

CHRISTIANA SANCHEZ

ENDORSED  
FILED IN MY OFFICE THIS

JUL 20 2011

*Janita M. Duran*  
CLERK DISTRICT COURT

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT

AMERICAN CIVIL LIBERTIES  
UNION OF NEW MEXICO,  
Plaintiff,

vs.

No. CV 201107257

DIANNA J. DURAN, and CHRISTIANA SANCHEZ,  
Defendants.

**COMPLAINT TO ENFORCE THE INSPECTION OF  
PUBLIC RECORDS ACT, FOR PRODUCTION OF PUBLIC  
RECORDS, AND FOR DAMAGES, COSTS AND ATTORNEYS' FEES**

Plaintiff states:

1. This action is brought pursuant to NMSA 1978 §14-2-12 to enforce the provisions of the Inspection of Public Records Act, NMSA 1978 §§14- 2-1 to -12 (1947, as amended through 2011) ("IPRA").
2. Plaintiff is a nonprofit corporation, organized pursuant to the laws of the State of New Mexico, and with its principal place of business in Albuquerque, Bernalillo County, New Mexico.
3. 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.

4. Written requests for public records made on behalf of Plaintiff pursuant to the IPRA were wrongfully denied by Defendants as set out herein.
5. On March 8, 2011 Bobbi Shearer, Secretary of State (“SOS”) Bureau of Elections Director, forwarded an e-mail from Judd Choate, Director, Division of Elections, Colorado Department of State to Matt Kennicott, Director of Policy & Planning, Office of the New Mexico Governor.
6. The e-mail from Mr. Choate stated that on March 8, 2011, the Colorado Secretary of State would hold a news conference to discuss legislation under consideration in the Colorado House that would allow the Colorado Department of State to spot check and investigate voter registrations for the possibility that non-citizens are 1) currently registered to vote, 2) are being accidentally registered to vote, or 3) are willfully seeking to register in violation of both state and potentially federal law. In addition, simultaneous with this press conference, the Colorado Department of State planned to issue a report outlining the research they had undertaken to determine if there were persons currently registered to vote who may not be U.S. citizens. Mr. Choate concluded by stating that “I wanted to warn you that this report will be issued in case it becomes a national story requiring that you address the issue relative to your state.”
7. In response to the Choate message, employees of the State of New Mexico were mobilized to “address the issue” as related to New Mexico.

8. Numerous e-mails were sent to and from employees of the State of New Mexico including the Office of the Governor, the Office of the Secretary of State (“SOS”) and the Taxation and Revenue Department (“TRD”).
9. The Motor Vehicle Division (“MVD”) is a division of the TRD.
10. The purported purpose of the e-mails was to coordinate a “cross-check” to determine if the New Mexico records showed persons registered to vote who were not U.S. citizens.
11. An e-mail dated March 10, 2011, from Jessica Hernandez, General Counsel, Office of the Governor, to Matt Kennicott, Director of Policy & Planning, Office of the Governor, states that “MVD and SOS are working on this and will have preliminary results by the end of the day [*March 10, 2011*].”
12. On March 15, 2011, Scott Darnell, Communications Director for the Office of the Governor, stated as his “on-record statement:”

The initial report from the Secretary of State that illegal immigrants with driver’s licenses have registered to vote and voted should concern every New Mexican. Each and every illegally cast vote disenfranchises a New Mexican and this is yet another reason why the Governor strongly supports repealing the law that gives driver’s licenses to illegal immigrants.
13. On March 15, 2011, Scott Darnell, Communications Director for the Office of the Governor, further stated that his use of the term “*initial* report” in his on-record statement did not mean that the Governor’s Office was not positive about the findings

of the secretary of State; “it simply meant that they are not finished matching the MVD records with the voting rolls and more information would be forthcoming.”

14. This voluntarily disclosure of the initial report constituted a waiver of all privileges, if any, against disclosure.
15. Any expectancy of or need for privacy disappeared once the initial report was disclosed.

**ACTIONS BY THE SECRETARY OF STATE PRIOR TO PLAINTIFF'S REQUESTS FOR PUBLIC RECORDS**

16. Defendant Dianna J. Duran is the Secretary of State for the State New Mexico and is a member of the executive branch of the State of New Mexico government.
17. Defendant Christiana Sanchez is the Records Custodian for the Office of the SOS.
18. On March 15, 2011, Defendant Dianna J. Duran announced purported findings of an investigation as follows:

The Secretary of State's Office has so far been able to match 117 voter registrations to names and dates of birth in the MVD Foreign National database – all 117 of those have Social security numbers that do not match up with their names. The records make it clear that at least 37 of those identified have voted in New Mexico elections. These are still under investigation to verify the accuracy of the information.
19. On or about March 15, 2011, Bobbi Shearer, Director of the New Mexico Bureau of Elections, stated that “There's evidence that they're in the foreign national database, that their name and date of birth matches, and their social security number in our data base is not valid, and that they did cast votes.”

20. The voluntarily disclosure of the material by the Secretary of State and the Director of the New Mexico Bureau of Elections constituted a waiver of all privileges, if any, against disclosure of the material.
21. Any expectancy of or need for privacy disappeared once the findings of the investigation were disclosed.

**PLAINTIFF'S REQUEST FOR PUBLIC RECORDS FROM THE SECRETARY OF STATE**

22. On March 16, 2011, Laura Schauer Ives, Managing Staff Attorney, ACLU of New Mexico, acting on behalf of Plaintiff, submitted a written Request for Public Records to the Custodian of Records, Office of the Secretary of State.
23. Plaintiff's First Request to the SOS is attached hereto as "Exhibit A."
24. By letter dated March 31, 2011 ("First Response from SOS"), Defendant Christiana Sanchez, Records Custodian for the SOS, stated that all records obtained from the MVD were protected from disclosure by the Driver Protection Privacy Act ("DPPA") and the New Mexico Driver Protection Privacy Act ("NMDPPA") and denied Plaintiff's request for those records.
25. The First Response from the SOS is attached hereto as "Exhibit B."
26. In the First Response from the SOS, Defendant Christiana Sanchez:
  - a. Did not describe any additional records that were not produced.
  - b. Did not set forth the names and titles or positions of each person responsible for the denial of any additional records.

27. In the First Response from the SOS, Defendant Christiana Sanchez produced a letter from Secretary Diana J. Duran to Assistant Attorney General Tania Maestas that stated in part: “Our preliminary review, involving checking *voter information* against Motor Vehicle Division (MVD) records ... The *registration cards* reviewed ... ” (emphasis supplied)
28. This voluntarily disclosure of this attorney-client communication constituted a waiver of all privileges, if any, against disclosure.
29. In addition, in the First Response from the SOS, Defendant Christiana Sanchez produced heavily redacted e-mails that reflected communications between the Office of the Secretary of State and the MVD and stated that the redacted information was withheld pursuant to a claim of executive privilege.
30. However, on information and belief, several of the participants in the e-mail exchanges were MVD (TRD) staff responsible for conducting audits of the information, not analyzing the strategic vision for the operation of the office of the SOS. These e-mail exchanges are not protected from disclosure by executive privilege.
31. Several of these communications convey purely factual information and/or involve discussion of technical issues associated with the search the MVD (TRD) was conducting. These e-mail exchanges are not protected from disclosure by executive privilege.

32. In the First Response from the SOS, Defendant Christiana Sanchez claimed that the Office of the SOS did not possess any documents that reflected communications between the Office of the SOS and the Governor's Office relating to alleged and/or proven voter fraud involving foreign nationals and/or any irregularities noted in the master list of registered voters in New Mexico. However, e-mails produced by the Office of the Governor include:

- a. An e-mail from Bobbi Shearer, SOS Bureau of Elections Director, to Keith Gardner, Office of the Governor, dated March 1, 2011.
- b. E-mails between Bobbi Shearer, SOS Bureau of Elections Director, and Matt Kennicott, Director of Policy & Planning, Office of the Governor, dated March 8, 2011 and March 9, 2011.

33. The redacted e-mails contained at least seven attachments. However, none of the attachments were produced by Defendants.

34. In an e-mail dated March 10, 2011, Jessica Hernandez, General Counsel, Office of the Governor, states that "MVD and SOS are working on this and will have preliminary results by the end of the day."

35. Later, Defendant Dianna J. Duran reportedly identified approximately 64,000 cases of possible voter fraud for the New Mexico Department of Public Safety, purportedly for investigation of possible criminal activity.

36. However, Defendant Dianna J. Duran admitted that some number of the 64,000 cases of possible voter fraud she identified for the New Mexico Department of Public Safety for investigation could involve clerical errors rather than criminal wrongdoing.
37. Defendant Diana J. Duran and staff members of the SOS stated at the July 15, 2011 Courts, Corrections, and Justice Committee meeting that the approximately 64,000 registered voter records the SOS turned over to the New Mexico Department of Public Safety were not criminal investigations, but instead the New Mexico Department of Public Safety had been engaged by the SOS to aid the SOS in verifying the accuracy of the registered voter file.
38. At the same July 15, 2011 Courts, Corrections, and Justice Committee hearing, Defendant Diana J. Duran and staff members of the SOS stated that they were not alleging any criminal activity had taken place.
39. Based on these statements, on information and belief, no criminal investigation is currently in progress, and no person has been accused of or charged with a crime.
40. Therefore, the approximately 64,000 records the SOS turned over to the New Mexico Department of Public Safety are not protected by any exception to IPRA. *See* NMSA § 14-2-1.
41. On information and belief, Defendant Dianna J. Duran turned over approximately 64,000 registered voter records to the New Mexico Department of Public Safety in an effort to shield the data that she had collected from disclosure to the public pursuant to IPRA.



42. On information and belief, Defendant Dianna J. Duran turned over approximately 64,000 registered voter records to the New Mexico Department of Public Safety for investigation of possible criminal activity in an effort to convert public records to records not obtainable pursuant to the IPRA.

#### **DEFENDANT DIANNA J. DURAN'S CLAIM OF EXECUTIVE PRIVILEGE**

43. The records withheld from production by Defendant Christiana Sanchez, on the ground of executive privilege, do not fall within the scope of executive privilege.

44. By letter dated May 26, 2011, in response to an IPRA request made by Heath Haussamen, Editor and Publisher, nmpolitics.net, Patricia A. Silva, Records Custodian for the New Mexico Taxation and Revenue Department, made available 14 emails.

45. Several of these same emails were produced by the SOS in response to Plaintiff's request for public records.

46. In response to the IPRA request by Mr. Haussamen, the New Mexico TRD refuted the claim of executive privilege that had been previously made by the SOS.

47. Patricia A. Silva, Records Custodian for the New Mexico Taxation and Revenue Department, stated:

“We should be clear it is our understanding that these same emails were requested from the Secretary of State and they chose to assert executive privilege over some or all parts of these emails. The Department does not feel that executive privilege can be asserted, or would appropriately apply over these emails.”

Ms. Silva's letter is attached as Exhibit C."

48. Nevertheless, the emails were heavily redacted by the TRD, purportedly to withhold material protected from disclosure for another reason, namely the law enforcement exception contained in IPRA, NMSA 1978 §14-2-1A.
49. In addition, the attachments to the emails were withheld pursuant to a similar claim by the TRD that they were protected from disclosure by the law enforcement exception contained in IPRA, NMSA 1978 §14-2-1A.
50. Accordingly, the TRD and the SOS have asserted inconsistent and contradictory reasons for their refusal to produce the same public records.
51. The need for disclosure of the records sought by Plaintiff and the public outweighs any interest in executive privilege or any other ground of confidentiality.
52. Upon information and belief, the executive officials involved in this matter did not engage in a complete analysis of the application of executive privilege to the records sought by Plaintiff before the claim of executive privilege was asserted.
53. Invocation of executive privilege in response to a request for records pursuant to IPRA should be exercised cautiously and in accord with the public interest in full disclosure.
54. A claim of executive privilege in response to a request for records pursuant to IPRA should only be invoked to protect communications among a limited group of senior officials engaged in a limited type of communication.

55. The invocation of executive privilege should only be invoked to communications between or among the Governor, a Cabinet Secretary, an agency head, or any of their high-level advisors.
56. The communications withheld by Defendant Dianna J. Duran, pursuant to a claim of executive privilege, were not made between the Governor, a Cabinet Secretary, an agency head, or any of their high-level advisors.
57. The invocation of executive privilege should be restricted to communications among the limited executive group that impact the decision-making process; that is, claims of executive privilege may only be asserted to protect communications that occurred in connection with a pending or anticipated decision.

**PLAINTIFF'S SECOND REQUEST FOR PUBLIC RECORDS TO THE SECRETARY OF STATE**

58. Thereafter, by letter dated April 11, 2011 ("Second Request to the SOS"), Alexandra Freedman Smith, Staff Attorney, ACLU of New Mexico, acting on behalf of Plaintiff, requested Defendant Christiana Sanchez to produce the referenced voter information, i.e., voters certificates of registration (except for the voter's social security number and date of birth), against which the MVD records were checked.
59. In the Second Request to the SOS, Alexandra Freedman Smith pointed out that, pursuant to NMSA 1978 §1-4-12, the contents of the requested voter information (excluding social security numbers and dates of birth) were public records.
60. Plaintiff's Second Request to the SOS is attached hereto as "Exhibit D."

61. By a letter dated April 26, 2011 (“Second Response from the SOS”), Defendant Christiana Sanchez, declined to produce any additional records except for:
- a. A letter dated March 25, 2011 from Secretary Dianna J. Duran to Bill Hubbard, New Mexico State Police.
  - b. A letter dated April 26, 2011 signed by Defendant Christiana Sanchez in which she forwarded the Third Request to the Records Custodian for the New Mexico Department of Public Safety (“DPS”) for action.

62. The Second Response from the SOS is attached hereto as “Exhibit E.”

63. By letter dated May 9, 2011 (“DPS Response”), Regina Chacon, Records Custodian for DPS, to Alexandra Freedman Smith, Staff Attorney, ACLU of New Mexico, stated that DPS had no records “regarding ‘All records pertaining to possible voter fraud ... ’”

64. The DPS Response is attached as “Exhibit F.”

**FACTS COMMON TO ALL REQUESTS**

65. This court has jurisdiction to hear this matter.

66. Venue for this action is appropriate in the Second Judicial District Court.

67. Plaintiff is a proper party to enforce the provisions of the IPRA by bringing this action. NMSA 1978 §14-2-12.

68. Defendants have wrongfully and illegally refused and failed to produce the public records sought by Plaintiff as set out above.

69. The public is entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees.
70. The public's right to access to public records is the rule and secrecy is the exception.
71. The public has a right to the disclosure of the validity of any assertions that New Mexico law allowing drivers licenses for all immigrants has contributed to voter fraud.
72. Such claims of voter fraud must be taken seriously because they undermine voter confidence in the electoral system and tend to discourage participation in elections.
73. In this matter, the public's right to access to the public records sought by Plaintiff outweighs any interest in confidentiality.
74. It is the intent of the legislature, and the public policy of the State of New Mexico, that to provide the public with such information is an essential function of a representative government and an integral part of the routine duties of public officers and employees.
75. Protected personal identifier information contained in public records may be redacted by a public body before inspection or copying of a record. The presence of protected personal identifier information on a record does not exempt the record from inspection. NMSA 1978 §14-2-1B. (Amended by 2011, c. 134, s. 2, eff. 7/1/2011).
76. IPRA provides that requester may be awarded damages when the failure to provide a timely explanation of a denial is determined to be unreasonable. NMSA 1978 §14-2-

11C. The award of damages for failure to provide a timely explanation of a denial shall not exceed one hundred dollars (\$100) per day. *Id.*

77. In this enforcement action, Plaintiff has incurred damages, costs, expenses and is entitled to an award of reasonable attorneys' fees.

78. IPRA provides that a district court may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of the Inspection of Public Records Act. NMSA 1978 §14-2-12B. Accordingly, Plaintiff seeks an Order from this court requiring Defendant to produce the Public Records sought by Plaintiff (except for documents protected from disclosure by the DPPA and the NMDPPA).

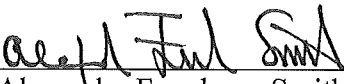
79. IPRA provides that the court shall award damages, costs and reasonable attorneys' fees to any person whose written request has been denied and is successful in a court action to enforce the provisions of the Inspection of Public Records Act. NMSA 1978 §14-2-12D.

Wherefore, Plaintiff requests this Court to:

- A. Order Defendants to produce all information, documents, reports and other material that was the basis for the statement by Defendant Dianna J. Duran on March 15, 2011, in which she announced purported findings of an investigation.
- B. Order Defendants to produce all information, documents, reports and other material that was the basis for the statement by Bobbi Shearer, SOS Bureau of Elections Director, on March 15, 2011, in which she announced that ineligible voters had voted.

- C. Order Defendants to produce all records sought by Plaintiff in its Requests (except for documents protected from disclosure by the DPPA and the NMDPPA and protected personal identifier information contained in public records which may be redacted).
- D. Order Defendants to produce all attachments to e-mails sought by Plaintiff in its Requests (except for documents protected from disclosure by the DPPA and the NMDPPA and protected personal identifier information contained in public records which may be redacted).
- E. Award damages, costs and reasonable attorneys' fees to Plaintiff.
- F. Grant such other and further relief as to the Court seems proper.

Respectfully submitted,



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ACLU of NM Foundation  
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Of Counsel





March 16, 2011

VIA FACSIMILE AND FIRST CLASS MAIL

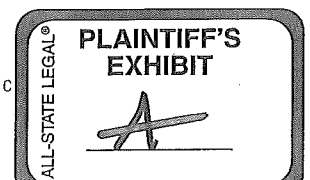
Custodian of Records  
Office of the Secretary of State  
New Mexico State Capitol  
325 Don Gaspar, Suite 300  
Santa Fe, NM 87503  
Facsimile: 505.827.8403

Dear Custodian of Records,

Our office faxed a version of this letter earlier this afternoon. Please disregard that letter; I have subsequently revised the sixth request.

This letter constitutes a request pursuant to the New Mexico Statute Authority Public Records Act ("Public Records Act") NMSA 1978 § 14-2-1 et. seq. The foregoing requests are limited to documents promulgated and/or received by the current administrations. I respectfully request copies of the following information in the custody or control of the Office of the Secretary of State or any agency or subdivision thereof:

1. All records pertaining to possible voter fraud and/or any irregularities noted in the master list of registered voters in New Mexico involving foreign nationals, including, but not limited to, any memoranda, correspondence, including email, and/or notes that discuss voter fraud and/or irregularities and the Office of the Secretary of State's search for voter fraud in voter rolls and registrations.
2. All records that support the Office of the Secretary of State's allegations of possible voter fraud and/or any irregularities noted in the master list of registered voters in New Mexico involving foreign nationals, including, but not limited to the voter registrations in question.
3. Any documents that reflect communications between the Office of the Secretary of State and any one at the Governor's Office related to alleged and/or proven voter fraud involving foreign nationals and/or any irregularities noted in the master list of registered voters in New Mexico.
4. Any documents that reflect communications between the Office of the Secretary of State and the New Mexico Motor Vehicle Division related to alleged and/or proven voter fraud involving foreign nationals and/or any irregularities noted in the master list of registered voters in New Mexico.
5. Any documents that reflect communication between the Office of the Secretary of State and any federal agency related to alleged and/or proven voter fraud involving foreign nationals and/or any irregularities noted in the master list of registered voters in New Mexico.
6. Any documents that reflect communication between any parties outside of the Office of the Secretary of State—including, but not limited to faculty at the University of New Mexico and representatives of any political party—and the Office of the Secretary of State related to alleged and/or proven voter fraud involving foreign nationals and/or any irregularities noted in the master list of registered voters in New Mexico.



Please advise me if this request does not describe all of the documents with sufficient specificity for you to make a reasonable response, and I will attempt to reformulate the request in a manner that meets your requirements. If your agency does not maintain these public records, please forward this request to the designated custodian of the requested records, and notify me of that action, including information required by NMSA 1978, §14-2-8 (E).

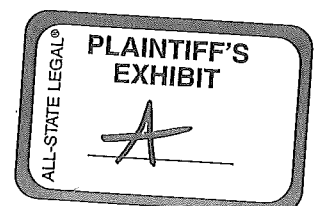
If the request encompasses exempt information that the Office of the Secretary of State is unable to release, then please either separate or retain the exempt documents or redact that information from documents that are otherwise non-exempt. If documents are exempt because the documents reveal "law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime" NMSA 1978 §14-2-1 (A)(4), please specify why the information falls under this exception. See Estate of Romero ex rel. Romero v. City of Santa Fe, 2006-NMSC-028, 139 N. M. 671, 137 P.3d 611.

I request that these documents be provided no later than 15 business days from the day this request is sent. Electronic documents are preferred and may be sent to [lives@aclu-nm.org](mailto:lives@aclu-nm.org). If your agency only has the capacity to produce hard copies, they are to be sent to me at the following address: ACLU of New Mexico, P.O. Box 566, Albuquerque, NM, 87103. Pursuant to Public Records Law, I agree to pay a reasonable fee for copying the public records. If the charges will exceed \$50.00, please telephone me in advance at 505.243.0046 so that I may review and agree to such charges. I would ask that a receipt indicating the copying charges for each document be provided.

Please do not hesitate to contact me if you have any questions or concerns. I can be reached by email at [lives@aclu-nm.org](mailto:lives@aclu-nm.org) or by phone at 505.266.5915 Ext. 1007. Thank you in advance for your assistance in this matter.

Sincerely,

Laura Schauer Ives  
Managing Staff Attorney  
ACLU of New Mexico





STATE OF NEW MEXICO  
DIANNA J. DURAN  
SECRETARY OF STATE

March 31, 2011

Laura Schauer Ives  
Managing Staff attorney  
ACLU of New Mexico  
P.O. Box 566  
Albuquerque, NM 87103

**Re: Records request**

Ms. Schauer Ives:

On March 16, 2011 we received your request to inspect certain records. Please be advised that all records within your request "related to alleged and/or proven voter fraud involving foreign nationals" consist of information we have obtained from the New Mexico Motor Vehicle Division ("MVD"). The information indisputably qualifies as personal information protected from disclosure under both the Driver Privacy Protection Act ("DPPA") and the New Mexico Drive Privacy Protection Act ("NMDPPA"). Thus, we cannot permit inspection of these records because they are excepted from disclosure "as otherwise provided by law" pursuant to NMSA 1978, § 14-2-1(A)(12). Based upon the advisement of our legal counsel, the records are prohibited from release pursuant to state and federal driver privacy statutes, the DPPA and the NMDPPA.

The DPPA provides: "It shall be unlawful for any person knowingly to obtain or disclose personal information, from a motor vehicle record, for any use not permitted under section 2721(b) of this title." *See* 18 U.S.C. § 2722. The NMDPPA similarly provides that it is unlawful to disclose to any person other than another employee of the department or bureau any personal information about an individual obtained in connection with a driver's license or permit. *See* NMSA 1978, § 66-2-7.1(A). As such, the information within the records you request is personal information governed by the DPPA and the NMDPPA and shall not be obtained by nor disclosed to a third party.

With regard to your request to inspect any documents that reflect communication between the Office of the Secretary of State and the New Mexico Motor Vehicle Division, you are being provided twelve (12) emails which have been redacted. The redacted information is either exempted as otherwise provided by law as explained



above, or subject to the executive privilege recognized in State ex rel. Attorney General v. First Judicial District Court, 96 N.M. 254, 629 P.2d 330 (1981). Revelation of the information within these emails will compromise the Secretary of State's decision-making process, and thus outweighs the public's interest in disclosure.

With regard to your request to inspect any documents that reflect communication between the Office of the Secretary of State and any parties outside of the office, we are providing you a letter addressed to Assistant Attorney General, Tania Maestas.

The Secretary of State's Office does not possess any documents that reflect communications between the Office of the Secretary of State and the Governor's Office, and/or any federal agency, faculty at the University of New Mexico, nor representatives of any political party related to alleged and/or proven voter fraud involving foreign nationals and/or any irregularities noted in the master list of registered voters in New Mexico.

Sincerely,



Christiana Sanchez  
Records Custodian





STATE OF NEW MEXICO  
**Taxation and Revenue Department**

An Equal Opportunity Employer

**Susana Martinez**  
Governor

**Demesia Padilla, CPA**  
Cabinet Secretary

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Office of the Secretary  
(505) 827-0341  
Administrative Services  
(505) 827-0369  
Audit and Compliance  
(505) 827-0900  
Motor Vehicle  
(505) 827-2296  
Property Tax  
(505) 827-0870  
Revenue Processing  
(505) 827-0800  
Tax Fraud Investigations  
(505) 827-0354

May 26, 2011

Via email only to: [heath@haussamen.com](mailto:heath@haussamen.com)

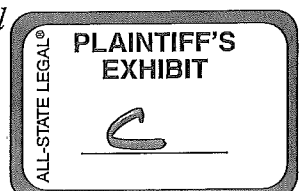
Heath Haussamen  
Editor and Publisher, NM Politics.net  
Haussamen Publications  
4993 Rock Court  
Las Cruces, NM 88012-0640

**Re: Request to Inspect Public Records**  
**IPRA CASE NUMBER: 11-0118**

Dear Mr. Haussamen:

Your email correspondence dated April 25, 2011 requested the Taxation and Revenue Department ("TRD") provide you with the following documents. Our response is below.

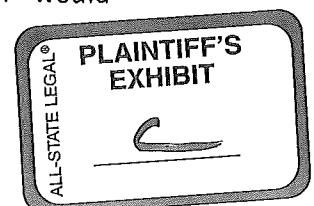
- "- An e-mail from TRD employee Lee A. Baca to Secretary of State employee Kenneth Ortiz that was sent March 10, 2011 at 8:59 a.m., and all attachments. The e-mail includes the subject line "RE: Voter file."*
- An e-mail from Ortiz to Baca that was sent March 10, 2011 at 8:42 a.m., and all attachments. The e-mail includes the subject line "Voter file."*
- An e-mail from TRD employee Rao, Chad to Ortiz that was sent March 10, 2011 at 6:50 p.m., and all attachments, including the file "NO SNN.xls." The e-mail includes the subject line "Emailing: NO SNN.xls."*
- An e-mail from TRD employee Venkata Dodda to Ortiz sent March 14, 2011 at 10:09 a.m. and all attachments. The e-mail includes the subject line "RE: SOS data matching against Foreign National Data."*
- An e-mail from Ortiz to Dodda sent March 14, 2011 at 9:45 a.m. and all attachments. The e-mail includes the subject line "SOS data matching against Foreign National Data."*
- An e-mail from Baca to Ortiz sent March 17, 2011 at 6:46 p.m., and all attachments. The e-mail includes the subject line "First File Complete."*



Heath Haussamen  
Editor and publisher, NM Politics.net  
**Re: Request to Inspect Public Records**  
**IPRA CASE NUMBER: 11-0118**  
May 26, 2011  
Page 2 of 3

- An e-mail from TRD employee Tirumal Rao to Baca, Ortiz, Venkata, Greg Saunders and Rama Bandapelli sent March 25, 2011 at 11:39 a.m., and all attachments. The e-mail includes the subject line "SSA - Checks remaining."
- An e-mail from Chad to Ortiz sent March 10, 2011 at 7:25 p.m., and all attachments, including the file "DuplicateSNNFromSOS.xls." The e-mail includes the subject line "DuplicateSNNFromSOS.xls."
- An e-mail from Chad to Ortiz and CC'ed to Baca and Jacque Y. Geoffrion, sent March 11, 2011 at 7:39 p.m., and all attachments, including the file "SOS Info.xls." The e-mail includes the subject line "SOS Info.xls."
- An e-mail from Baca to Ortiz, Saunders and Demesia Padilla, sent March 18, 2011, at 8:50 a.m., and all attachments, including the file "File 1 (1036).xls." The e-mail includes the subject line "First File."
- An e-mail from Chad to Ortiz, Geoffrion, Baca and Dodda, sent March 12, 2011, at 5:42 p.m., and all attachments, including the file "SOS Info.xls." The e-mail includes the subject line "SOS Info.xls."
- An e-mail from Chad to Ortiz, sent March 11, 2011, at 9:59 a.m., and all attachments, including the file "DuplicateDataInfo.xls." The e-mail includes the subject line "DuplicateDataInfo.xls."
- An e-mail from Chad to Ortiz, Baca and Geoffrion, sent March 16, 2011, at 3:47 p.m., and all attachments, including the file "FNAMEANDDOB\_03162011.xls." The e-mail includes the subject line "FNAMEANDDOB\_03162011.xls."
- An e-mail from Baca to Ortiz, sent March 18, 2011, at 11:38 a.m., and all attachments. The e-mail includes the subject line "SSA Verification."

**RESPONSE:** The requested records are available for inspection. We should be clear it is our understanding that these same emails were requested from the Secretary of State and they chose to assert executive privilege over some or all parts of these emails. The Department does not feel executive privilege can be asserted, or would appropriately apply over these emails.



Heath Haussamen  
Editor and publisher, NM Politics.net  
**Re: Request to Inspect Public Records**  
**IPRA CASE NUMBER: 11-0118**  
May 26, 2011  
Page 3 of 3

However, pursuant to the Inspection of Public Records Act ("IPRA") §14-1-1A (4), "[e]very person has a right to inspect any public records of this state except . . . law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime." The Secretary of State's Office turned this investigation over to the State Police, which is continuing the investigation. The Department has decided to only redact those portions of the emails that we believe fall under the law enforcement records exception articulated in NMSA 1978, § 14-2-1(4). Furthermore, the Department will not be turning over the attachments to these emails also pursuant to the law enforcement exception. It is our understanding that the Secretary of State's Office did not assert the law enforcement exception because it had received advice from the Attorney General's Office that the exception was not available to it because it is not a law enforcement agency. However, the Deputy Attorney General has confirmed that the availability of this exception is based upon the nature and content of the documents rather than by the identity of the agency holding them.

To the extent you consider any of the Department's determination to be a denial, the person responsible for the denial is Nelson Goodin, Chief Counsel, Legal Services Bureau, P.O. Box 630, Santa Fe, NM 87504-0630, nelson.goodin@state.nm.us. (505) 827-2594.

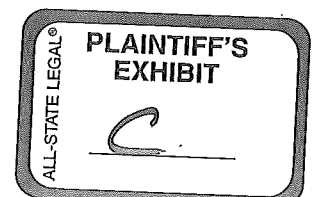
Our search for the requested records is now complete. Please contact me at the above phone number to set up a time to review the records. According to the Inspection of Public Records Act, NMSA 1978, § 14-2-9(B) (1) and (3), a fee has been instituted for copying public records, payment of which is required in advance. The fee per page for copies is \$0.25. However, for this instance the Department is waiving your fee and sending you the scanned documents directly.

Thank you for affording us this opportunity to be of assistance to you.

Sincerely,



Patricia A. Silva  
IPRA Records Custodian  
Enclosures





April 11, 2011

VIA FACSIMILE AND FIRST CLASS MAIL

Custodian of Records  
Office of the Secretary of State  
New Mexico State Capitol  
325 Don Gaspar, Suite 300  
Santa Fe, NM 87503  
Facsimile: 505.827.8403

Dear Ms. Sanchez,

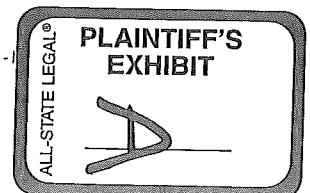
Our organization received your March 31, 2011 letter in which you responded to our March 16, 2011 request to inspect certain public records. We appreciate your response. I am concerned, however, that certain records to which we are entitled pursuant to the Public Records Act, NMSA 1978 § 14-2-1 et. seq. were not produced.

Our first two requests were for:

1. *All* records pertaining to possible voter fraud and/or any irregularities noted in the master list of registered voters in New Mexico involving foreign nationals, including, but not limited to, any memoranda, correspondence, including email, and/or notes that discuss voter fraud and/or irregularities and the Office of the Secretary of State's search for voter fraud in voter rolls and registrations.
2. *All* records that support the Office of the Secretary of State's allegations of possible voter fraud and/or any irregularities noted in the master list of registered voters in New Mexico involving foreign nationals, including, but not limited to the voter registrations in question.

You responded that "all records within [our] request 'related to alleged and/or proven voter fraud involving foreign nationals' consist[s] of information...obtained from the New Mexico Motor Vehicle Division." However, the letter you produced from Dianna Duran to Tania Maestas at the Attorney General's Office says that the Secretary of State's office conducted "a preliminary review, involving checking voter information against Motor Vehicle Division (MVD) records...". While the MVD records may be protected from disclosure pursuant to NMSA 1978 § 14-2-1(A)(12) due to the Driver Privacy Protection Act (DPPA) and the New Mexico Driver Privacy Protection Act (NMDPPA) according to Republican Party of New Mexico v. New Mexico Taxation and Revenue Dept., 2010-NMCA-080, 148 N.M. 877, cert. granted, No. 32,524 (2010), **the voter information against which the MVD records were checked is not protected and must be disclosed.** The contents of voter registration information, excluding the social security numbers and dates of birth, are public records which we are entitled to inspect. See NMSA 1978 § 1-4-12.

Additionally, the letter from Dianna Duran to Tania Maestas also states that the Secretary of State's preliminary review appears to have identified non-citizens who have voted in elections. The voting





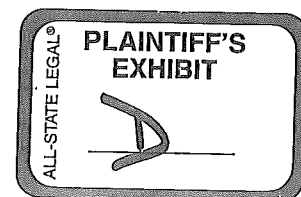
records identifying these alleged non-citizens and any information indicating how this information was discovered should be made available to us. Furthermore, the letter indicates that "the registration cards reviewed thus far include a number of instances in which the person registering to vote checked 'no' to the question 'Are you a citizen?'" . These registration cards must also be disclosed. Moreover, the heavily redacted emails which you produced refer to attachments that appear to be spreadsheets regarding the issue of alleged non-citizens who have voted. These attachments should be produced as well. While the information from MDV records contained in these attachments can be redacted under the current law, any voter information included (other than social security numbers and dates of birth) and any other non-exempt information should be disclosed as should the attachments themselves. According to the New Mexico Attorney General's Compliance Guide to IPRA Requests, "[t]he fact that a document may contain some information that may not be disclosed does not protect all the information from public disclosure." Office of the Attorney General, Inspection of Public Records Compliance Guide, 37 (6<sup>th</sup> Ed.) 2009.

Additionally, you asserted the executive privilege as a reason for not disclosing information within the heavily redacted emails which you produced. "The executive privilege is not absolute and may not be used unless revelation of a document will truly compromise the agency's decision making process." *Id.* at 22-23 It also only applies to "recommendations and advice among members of the executive agency." *Id.* Thus, any information contained in the emails that does not represent advice or recommendations must be disclosed. This includes any data or factual information that may be contained in the email communications and the attachments to these emails.

Finally, in your March 31, 2011 letter, you indicated that in response to our request for any documents indicating communication between the Office of the Secretary of State and any other parties outside the office, you were providing the letter from Dianna Duran to Tania Maestas. Does this letter reflect the only document responsive to our request for "any documents that reflect communication between any parties outside of the Office of the Secretary of State...related to alleged and/or proven voter fraud involving foreign nationals and/or any irregularities noted in the master list of registered voters in New Mexico?"

Although I believe our previous requests listed above cover these documents, I hereby formally request pursuant to the New Mexico Statute Authority Public Records Act ("Public Records Act") NMSA 1978 § 14-2-1 et. seq. that we be allowed to inspect the following documents in addition to the documents requested in our March 16, 2011 requests:

1. For those individuals that have been identified as suspected non-citizens who have voted or have registered to vote, all documents regarding these individuals including, but not limited to, voter registration documents for these individuals, signature rosters and/or checklists of voters indicating that these individuals may have voted, voter lists identifying these individuals, and any other documents that the Secretary of State's Office has created, reviewed, received, or possesses that may indicate non-citizen voting.
2. All lists of individuals identified by any state agency as being suspected non-citizens who may have voted in any New Mexico election and all documents including, but not limited to, correspondence, memoranda, and spreadsheets that discuss or refer to these lists.
3. All voter registration documents indicating that a person registering to vote may be a non-citizen including, but no limited to, those documents where a person registering to vote checked "no" in response to the question "Are you a citizen?"



4. Where voter information has been used to check against Motor Vehicles Division records and possible non-citizen voting has been discovered, all voter documents that were used in this process as well as any documents created as a result of this process and any documents that refer to this process.
5. All attachments to the emails produced in response to our March 16, 2011 requests.

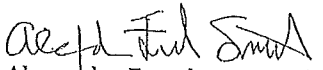
Please advise me if this request does not describe all of the documents with sufficient specificity for you to make a reasonable response, and I will attempt to reformulate the request in a manner that meets your requirements. If your agency does not maintain these public records, please forward this request to the designated custodian of the requested records, and notify me of that action, including information required by NMSA 1978, §14-2-8 (E).

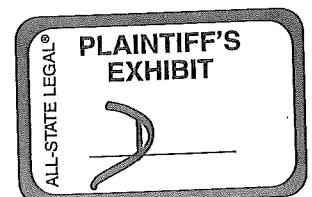
If the request encompasses exempt information that the Office of the Secretary of State is unable to release, then please either separate or retain the exempt documents or redact that information from documents that are otherwise non-exempt. If documents are exempt, please identify the information and specify why the information falls under this exception.

I request that these documents be provided no later than 15 business days from the day this request is sent. Electronic documents are preferred and may be sent to [asmith@aclu-nm.org](mailto:asmith@aclu-nm.org). If your agency only has the capacity to produce hard copies, they are to be sent to me at the following address: ACLU of New Mexico, P.O. Box 566, Albuquerque, NM, 87103. Pursuant to Public Records Law, I agree to pay a reasonable fee for copying the public records. If the charges will exceed \$50.00, please telephone me in advance at (505) 266-5915 x 1008 so that I may review and agree to such charges. I would ask that a receipt indicating the copying charges for each document be provided.

Please do not hesitate to contact me if you have any questions or concerns. I can be reached by email at [asmith@aclu-nm.org](mailto:asmith@aclu-nm.org) or by phone at 505.266.5915 Ext. 1008. Thank you in advance for your assistance in this matter.

Very truly yours,

  
Alexandra Freedman Smith  
Staff Attorney  
ACLU of New Mexico





STATE OF NEW MEXICO  
DIANNA J. DURAN  
SECRETARY OF STATE

April 26, 2011

Alexandra Freedman Smith  
Staff Attorney  
ACLU of New Mexico  
P.O. Box 566  
Albuquerque, NM 87103-0566

Sent via email at [asmith@aclu-nm.org](mailto:asmith@aclu-nm.org)

**Re: Records request**

Dear Ms. Smith:

On March 16, 2011 we received your request to inspect certain records. We responded to this request on March 31, 2011, indicating that the requested records contained personal information protected from disclosure under both the Driver Privacy Protection Act ("DPPA") and the New Mexico Driver Privacy Protection Act ("NMDPPA") and pursuant to executive privilege, "as otherwise provided by law" in accordance with NMSA 1978, § 14-2-1(A)(12). Your most recent request dated April 11, 2011 reiterates your previous request and supplements your request for specific additional documents.

As referenced in our prior response, it would be impossible to reveal any voting records identifying alleged non-citizens who voted in elections without disclosing the confidential personal information as it correlates to MVD records. The DPPA provides, in pertinent part, that we "shall not knowingly disclose or otherwise make available to any person or entity... personal information... about any individual obtained by the department in connection with a motor vehicle record[.]" See 18 U.S.C. § 2721(a)(1). Any identified individual's name and residency status were obtained in connection with protected Motor Vehicle Division ("MVD") records. As such, revelation of the individual's name and corresponding voter record would violate the DPPA.

Moreover, while you are correct in stating that the Secretary of State's Office conducted a preliminary review of voter information against MVD records, we are unable to provide any records pursuant to this request at this time. The Secretary of State is currently in a review process to determine whether individuals improperly registered and/or illegally voted in New Mexico elections. All of the data derived from MVD, including the emails



and attached spreadsheets referenced in your request, are part of this review process and subject to the executive privilege recognized by law in the State of New Mexico.

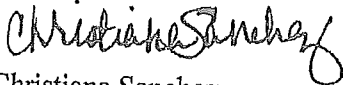
We have commenced an investigation based upon these documents and are in the process of confirming our findings. As such, any voter registration forms reviewed during this process have been forwarded to the Department of Public Safety ("DPS"), pursuant to our letter to DPS dated March 25, 2011. I have attached a copy of the letter for your convenience. DPS is now in possession of these records, so I will forward a copy of your request to them as the proper custodian. You may also contact them at:

Department of Public Safety  
Attn: Records Custodian  
P.O. Box 1628  
Santa Fe NM 87504-1628

At this time, we are unable to provide any additional documents pursuant to your request. Voter registration documents, including signature rosters, checklists or voter lists are also being reviewed as part of our investigation. We firmly believe that revelation of this information will compromise the Secretary of State's decision making process, and we are currently strategizing on how to proceed with the information we have received and reviewed. Until such time that this investigation has been completed, we cannot reveal any of these records. However, please rest assured that upon completion of our investigation, we will disclose all relevant documents to the full extent allowed by law.

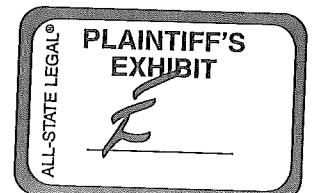
Secretary of State Duran is statutorily charged with ensuring the conduct of efficient, fair and secure elections. As such, she is making every effort to ensure that all data is properly reviewed and that all resulting information is accurately affirmed. As noted above, we have forwarded initial information to the Department of Public Safety and Secretary Duran fully intends to pursue this matter if affirmed. We ask for your patience during this complex and crucial investigation.

Sincerely,



Christiana Sanchez  
Records Custodian

Attachment: as stated





# NEW MEXICO DEPARTMENT OF PUBLIC SAFETY

POST OFFICE BOX 1628 • SANTA FE, NEW MEXICO 87504-1628

**SUSANA MARTINEZ**  
GOVERNOR

**GORDEN E. EDEN, JR.**  
CABINET SECRETARY

**ROBERT W. SHILLING**  
INTERIM—STATE POLICE CHIEF

OFFICE OF THE SECRETARY  
827-3370

OFFICE OF THE CHIEF  
NEW MEXICO STATE POLICE  
827-9219

ADMINISTRATIVE SERVICES  
827-3332

INFORMATION TECHNOLOGY  
827-9262

MOTOR TRANSPORTATION  
POLICE DIVISION  
476-2457

SPECIAL INVESTIGATIONS  
841-8053

TECHNICAL SUPPORT  
827-9221

TRAINING AND RECRUITING  
827-9251



May 9, 2011

Alexandra Freedman Smith  
ACLU of New Mexico  
Post Office Box 566  
Albuquerque, NM 87103-0566

Dear Ms. Smith:

The New Mexico Department of Public Safety recently received your written Inspection of Public Records request, pursuant to NMSA 14-2-1 et seq., regarding "All records pertaining to possible voter fraud..."

This letter is to inform you that your request has been received and that the Department of Public Safety has no records responsive to your request at this time.

If we can be of further assistance, please feel free to contact the Records Bureau at (505) 827-9192.

Sincerely,

Regina Chacon  
Records Custodian  
Department of Public Safety

jw:rc



CALEA ACCREDITED LAW ENFORCEMENT AGENCY

