

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

NO: D 202 CV 2014 03173

ABQ FREE PRESS and PETER ST. CYR.,
Plaintiff(s),

-vs-

CITY OF ALBUQUERQUE, et al.

Defendant(s).

**ORDER ON PLAINTIFFS MOTION FOR SUMMARY JUDGMENT,
DEFENDANTS' MOTION TO DISMISS, AND CASE MANAGEMENT ISSUES**

THIS MATTER having come before the Court upon the aforesaid Motions; the Court having reviewed the parties' briefing on the Motions; the Court having reviewed the file; and the Court being sufficiently advised:

THE COURT FINDS:

1. There is jurisdiction over the parties and the subject matter.
2. Further hearing on the foregoing Motions is not necessary for an appropriate determination of the issues presented. *Nat'l Excess Ins. Co. v. Bingham*, 1987 NMCA 109; *State Trans. Dept. v. Yazzie*, 1991 NMCA 098; *Flagstar Bank v. Licha*, 2015 WL 730063 (2-8-15).

DEFENDANTS' MOTION TO DISMISS

3. The parties agree that Defendants Reynaldo L. Chavez, acting in his capacity as Custodian, should be dismissed from this action.
4. The parties agree that Defendant Gordon Eden, acting in his capacity as Chief of Police, should be dismissed from this action.
5. The parties agree that Count II of the Complaint should be dismissed.

6. Defendants further assert that Plaintiff ABQ Free Press' claims should be dismissed for lack of standing as it did not submit the IPRA request at issue nor specifically authorize Plaintiff St. Cyr to do so on its behalf.

7. The Complaint alleges the IPRA request at issue was a joint effort by both Plaintiffs.

8. A Motion to Dismiss does not test the factual basis for allegations in the Complaint, but assesses only whether, viewed most favorably, they support a claim for the relief requested. *Pillsbury v. Blumenthal*, 1954 NMSC 066; *Garcia v. Rodey Law Firm*, 106 N.M. 757, 750 P.2d 118 (1988).

9. Defendants' Motion is well taken and should be granted insofar as dismissal of Mr. Chavez, Chief Eden, and Count II are concerned. It is not well taken, and should be denied, as to ABQ Free Press' claims.

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

10. Plaintiff seeks summary judgment on its claims that the City violated IPRA in both timing and substance in its refusal to provide documents responsive to Plaintiffs' request for:

A copy of the APD's complete weapons inventory, including firearms, tactical systems, armored personnel carriers, SWAT weapons, gear and equipment, rocket launchers, grenades, flash bangs, bearcats, drones (if any), etc. This request is not limited to firearms; the inventory provide [sic] should include any and all equipment, weapons, or systems that may be used in tactical field operations or serious incident responses.

11. The request was made on January 21, 2014.

12. On March 6, 2014, Defendants denied the request pursuant to Section 14-2-1(A)(4)(7)&(8) NMSA.

13. Defendants do not dispute the operative facts of the case. Instead, they assert; 1) the requested inventory is not a "public record" within the meaning of IPRA; 2) the requested inventory is exempt under 14-2-1 (A)(4) as "confidential law enforcement records"; and 3) the

requested inventory is exempt under 14-2-1(A)(7) as “tactical response plans [for use in case of] terrorist attack.” Defendants’ early assertion that some other legal basis exempts the requested inventory, as set forth in 14-2-1(A)(8), was abandoned.

14. It is the express public policy of this State that members of the public are entitled to as much information as is possible regarding the operations of their government. Section 14-2-5 NMSA; *Republican Party of NM v. NM Tax & Rev. Dept.*, 2012 NMSC 026.

15. In their Response, Defendants assert the requested inventory “is an internal confidential list and does not relate to public business.” It is, therefore, not a “public record” subject to IPRA disclosure.

16. A “public record” is:

[Any] 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.

Section 14-2-6(F) NMSA [Emphasis Added]

17. The Court adamantly rejects Defendant City of Albuquerque’s argument that an inventory of the weapons and related materials possessed by its Police Department is not “used by” Defendant City in carrying out its governmental functions generally and by the Police Department in carrying out its law enforcement and public protection duties specifically. Primary functions of any police department include public protection and maintaining order. That these operations when performed by the City of Albuquerque’s Police Department are matters “that relate to public business” is so basic and axiomatic as to be inarguable. There is no genuine issue of material fact but that the requested inventory is a “public record” within the meaning of IPRA.

18. Defendants next argue Section 14-2-1(A)(4) NMSA exempts disclosure of the requested inventory. That statutory provision exempts “law enforcement records that reveal confidential sources, methods, information or individuals...[including] evidence in any form received or compiled in connection with a criminal investigation or prosecution...”

19. Defendants admit that the requested inventory has nothing to do with any particular investigation or prosecution as set forth in (A)(4) but “still maintain the outstanding records are law enforcement records that reveal confidential methods and information” because disclosure of the weaponry held by APD “will provide criminal elements with advanced knowledge, which could be used against law enforcement in tactical situations.” Defendant argues, then, “for a broad reading of the law enforcement exception.” IPRA specifically calls for a narrow reading of exemptions to disclosure, not a broad one. Section 14-2-5 NMSA.

20. It is undisputed that the requested inventory is not connected with any specific criminal investigation(s) or prosecution(s), whether active or closed. Defendants’ argument for exemption under Section 14-2-1(A)(4) fails. *Romero v. City of Santa Fe*, 2006 NMSC 028.

21. Finally, Defendant City argues the requested inventory is exempted by Section (A)(7) as part of “tactical response plans or procedures...the publication of which could reveal specific vulnerabilities...that could be used to facilitate...a terrorist attack.” Plaintiffs have made it clear they “are not interested in revealing police tactics; instead [they] simply want to know any and all systems, weapons and equipment...available to the department and paid for with taxpayer money.”

22. The inventory requested does not seek any specific tactical plans and procedures, specific weapon assignment, location, or deployment or deployment procedures. Defendant protests generally that disclosure of the inventory could give criminal elements an ability to predict

police response times and response power. The same argument might be made regarding the simple fact of how many officers are employed, deployed, or otherwise available in the City at any given time, the number and condition of its vehicles, or even the identity of personnel, command level or otherwise. Given the clearly expansive scope of IPRA in providing citizens information about their government and its activities, Defendant's argument for exemption under the "terrorist attack" exemption of Section 14-2-1(A)(7) NMSA is unpersuasive.

23. Plaintiffs have established an absence of any genuine issues of material fact and that they are entitled to judgment as a matter of law compelling production of the requested weaponry inventory.

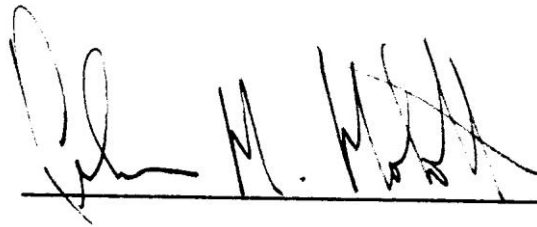
24. While issues may still exist as to whether Plaintiff ABQ Free Press is a maker of the IPRA request at issue, and whether it has standing to pursue these claims, such questions do not preclude directing production to Plaintiff St. Cyr. Further, nearly a year and a half has elapsed since the IPRA request was submitted. Having determined production is appropriate as a matter of law, the Court finds public policy mitigates to prompt disclosure. Section 14-2-5 NMSA.

25. Plaintiff may be entitled to costs and attorney's fees, to be determined in a separate procedure upon written Motion of Plaintiff.

WHEREFORE, it is Ordered:

1. Plaintiffs' claims against Reynaldo Chavez, as custodian, are dismissed with prejudice.
2. Plaintiff's claims against Gordon Eden, as Chief of Police, are dismissed with prejudice.
3. Count II of the Complaint is dismissed with prejudice.
4. Defendants' Motion to Dismiss Plaintiff ABQ Free Press is denied.

5. Plaintiff's Motion for Summary Judgment on Count I is granted. Defendant shall provide the requested inventory of APD's weaponry and related equipment as designated in the January 21, 2014, IPRA request within fifteen (15) days of the date of this Order. Tactical plans and procedures, including the location, deployment, or procedures for deployment of any specific weaponry or related equipment shall **not** be provided or disclosed.
6. Plaintiffs' claims for attorney's fees and/or statutory damages are reserved for further proceedings.
7. Any relief sought and not specifically addressed herein shall be deemed denied.



Alan Malott
District Court Judge

Dated: __May 5, 2015__

Copies of the foregoing were e-mailed, mailed, or delivered to the following on the date of filing/e-filing:

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