**IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**



ANDREW JONES,

Plaintiff-Appellant,

v.

Appeal No. 35,120
District Court No. D-202-CV-2014-03426

THE DEPARTMENT OF PUBLIC SAFETY
OF THE STATE OF NEW MEXICO,

Defendant-Appellee.

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# APPELLANT'S BRIEF-IN-CHIEF

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Appeal from the Honorable Denise Barela-Shepherd, District Judge
(District Court Case No. D-202-CV-2014-3426)
Bernalillo County, New Mexico

**ORAL ARGUMENT REQUESTED**

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## SUMMARY OF PROCEEDINGS

This appeal arises from the Department of Public Safety's ("Department") refusal to disclose public records pursuant to the New Mexico Inspection of Public Records Act ("IPRA"), NMSA 1978, Sections 14-2-1 through 14-2-12 (1947, as amended through 2013). Record Proper ("RP") 0016-0017. There are no genuine material disputes of fact and the only issue is one of law. As a result of the Department's refusal to disclose records, plaintiff Andrew Jones filed suit in Bernalillo County, Second Judicial District Court, State of New Mexico against the Department and the City of Albuquerque. RP 0001-0007. Jones sought an order from the District Court requiring the Department to disclose the records requested. RP 0007. Jones resolved his claims completely against the City of Albuquerque. The Department eventually provided Jones with the materials requested some months after the initial request. RP 0150. Jones continued to seek a District Court determination that the Department's refusal to provide requested documents within the mandated time limits of the statute was a violation of IPRA. RP 0157. Jones also sought his attorney fees since he was required to file suit to receive the requested material. RP 0157. Jones voluntarily waived any claim to damages.

The Department filed a motion for summary judgment claiming that the documents requested were exempted from IPRA. RP 0129-0137. On September 9, 2015, District Court Judge Denise Barela-Shepherd entered an order granting the Department's Motion for Summary Judgment on the basis that the records sought were exempt from IPRA under the law enforcement exception codified at Section 14-2-1(A)(4). RP 0197-0200.

On March 16, 2014, two Albuquerque police officers fatally shot James Matthew Boyd in the foothills of Albuquerque. RP 0178. The shooting immediately gained widespread media attention. RP 0177-0182. The Albuquerque Police Department ("APD") shortly after the

shooting held a news conference in which the chief of police of the Albuquerque Police Department released to the media footage from an officer's helmet camera of the shooting of Boyd. At the same news conference, the Chief of Police declared the shooting justified. The media reported and the City of Albuquerque confirmed that officers from the Department were at the scene of the shooting of Boyd.

On April 8, 2014, Plaintiff, the brother of James Matthew Boyd, through his attorneys, Kennedy Kennedy & Ives, in addition to making a request under the Inspection of Public Records Act (IPRA) to the City of Albuquerque, made an IPRA request to the Department, specifically requesting the lapel/belt audio and/or video of any police officer that was present at the shooting as well as all written reports from Department officers at the shooting. RP 0010-0012.

On April 22, 2014, the Department's Records Custodian, Regina Chacon, responded to Plaintiff's IPRA request. RP 0016-0017. Ms. Chacon acknowledged that the Department had "investigative reports, audio/video evidence, and investigatory materials that would be responsive to the areas outlined in your request." RP 0016. However, Ms. Chacon stated that the Federal Bureau of Investigation ("FBI") had requested the Department to refrain from releasing documents to the public as it had informed the Department it was investigating the shooting. RP 0016. The Department, through Ms. Chacon, refused to provide the lapel/belt audio and/or video recordings from the shooting and refused to provide everything but the "primary incident report." RP 0017. The Department cited NMSA 14-2-1(A)(4) NMSA 1978 as a "law enforcement exception" to the release of materials. RP 0016-0017. The Department contended that it was required by law to cooperate with the FBI's investigation into the matter. RP 0017.

On May 16, 2014, Jones filed a Complaint seeking enforcement of IPRA against both the City and the Department. RP 0001-RP 0007. Jones resolved his claims against the City. On September 4, 2014, Jones filed a motion for summary judgment seeking an order from the court that the requested material was not subject to any "law enforcement exception." RP 0059-0069. The Department responded by continuing to refuse to release the requested material and citing to a request from the FBI to the Department that the Department withhold the documents from public disclosure to the extent permitted by law. RP 0074-0092. As to the statutory legal basis for withholding the material from public disclosure, the Department stated that the disclosure would reveal "information or individuals accused but not charged with a crime." RP 0081.

On December 11, 2014, the District Court denied Jones' motion for summary judgment, but ordered the Department to provide a privilege log to Jones if the FBI had not completed its investigation by January 15, 2015. RP 0126-0128. On or before January 15, 2015, the Department delivered the requested material to Jones. RP 0158-0176. There was never a statement from the FBI that it had completed its investigation into the Boyd shooting.

The most significant piece of evidence withheld was an audio recording of a conversation that a Department officer (Sergeant Chris Ware) had with one of the APD shooting officers (Keith Sandy) in which Sandy clearly referred to James Matthew Boyd as a "fucking lunatic" and stated something related to shooting him with a taser or shooting him in the penis. RP 0161. The Department has never articulated how withholding this critical public document aided the FBI's investigation. In fact, Jones was able to present to the District Court a timeline, which revealed that the subjects of the investigation were well aware of the taped conversation before Jones even made his IPRA request. RP 0159-0163.

Jones continued to contend that the Department had wrongfully withheld documents and material that were subject to IPRA. RP 0148-0157. The Department filed a motion for summary judgment on Jones' claim. RP 0129-0138. The Department again cited to a broad law enforcement exception for any matter that is under criminal investigation as a basis for withholding public documents. RP 0133.

In response to the Department's motion for summary judgment, Jones contended that on March 18, 2014, Hal Cage of the New Mexico State Police initially interviewed Keith Sandy about the shooting. RP 0160-0161. On March 24, 2014, Hal Cage gained possession of Sergeant Chris Ware's dash cam video and audio recorder. RP 0161. On March 27, 2014, Hal Cage reviewed and summarized, in a Department report, Sergeant Ware's dash cam recording, noting that it contained the statement "[t]his fucking lunatic, I'm gonna shoot him in the (inaudible) with this shotgun, in a second." RP 0161. On March 28, 2014, New Mexico State Police Chief Pete Kassetas delivered a copy of Sergeant Ware's footage to agents of the FBI. RP 0162. On April 2, 2014, Hal Cage transferred a copy of the Department's file to APD. Detective Geoff Stone. RP 0163. On April 3, 2014, Hal Cage transferred final documents in the Department's file to the FBI and APD; Gage then closed his file and ended the Department's involvement in the investigation. RP 0163.

On April 7, 2014, New Mexico State Police Investigations Bureau Sergeant James Mowduk assigned Officer Rafael Gomez to assist APD Detective Stone in a re-interview of Keith Sandy. RP 0172-0176. In the interview, Sandy advised Officer Gomez and Detective Stone that his coworkers had told him about his statement on Sergeant Ware's dash cam video recording. RP 0174. Sandy reported that the information was disclosed to him a week prior to his interview. RP 0174. Thus, Sandy was fully aware of the recording of his conversation with

Sergeant Ware and was aware of the content of the recording. Seven days after Sandy learned of the recording, Mr. Jones served his IPRA requests upon the Department. RP 0010. On April 22, 2014, DPS denied Mr. Jones's IPRA request, knowing that Sandy was aware of the recorded conversation. RP 0016-0017.

## STANDARD OF REVIEW

The issue raised in this appeal is one of law resolved pursuant to Rule 1-056(C), and is subject to de novo review. Romero v. Phillip Morris Inc., 2010-NMSC-035, ¶ 7, 148 N.M. 713, 242 P.3d 280. Summary judgment will be affirmed if it is concluded that "there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law." Id. The facts are viewed in a light "most favorable to the party opposing summary judgment" and all reasonable inferences will be drawn in support of a trial on the merits. Id. The movant has the "initial burden of establishing a prima facie case for summary judgment" by presenting "such evidence as is sufficient in law to raise a presumption of fact or establish the fact in question unless rebutted." Id. ¶ 10. Once this burden is met, "the burden shifts to the non-movant to demonstrate the existence of specific evidentiary facts which would require trial on the merits." Id. To determine which facts are material, a court's focus should be on whether, under the pertinent substantive law, "the fact is necessary to give rise to a claim." Id. ¶ 11. In this case there are no genuine material disputes of fact and the only issue is one of law—namely, the application of IPRA. Under IPRA, Plaintiff should be granted summary judgment.

## ARGUMENT

Jones contends that the records he sought did not fall under the law enforcement exception of IPRA. The records sought did not implicate a confidential source. The video of the shooting was widely available before the request and the identities of the officers who shot Boyd

were publically known and reported in the media. The request implicates law enforcement "methods" as the material was raw data delivered to another law enforcement agency for its use in its investigation. The target of the investigation was well aware of the withheld audio recording when Jones requested the recording. The identity of the shooting officers and the underlying facts of the shooting were well known to the public and the officers being investigated. The Department's assertion amounts to a blanket exception for law enforcement to unilaterally decide a document cannot be publicly disclosed because of a criminal investigation. The public's right to know is at its paramount when a public official is suspected of criminal activity.

The records requested did not endanger the safety of the public or of the officers involved in the investigation and there was no possibility of it endangering any investigation as the officer suspected of the crime was well aware of the content of the material. The information requested simply portrays the factual underpinnings of Mr. Boyd's death. They did not reveal any information that would "interfere with law enforcement and crime prevention." Furthermore, the Department and the FBI had the videos in their possession since the date that Mr. Boyd was shot and had ample time to identify any information they contained which would fall within Section 14-2-4(A). Therefore, because the law enforcement exception does not apply to IPRA under the facts of this case, the videos pertaining to Mr. Boyd's death and other records requested by Plaintiff should have been provided.

Defendant's asserted reasons for refusing to provide records in this case are "belied by the broad language of the statute." Edenburn v. New Mexico Dep't. of Health, 2013-NMCA-045, ¶ 17, 299 P.3d 424 (filed 2012), cert. denied (Feb. 26, 2013). The purpose of [IPRA] is to "ensure ... that all persons are entitled to the greatest possible information regarding the affairs of

government and the official acts of public officers and employees." Derringer v. State, 2003-NMCA-073, ¶ 9, 133 N.M. 721, 68 P.3d 961 (citing NMSA 1978, § 14-2-5 (1993)). Pursuant to the plain statutory language of IPRA "[e]very person has a right to inspect public records of this state" subject to certain exceptions stated in NMSA 1978, Section 14-2-1(A). As used in the IPRA, the term "public records' means all documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, regardless of physical form or characteristics, that are used, created, received, maintained or held by or on behalf of any public body and relate to public business, whether or not the records are required by law to be created or maintained." NMSA 1978, § 14-2-6. The DPS Department relies upon the "law-enforcement" exception to

> law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime. Law enforcement records include evidence in any form received or compiled in connection with a criminal investigation or prosecution by a law enforcement or prosecuting agency, including inactive matters or closed investigations to the extent that they contain the information listed in this paragraph; [and]
> ...
> [exceptions] as otherwise provided by law.

Id., §§ 14-2-1(A)(4); 14-2-1(A)(8) (RP 0040).

In interpreting IPRA, New Mexico Courts err in favor of disclosure absent clear statutory language to the contrary. San Juan Agr. Water Users Ass'n v. KNME-TV, 2011-NMSC-011, ¶¶ 14-15, 150 N.M. 64, 257 P.3d 884. As stated by the Supreme Court:

> [w]e must construe IPRA in light of its purpose. "A statute should be interpreted to mean what the Legislature intended it to mean, and to accomplish the ends sought to be accomplished by it." [State ex rel.] Newsome [v. Alarid, 1977-NMSC-076, 90 N.M. 790, 794, 568 P.2d 1236, 1240]. The Legislature expressly stated IPRA's purpose and underlying public policy in Section 14–2–5[.]
> ...
> IPRA's stated policy reflects the fact that people in our democratic society have "a fundamental right" to inspect public records. Newsome, 90 N.M. at 797, 568 P.2d at 1243. Open records laws such as IPRA are based on the premise that public access to public records will result in better government. See IPRA Compliance Guide, supra, at 26. IPRA creates a presumption in favor of access: "The citizen's

> right to know is the rule and secrecy is the exception. Where there is no contrary statute or countervailing public policy, the right to inspect public records must be freely allowed." Newsome, 90 N.M. at 797, 568 P.2d at 1243.

Id.

Thus, if an exception is not contained in the statutory language of IPRA, a Court will hesitate in carving out a new one that is not clearly supported by New Mexico law. Edenburn, 2013-NMCA-045, ¶¶ 7-8 ("courts now should restrict their analysis to whether disclosure under IPRA may be withheld because of a specific exception contained within IPRA, or statutory or regulatory exceptions, or privileges adopted by this Court or grounded in the constitution.") (quoting Republican Party of New Mexico v. New Mexico Taxation & Revenue Dep't., 2012-NMSC-026, ¶ 16, 283 P.3d 853")). Where a privilege is asserted, the burden of establishing the privilege rests with the party asserting its applicability, see, e.g., Pina v. Espinoza, 2001-NMCA-055, ¶ 24, 130 N.M. 661, 29 P.3d 1062 ("As the party asserting the privilege, Plaintiff bears the burden of establishing that the privilege applies.") (citation omitted), and a privilege log is generally required. Id. ("Plaintiff's privilege log together with any supplemental affidavits must affirmatively demonstrate an objectively reasonable basis for each assertion of privilege.") (citation omitted). Furthermore, where no exception applies, personal identifiers and other items that are commonly subject to redaction are insufficient to bar the disclosure of records. NMSA 1978, § 14-2-1(B) (allowing redaction of "personal identifier information contained in public records"); see NMSA 1978, § 12-2-6(E) (defining "protected personal identifier information").

**A) The requested records in this case are not protected by the law enforcement exception, NMSA 1978, Section 14-2-1(A)(4).**

Defendant cannot rely on Section 14-2-1(A)(4) to justify its refusal to provide the records requested in this case. By its plain language that exception applies only to "law enforcement

records that reveal confidential sources, methods, information or individuals accused but not charged with a crime." Id. Plaintiff's request did not implicate any of these exclusions. RP 0004.

The requested records do not implicate a confidential source. RP 0004. Certain lapel camera videos depicting the shooting death of James Boyd are widely available and the identities of the shooting officers are known.[1] The videos reveal no confidential sources; but, rather, portray the death of Mr. Boyd and relevant facts surrounding his death. Therefore, Defendant has provided no basis for withholding the lapel camera videos it maintains on the ground that they identify a confidential source. See Black's Law Dictionary, 146 (4th Pocket. Ed. 2011) (defining "confidential source" as "[a] person who provides information to a law-enforcement agency or to a journalist on the express or implied guarantee of anonymity."). Furthermore, to the extent that confidential information was contained in witness interviews or any of the non-video records that Plaintiff requested, Defendant was free to redact the same. NMSA 1978, § 14-2-1(B).

Nor did Plaintiff's request implicate law enforcement "methods" as that term is commonly understood. See "Method." Merriam-Webster.com. Merriam-Webster, n.d. Web. 27 Aug. 2014. <http://www.merriam-webster.com/dictionary/method> (defining "method" as "a way of doing something" and "a careful or organized plan that controls the way something is done."). The video itself did not contain any information concerning Defendant's methods relating to the investigation of the death of Mr. Boyd or Defendant's tactical plans. RP 0004. The video contained facts regarding the death of Mr. Boyd that are otherwise public. RP 0004. To the extent that the records contain any methods exempt from disclosure under IPRA, Defendant

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[1] To wit, a cursory Google™ search reveals a multiplicity of websites and articles dedicated to the shooting death of Mr. Boyd. See, e.g., "James Boyd Shooting," available at <http://en.wikipedia.org/wiki/James_Boyd_shooting> (accessed on August 27, 2014); "Albuquerque Police Release New Video Of James Boyd Shooting," available at <http://www.huffingtonpost.com/2014/06/12/james-boyd-shooting_n_5490119.html> (accessed on August 27, 2014); "Autopsy: James Boyd was shot in the back and arms," available at <http://www.koat.com/news/autopsy-james-boyd-shot-in-the-back/26234078#ixzz3BdadYlkD> (accessed on August 27, 2014).

should have provided redacted versions of the records, see NMSA 1978, § 14-2-1(B), or a log of the records withheld, see Pina, 2001-NMCA-055, ¶ 24, rather than withholding the vast majority of such records and releasing them in a piecemeal fashion to the media and the public at large. Therefore, Defendant cannot reasonably claim that the records sought are excepted from disclosure on the ground they contain law enforcement methods contemplated by Section 14-2-1(A)(4).

Finally, Defendant cannot rely on the assertion that it has turned the records over to a law enforcement agency and, therefore, that they cannot be disclosed because they might implicate "information or individuals accused but not charged with a crime." NMSA 1978, § 14-2-1(A)(4). Not only would Defendant's reading of that exception completely write any records in the possession of law enforcement agencies out of the purview of IPRA, but such a reading is belied by the purpose of the statute and cases analyzing similar statutory provisions. See, e.g., Morales v. Ellen, 840 S.W.2d 519, 525-26 (Tex. App. 1992) ("The purpose of [Texas' law enforcement] exception is to prevent law enforcement and crime prevention techniques from being readily available to the public at large.... This section protects the type of information that, if revealed, might endanger the life or physical safety of law enforcement personnel, or interfere with law enforcement and crime prevention.").

The records requested did not endanger the safety of the officers involved, whose identities are known, and did not interfere with law enforcement or crime prevention, as the cause of Mr. Boyd's death is known. The lapel-camera videos simply portray the factual underpinnings of Mr. Boyd's death. They do not reveal any information that will "interfere with law enforcement and crime prevention." Rather than identify information that is exempt, the Department broadly claimed an exemption because the FBI asked the Department to withhold

disclosure if allowed by law. RP 0016. Therefore, because the law enforcement exception does not apply to IPRA under the facts of this case, the videos pertaining to Mr. Boyd's death and other records requested by Plaintiff should have been provided.

There is no New Mexico case on point addressing the purview of Section 14-2-1(A)(4); however, recent interpretations of the common law "law enforcement exception" and similar rationales for withholding the kinds of records requested by Plaintiff inform the issue. For example, in Estate of Romero ex rel. Romero v. City of Santa Fe, 2006-NMSC-028, 139 N.M. 671, 137 P.3d 611, our Supreme Court was tasked with determining whether the "law enforcement exception," which bears similar language as Section 14-2-1(A)(4), should apply in the context of a discovery dispute. See Romero, 2006-NMSC-028, ¶ 10 ("As an example of information that should be protected, City Defendants presented testimony describing an investigatory report containing identities of confidential informants, confidential investigative methods, information about individuals accused but not charged with a crime, and information only the perpetrator(s) would know."). The Supreme Court recognized that there is no such law enforcement privilege under the New Mexico Constitution, its Court Rules, or its common law. Id., ¶¶ 11-13 ("we can find no implied privilege in the Constitution for the protection of local law enforcement investigatory materials."). Thus, while the Court did recognize certain limitations on disclosures under the New Mexico Rules of Evidence to protect confidentiality of informants and similar matters, "this rule does not privilege the investigative materials themselves." Id., ¶¶ 14-15. Thus, the limit of the law enforcement privilege is consistent with IPRA's law enforcement exception and, therefore, goes no further as Defendant asserts. Compare Id., ¶ 15 ("Nevertheless, we do not believe the absence of a law enforcement privilege means confidential police investigatory materials, such as reports containing confidential investigative methods,

information about individuals accused but not charged with a crime, and information only the perpetrator(s) would know, are completely unprotected from disclosure[.]") with NMSA 1978, § 14-2-1(A)(4). "Clearly, the primary purpose of the IPRA is to provide access to public records rather than 'to create an evidentiary shield behind which the government can hide.'" Id., ¶ 18. Therefore, the records in this case should have been disclosed.

In light of Romero, Defendant cannot reasonably withhold its entire files on Mr. Boyd's shooting death under the law enforcement exception to IPRA without, at a minimum, specifically identifying the records withheld. After Romero it would certainly be reasonable for Defendant to limit the records in this case by redacting any personal identifiers, or any other information that is protected from disclosure, in accordance with Section 14-2-1(B). However, given the legislative purpose behind IPRA, Defendant's denial of Plaintiff's request, without more, was unreasonable.

In Cox v. New Mexico Dep't. of Pub. Safety, 2010-NMCA-096, 148 N.M. 934, 242 P.3d 501, the Court of Appeals confronted an argument that citizen complaints regarding law enforcement officers were not public records under IPRA. Id., ¶ 10. The Court of Appeals disagreed. Id., ¶ 11 ("We therefore conclude that the citizen complaints requested by Plaintiff are available to the public for inspection under IPRA unless an exception protects their disclosure."). In denying the applicability of any IPRA exceptions to the complaints at issue the Court of Appeals reasoned that "[e]ach inquiry [under IPRA] starts with the presumption that public policy favors the right of inspection." Id., ¶ 17. The Court then found that neither of the exceptions argued by the defendant applied to completely bar the disclosure of the complaints because the information contained in them originated from persons outside the purview of that agency. Id., ¶ 25 ("We also note that, although DPS is the keeper of the information contained in

the citizen complaints, the information continues to belong to the citizen who made the complaint.").

The same rationale applies in this case. Even if Defendant could reasonably withhold certain documents detailing information excepted by Section 14-2-1, the factual information underlying those records should have been made available to Plaintiff. As in Cox, Defendant in this case was permitted to redact confidential information in the records sought, but is not entitled to completely refuse to disclose them. Id., ¶¶ 30-31; see e.g. Bd. of Comm'rs of Dona Ana County v. Las Cruces Sun-News, 2003-NMCA-102, 134 N.M. 283, 76 P.3d 36 overruled on other grounds by Republican Party, 2012-NMSC-026 (requiring disclosure of settlement amounts involving inmate sexual assaults even in light of the defendant's assertion that their disclosure would impact its right to a fair trial). In sum, there is no legal support for Defendant's assertion that law enforcement investigatory records ought to be privileged under IPRA; therefore, because Section 14-2-1(A)(4) does not apply to the records sought in this case, Plaintiff's Motion should be granted.

**B) The records sought cannot be withheld simply because the Federal Government has so requested.**

Defendant asserts that it cannot release the records at issue because the FBI asked that the records not be released. This justification is not present in the plain language of IPRA and is not a reasonable basis by which to deny Plaintiff's request. "The United States is an indivisible 'Union of sovereign States.'" Arizona v. United States, 132 S. Ct. 2492, 2511, 183 L. Ed. 2d 351 (2012) (Scalia, J;) (dissenting) (citing Hinderlider v. La Plata River & Cherry Creek Ditch Co., 304 U.S. 92, 104 (1938)); see M'Culloch v. Maryland, 17 U.S. 316, 326, 4 L. Ed. 579 (1819) ("The people of the United States have seen fit to divide sovereignty, and to establish a complex system. They have conferred certain powers on the state governments, and certain other powers

on the national government."). In the absence of federal law to the contrary, New Mexico law controls the disclosure of information by New Mexico agencies and there is no New Mexico law barring disclosure of records under IPRA merely because the Federal Government so requests.

> Privileges in New Mexico are limited to those recognized by the Constitution, the Rules of Evidence, or other rules of the Supreme Court. See Estate of Romero v. City of Santa Fe, 2006–NMSC–028, ¶ 8, 139 N.M. 671, 137 P.3d 611 (noting the differences between privileges under the Federal Rules of Evidence and the New Mexico Rules of Evidence); see also Ammerman v. Hubbard Broad., Inc., 89 N.M. 307, 312, 551 P.2d 1354, 1359 (1976) (holding that as reflected in Rule 11–501 NMRA, privileges are limited to those required by the state constitution and the rules promulgated by the New Mexico Supreme Court). While the New Mexico Rules of Evidence generally follow the Federal Rules of Evidence, "New Mexico's approach to privileges is a special product of our state law jurisprudence." [Pub. Serv. Co. of N.M. v.]Lyons, 2000–NMCA–077, ¶ 12, 129 N.M. 487, 10 P.3d 166.

Pincheira v. Allstate Ins. Co., 2007-NMCA-094, ¶ 29, 142 N.M. 283, 164 P.3d 982 aff'd on other grounds, 2008-NMSC-049, 144 N.M. 601, 190 P.3d 322. There is no state constitutional provision, statute or case creating a privilege that would prevent disclosure of records otherwise subject to IPRA because the Federal government so requests. To wit, federal case law interpreting the Freedom of Information Act is not binding where interpretations of IPRA are at issue. See San Juan Agr. Water Users Ass'n v. KNME-TV, 2011-NMSC-011, ¶ 41, 150 N.M. 64, 257 P.3d 884 ("We agree with the jurisdictions that have rejected federal FOIA interpretations in interpreting their own statutes guaranteeing public access to public records."). Therefore, Defendant unreasonably withheld the records in this case as it has cited no authority allowing it to ignore the State of New Mexico's law requiring disclosure of public records due to the request of federal government officials.

Furthermore, Defendant's reliance on NMSA 1978, Section 29-3-3 is misplaced. RP 0016. Nothing in that provision clearly implicates the language of IPRA. See id. (stating that "[i]t shall be the duty of the New Mexico state police and it is hereby granted the power to cooperate

with agencies of other states and of the United States having similar powers to develop and carry on a complete interstate, national and international system of criminal identification and investigation, and also to furnish upon request any information in their possession concerning any person charged with a crime to any court, district attorney or police officer or any peace officer of this state, or of any other state or the United States."). At most what Section 29-3-3 requires is cooperation between Defendant and the FBI. See Wittkowski v. State Corr. Dept. of State of N.M., 1985-NMCA-066, ¶ 20, 103 N.M. 526, 710 P.2d 93 (explaining that Section 29-3-3 "deals with cooperation between various governments for the benefit of the law enforcement organizations" and declining to find an affirmative duty under it in a negligence *per se* action) overruled on other grounds by Silva v. State, 1987-NMSC-107, 106 N.M. 472, 745 P.2d 380. The plain language of Section 29-3-3 is devoid of any reference to a requirement that state law enforcement agencies keep secret those items the Federal government designates. Therefore, even if there was evidence that the FBI requested that Defendant not disclose the records in this case, which there is not, such a request would not be a valid basis for refusing to comply with the plain statutory provisions of IPRA. Therefore, Defendant's refusal to comply with IPRA in this case because of a request to do so by the FBI was unreasonable, and Plaintiff is entitled to summary judgment.

## CONCLUSION

Plaintiff respectfully asks that this Court reverse the district court's order and enter judgment for Plaintiff as a matter of law.

## STATEMENT OF COUNSEL AS TO ORAL ARGUMENT

Because of the importance of the issues at stake and because counsel's knowledge of the record will aid the Court, Appellant requests oral argument.

Respectfully submitted,

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## RULE 12-213(F) NMRA STATEMENT OF COMPLIANCE

As required by Rule 12-213(F)(2) NMRA I hereby certify that this brief is a total of **16** pages. As required by Rule 12-213 (F)(3) NMRA I hereby certify that the body of this brief contains **4,893** words and was prepared using a proportionally-spaced type style or typeface, Times New Roman. In reaching this total I relied upon my word-processing program WORD Version 16, last updated on June 5, 2016.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served on the following by U.S. and electronic mail on this 6th day of June, 2016, to:

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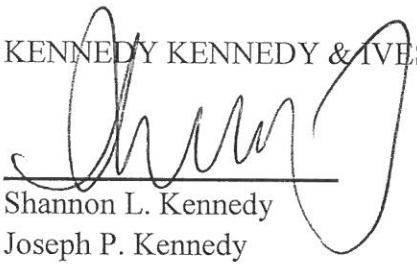

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