

**STATE OF NEW MEXICO
SECOND JUDICIAL DISTRICT COURT
BERNALILLO COUNTY**

ACLU of NEW MEXICO,

Plaintiff-Petitioner,

v.

No. _____

CITY OF ALBUQUERQUE,

Defendant-Respondent.

**COMPLAINT FOR EQUITABLE RELIEF AND DAMAGES
PURSUANT TO THE NEW MEXICO INSPECTION OF PUBLIC RECORDS ACT**

PLAINTIFF AMERICAN CIVIL LIBERTIES UNION OF NEW MEXICO (“Plaintiff”),
by and through undersigned counsel, files its Complaint and Petition pursuant to the New
Mexico Inspection of Public Records, Act (“IPRA”), NMSA 1978, § 14-2-1. *et seq.*, as follows.

Introduction

1. Plaintiff American Civil Liberties Union of New Mexico (“ACLU of New Mexico”) is an organization that, among other things, vigorously defends the civil rights of undocumented persons in New Mexico.
2. On or about May of 2010, Mayor Richard Berry announced that the City of Albuquerque (“the city”) would partner with U.S. Immigration and Customs Enforcement (“ICE”), a federal agency, to assess the immigration status of every person arrested and processed through the city’s prisoner transport center, irrespective of nationality.
3. Per the city’s May 13, 2010, press release (Attached as **Exhibit A**), “Mayor Berry has reached an agreement with U.S. Immigration and Customs Enforcement in which federal agents will be provided office space and work along side [*sic*] the city’s [Prison Transport

Center] personnel. This new partnership directly supports the Department of Homeland Security's Secure Communities Program.”

4. The city's partnership with ICE has been the subject of significant public debate and scrutiny, including media coverage and an attempt by the City Council to invalidate the agreement.
5. In reaching this agreement with U.S. Immigration and Customs Enforcement, the city—through its public servants—must have generated documents related to the above described agreement.
6. Plaintiff has sought numerous documents from the city related to its cooperation with ICE pursuant to the New Mexico Inspection of Public Records Act (“IPRA”), which requests have been effectively denied.
7. NMSA 1978, § 14-2-11(A) provides that a request for public records may be deemed denied if inspection is not permitted within fifteen days of the request unless the custodian deems the request excessively burdensome or broad.
8. Pursuant to NMSA 1978, § 14-2-10, a records custodian may have additional time to comply with a request if the custodian deems the request burdensome or broad, but the requestor may deem the request denied and pursue remedies available under IPRA if the custodian does not permit the records to be inspected in a reasonable period of time.

Parties, Jurisdiction, and Venue

9. The ACLU of New Mexico is non-profit corporation located in Albuquerque, New Mexico, and is a person for purposes of the New Mexico Inspection of Public Records Act, N.M.S.A. 1978, § 14-2-6(C).

10. The City of Albuquerque is a governmental entity subject to the Inspection of Public Records Act, N.M.S.A. § 14-2-1, *et seq.*
11. This action arose in Bernalillo County.
12. Venue is proper in the County of Bernalillo pursuant to NMSA 1978, § 38-3-1(A).

Factual Allegations

13. On July 29, 2010, Plaintiff requested public documents from Trina Casados, Records Custodian City of Albuquerque, as follows:
 1. Any and all policies or procedures relevant to the implementation of Secured Communities within the City of Albuquerque;
 2. Any and all management agreements and/or contracts between the City of Albuquerque and ICE;
 3. Any and all records establishing the policy for Secured Communities from ICE or any Federal, State, Law Enforcement Agency, group or association;
 4. Any and all interagency agreements between The City of Albuquerque and all Federal agencies regarding the operation of ICE at the Metropolitan Detention Center (hereinafter MDC);
 5. Any and all operating agreements between the City of Albuquerque and ICE;
 6. Any and all correspondence [referencing the above requests / regarding policies, procedures, management, contracts, records, or agreements] from the City of Albuquerque to and from any Federal, State, Law Enforcement Agency, group or association regarding ICE and/or Secured Communities;
 7. Any and all correspondence from the Department of Homeland Security giving guidance on detention policy or protocols regarding Secured Communities;
 8. Any and all correspondence to and from any Federal, State or Law Enforcement Agency, group or association raising concerns, giving direction, guidance, or advice regarding Secured Communities;
 9. Any and all records kept by the City of Albuquerque pertaining to ICE including, but not limited your response to include documents, notes, records,

- memos, notes, filings, pleadings, communications, criminal records & background checks, investigation, computer records of any Albuquerque official and/or officer working in conjunction with ICE and/or any ICE official and/or officer working with City officials and/or officers;
10. Any and all documents, reports, records, memorandums, correspondence relating to the financial relationship and or cost between the City of Albuquerque and ICE;
 11. Any and all records, documents, briefs, notes, or memorandums containing the key words “Secured Communities” and/or “ICE”;
 12. Any and all communications containing the key words “Secured Communities” and/or “ICE” to or from any City of Albuquerque official;
 13. Any and all communications between any representative of the City of Albuquerque & any representative of ICE regarding ICE’s involvement, conduct, procedures at MDC and/or Secured Communities;
 14. Any and all records which were prepared received, transmitted, collected, created and/or maintained by the City of Albuquerque concerning the Secure Communities Program and/or ICE;
 15. Any and all records, including but not limited to guidance or directives, memoranda, training materials, or legal analyses, concerning Secured Communities and/or ICE;
 16. Any and all statistical records kept or within the City’s possession regarding Secured Communities;
 17. Any and all booking records from the Albuquerque Police Department (hereinafter APD) regarding Secured Communities and/or ICE;
 18. Any and all briefs, meeting notes, memorandums, or communication between any agent or representative of the City of Albuquerque and any agent or representative of ICE;
 19. List of any and all personnel within the City of Albuquerque whom are responsible for record keeping involved with ICE;
 20. List of all personnel within the City of Albuquerque whom are responsible (entrusted) for keeping ICE records;

See **Exhibit B** attached hereto and incorporated herein by reference.

14. On August 30, 2010, counsel for the Albuquerque Police Department (“APD”) wrote to advise Plaintiff that there were no responsive documents to a number of its requests and that the remaining requests would require extensive searches of city databases. APD’s counsel also suggested that the parties meet and confer to discuss the possibility of narrowing the request. *See Exhibit C* attached hereto.
15. On September 16, 2010, Plaintiff’s counsel sent a letter to APD’s counsel suggesting dates and times to meet, attached hereto as **Exhibit D**.
16. On September 27, 2010, Plaintiff’s counsel sent another letter to APD’s counsel in an attempt to discuss the scope of Plaintiff’s requests. *See Exhibit E* attached hereto.
17. On October 8, 2010, counsel for APD wrote Plaintiff’s counsel to advise that she would be able to identify those individuals involved in the decision to implement Secured Communities in the transport center the following week and would run the necessary searches at that time, attached hereto as **Exhibit F**.
18. Although the scope of Plaintiff’s initial request for public records had been clear, Plaintiff’s counsel narrowed the terms of the search in a failed attempt to expedite the city’s response to its records request. *See Exhibit G* attached hereto.
19. Since the October 12, 2010, letter, the city has not provided responsive documents to Plaintiff’s request or made any such documents available for inspection.
20. The Defendant did not produce any documents in response to Plaintiff’s request, despite its proclamation that Major Berry had reached an agreement with ICE whereby ICE would office in its Prisoner Transportation Center and review the immigration status of all persons processed through that facility.

Cause of Action

Count I: Right to Access to Other Identified Public Records pursuant to New Mexico Inspection of Public Records Act

21. Plaintiff is entitled to a copy of those documents identified in **Exhibit B**, pursuant to the Inspection of Public Records Act.
22. Defendant's failure to make the responsive documents in its possession available for inspection is unreasonable.
23. Defendant was required to reasonably respond to Plaintiff's request by fifteen days after the request on July 29, 2010. NMSA 1978, § 14-2-8(D).
24. Defendant has been in noncompliance with its statutory obligation to comply with the IPRA since at least July 16, 2010, which entitles Plaintiff to statutory damages of up to \$100.00 per day from July 16, 2010, until Defendant complies.
25. Plaintiff is entitled to its attorney's fees in bringing this action.
26. Denying Plaintiff access to the documents is in violation of the New Mexico Inspection of Public Records Act, NMSA 1978, § 14-2-12.

WHEREFORE, premises considered, Plaintiff prays as follows:

1. That this Court grant Plaintiff a Permanent Injunction, directing Defendant to comply with future public records requests in accordance with the New Mexico Inspection of Public Records Act.
2. That this Court grant Plaintiff an award of statutory damages in the amount of up to \$100.00 per day beginning August 16, 2010, until the date of compliance, arising from Defendant's failure to respond to Plaintiff's public records request dated July 29, 2009.
3. That this Court grant Plaintiff his attorney's fees and costs.

DATE: December 3, 2010

Respectfully Submitted,

Laura Schauer Ives
Managing Attorney
ACLU of New Mexico
P.O. Box 566
Albuquerque, NM 87103
(505) 266-5915
Facsimile (505) 266-5916

CERTIFICATE OF SERVICE

I HEREBY CERTIFIED that on this the Third day of December, 2010, a true copy of the foregoing complaint was served by U.S. Mail, to the registered agents of record for the City of Albuquerque.

Laura Schauer Ives