior in households in which child abuse and neglect have gone undetected by the authorities – is a matter of keen public interest and concern. Law-enforcement investigations of crime committed by adolescents inevitably come to the attention of CYFD under the Children’s Code. If, as the City maintains, the law-enforcement records of all such “matters referred to CYFD are confidential,” the public will remain largely ignorant of a complex problem that society can never hope to solve except through collective efforts.

47. The only circumstance that seems to distinguish this case from the scores of cases in which police departments (including Rio Rancho’s) unquestioningly honor IPRA requests for information about suspected crimes involving child victims or perpetrators is that a police officer is one of the parties under suspicion. Cf., e.g., Matthew Reisen, [Boy, 15, is charged with killing aunt](#), Albuquerque J., Mar. 10, 2022, at A6 (“A 15-year-old boy is accused of fatally shooting his aunt Tuesday morning before stealing her SUV and leading police on a chase through Rio Rancho. Rio Rancho Police Lt. Jacquelynn Reedy said Brayden Baldree is charged with an open count of murder in the death of 45-year-old Carmen Kester.” (indentation omitted)). While the shooting death of the officer’s child in the officer’s home is an unspeakable personal tragedy for the officer and his family, the suggestion that the death resulted from the officer’s failure to keep his own firearms out of his own children’s reach is also a matter of understandable public interest and concern. The City’s insistence on maintaining blanket confidentiality – ostensibly for the purpose of protecting the privacy interests of children – seems primarily designed to protect a public-safety officer from public scrutiny, thereby illustrating the self-interested ways in which the City’s extravagant reading of Sections 32A-2-32 and 32A-4-33 would enable law-enforcement agencies to apply those statutes.



48. For these reasons, confidentiality of the police reports and 911 materials was not “otherwise provided” by Section 32A-2-32 or Section 32A-4-33, and the City’s complete denial of the IPRA requests submitted by the New Mexican and NMFOG was unjustified. At most, the City was entitled to redact all but the initials of the names of household members whose identities were not already publicly available – in other words, persons other than Officer Harmon, Courtney Harmon, and Lincoln Harmon – as well as the personal-identifier information that IPRA expressly authorizes public bodies to withhold. See NMSA 1978, § 14-2-1.1 (2019); id. § 14-2-9(A) (providing for selective redaction).

49. “[A] written request for inspection of public records that has not been permitted within fifteen days of receipt by the office of the custodian may be deemed denied. The person requesting the records may pursue the remedies provided in [IPRA].” NMSA 1978, § 14-2-11(A) (1993). This provision “requir[es] compliance immediately, but no later than fifteen days” after an IPRA request. Derringer v. State, 2003-NMCA-073, ¶ 11, 133 N.M. 721, 68 P.3d 961; accord, e.g., Jones v. City of Albuquerque Police Dep’t, 2020-NMSC-013, ¶ 20, 470 P.3d 252 (“prompt and scrupulous compliance”).

50. The City has neither complied with Plaintiffs’ IPRA requests nor promised to do so in the future. And while Defendant Valenzuela’s latest communications with the New Mexican and NMFOG suggest that the City may be attempting restart the statutory 15-day clock in the wake of the OAG determination letter, the time for “prompt and scrupulous compliance” with Plaintiffs’ requests was no later than 15 days after the requests were made on December 13, 2021, and January 14, 2022, respectively – in other words, months ago, on December 28 and January 29.

51. “The only basis IPRA provides for a public body to deny a person the right to inspect a public record is the body’s reasonable, good-faith belief that the record falls within one of IPRA’s enumerated exceptions.” Britton v. Office of Att’y Gen., 2019-NMCA-002, ¶ 31, 433 P.3d 320. For the reasons explained above, as well as the additional reasons cited in the OAG determination letter, the City’s denials of Plaintiffs’ original IPRA requests were neither reasonable nor in good faith.

52. And even if they had been, “[t]here is nothing in IPRA suggesting that good faith non-disclosure has any effect on an award of attorney fees.” Rio Grande Sun v. Jemez Mountains Pub. Sch. Dist., 2012-NMCA-091, ¶ 23, 287 P.3d 318.

**Prayer for Relief**

WHEREFORE, the New Mexican and NMFOG pray that the Court enter judgment in Plaintiffs’ favor and against Defendants for the following relief:

- A. an order directing Defendants to satisfy the above-described IPRA requests in full, or alternatively to the extent described in paragraph 48 above;
- B. an award of damages, costs, and reasonable attorneys’ fees under IPRA, NMSA 1978, § 14-2-12(D) (1993); and
- C. such other relief as the Court deems just and proper.

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By                       
Charles K. Purcell  
Attorneys for Plaintiffs  
Post Office Box 1888  
Albuquerque, New Mexico 87103  
Telephone: (505) 765-5900  
[kpurcell@rodey.com](mailto:kpurcell@rodey.com)