

SECOND JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF BERNALILLO

FILED
2nd JUDICIAL DISTRICT COURT
Bernalillo County
6/20/2019 10:54 AM
James A. Noel
CLERK OF THE COURT
Patricia Serna

No. CV 2019 -
D-202-CV-2019-04805

James Joseph Owens,
Petitioner,

vs.

University of New Mexico Foundation,
University of New Mexico,
Respondents.

**COMPLAINT FOR DAMAGES FOR VIOLATION
OF THE INSPECTION OF PUBLIC RECORDS ACT AND WRIT OF
MANDAMUS**

PARTIES

1. Petitioner, James Joseph Owens, is a resident of Bernalillo County, New Mexico and has been for the Six (6) months preceding the filing of this lawsuit.
2. The University of New Mexico Foundation is believed to be a separate not for profit entity from the University of New Mexico and is a public agency/entity, incorporated in the State of New Mexico, with the capacity to sue and to be sued.
3. The University of New Mexico is a publicly funded University, incorporated in the State of New Mexico, with the capacity to sue and to be sued.

JURISDICTION

4. All acts or omissions giving rise to this Complaint occurred in Bernalillo County, New Mexico.
5. Venue is proper in this District because the parties, Petitioner and Respondent, are lawful residents of Bernalillo County, New Mexico.

FACTS

6. On or about February 12, 2019 petitioner e-mailed a written request to the University of New Mexico, which he then forwarded to the University of New Mexico Foundation to inspect specified public records, pursuant to NMSA 1978, Sections 14-2-1 to -12, as amended through 2009. (IPRA).
7. A second follow up IPRA request dated May 30, 2019 restated the first IPRA request and also sought specifically any and all communications from any of the six individuals named below, and the UNM Foundation “for the period January 15, 2015 to the present.”
 1. Paul Krebs
 2. Cole McAmey
 3. Craig Neal
 4. Darren Davis
 5. Rollie Gardenhire
 6. Paul Gibson
8. Upon information and belief, the six individuals named above were selected without public acknowledgement, to receive a UNM Athletic Department funded golf trip.
9. The University allegedly donated the cost of the trip to each of the six individuals named above, under the auspices of allowing important donors to rub elbows with UNM Athletic Department officials.
10. The stated purpose was to generate monetary donations to the University of New Mexico (UNM) and, or, the UNM Athletic Department.
11. The University or its related entities paid approximately Sixty-four Thousand Dollars (\$64000) for a St. Andrew’s golf junket.

12. The University of New Mexico IPRA custodian, directed the request be made of the University of New Mexico Foundation.
13. On April 17, 2019, the UNM Foundation through its Chief Counsel Pat Allen, e- mailed Petitioner stating the information sought was proprietary and would not be forthcoming.
14. No further information was provided Petitioner under the IPRA act.
15. An important public interest is at issue, and the public is entitled to know what, if any efforts were made, to have the individuals repay the funds advanced.
16. Further, the IPRA sought to discover whether the golf junket resulted in repayment or contributions to the University of New Mexico.
17. The UNM Foundation e-mailed a second written denial of the inspection of public records designated by petitioner, on June 13, 2019. (See NMSA 14-2-8 (1993).
18. Fines not to exceed \$100 per day should be assessed against the University of New Mexico pursuant to Section 14-2-8 et seq. NMSA (1993).
19. The University of New Mexico Foundation is in violation of the Inspection of Public Records Act by its ongoing failure to provide the requested non-exempt public records.

**FIRST CAUSE OF ACTION:
VIOLATION OF THE INSPECTION OF PUBLIC RECORDS ACT**

20. Plaintiff incorporates each preceding allegation as if pled more fully herein.
21. Plaintiff submitted a written request to the University of New Mexico and to the University of New Mexico Foundation to inspect government records as outlined in Section 14-2-8 NMSA (1993).

22. The University of New Mexico Foundation failed to permit inspection of the requested records on the grounds that there was a need to protect donor's information, and the information was "proprietary" and would not be forthcoming.
23. The University of New Mexico Foundation violated the Inspection of Public Records Act.
24. The Inspection of Public Records Act calls for civil penalties "not in excess of \$100" per day to accrue from the date Respondent is in non-compliance until such time as a valid written denial is issued according to Section 14-2-8 NMSA (1993).
25. Section 14-2-12 NMSA (1993) empowers this Court to award costs and reasonable attorney fees to any person whose written request has been denied and Petitioner now turns to the Courts to enforce the provisions of the Inspection of Public Records Act.
26. It is well settled law that the New Mexico Legislature mandates public agencies are to make the fullest amount of disclosure documents available to the public under the New Mexico Inspection of Public Records Act (IPRA), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2009). *See* § 14-2-1(A) ("Every person has a right to inspect public records of this state....").
27. Respondent failed to provide documents in response to the Initial IPRA request on or about February 12, 2019, or subsequent requests on or about April 1, 2019, and May 30, 2019.
28. The University of New Mexico Foundation's defense as to their proprietary interest in protecting the names and information of donors is not equitable in this instance where individuals have received monetary benefits from the UNM Foundation, or its

Athletic Department for travel in violation of the anti- donation clause, and several statutes codifying honesty and transparency in public governance.

29. Petitioner e-mailed a third IPRA request with reasonable particularity, for public documents, to Jennifer K. Jelson, Legal Records and Planned Giving Manager, University of New Mexico Foundation, on or about May 30, 2019
30. On Friday, June 13, 2019, the Foundation denied petitioner's request for properly requested public documents.
31. The Foundation is deemed to have denied the inspection due to its failure to permit the inspection of public records within fifteen (15) days, as set forth in NMSA 14-2-11 (A.) NMSA (1993).
32. An important issue of transparency in government is at stake in this matter, and Petitioner has accrued reasonable attorney fees and costs to bring this matter before the Court, and Petitioner should be reimbursed for reasonable costs and attorney fees pursuant to NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2009).

Wherefore, Petitioner prays this Court for its Order to:

1. Mandate the University of New Mexico Foundation or the appropriate University of New Mexico entity immediately produce non-exempt documents requested by Petitioner in the three (3) IPRA requests dated February 12, 2019, April 1, 2019, and May 30, 2019;
2. Find Petitioner's IPRA requests valid, and not exempt from disclosure;
3. Find the University of New Mexico and the University of New Mexico Foundation to have unreasonably withheld public documents from the Petitioner;

4. Award Petitioner his damages, costs and attorney fees pursuant to NMSA 14-2-12 (D);
5. Award Petitioner the statutory fines of up to One Hundred dollars (\$100) per day since the respective due dates (February 27, 2019) of Petitioner's initial IPRA Request;
6. Award Petitioner the statutory fines of up to One Hundred dollars (\$100) per day since the respective due dates (April 15, 2019) of Petitioner's second IPRA Request;
7. Award Petitioner the statutory fines of up to One Hundred dollars (\$100) per day since the respective due date (June 15, 2019) of Petitioner's third written request for additional documents;
8. For such other and further relief as the Court deems proper.

Respectfully submitted,

/s/ James J. Owens
Petitioner, Pro Se
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