

FIRST JUDICIAL DISTRICT COURT  
COUNTY OF SANTA FE  
STATE OF NEW MEXICO

BRUCE WETHERBEE,

Plaintiff,

vs.

No.

THE HUMAN RIGHTS BUREAU OF  
THE NEW MEXICO DEPARTMENT OF  
WORKFORCE SOLUTIONS, THE NEW  
MEXICO WORKERS COMPENSATION  
ADMINISTRATION, THE OFFICE OF THE  
GOVERNOR OF NEW MEXICO,

Defendants.

COMPLAINT TO ENFORCE THE INSPECTION RECORDS ACT, FOR  
PRODUCTION OF PUBLIC RECORDS, AND FOR DAMAGES AND COSTS

COMES NOW Plaintiff, and 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 §14-2-12 (“IPRA”).
2. Plaintiff is a reporter who routinely reports, among other things, on affairs of the divisions of state government in New Mexico for a publication entitled The Candle<sup>1</sup>.
3. Defendant Human Rights Bureau (HRB) is a division of the State of New Mexico, operating within the department of Workforce Solutions, and as such is a public agency operating under the laws of the State of New Mexico.

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<sup>1</sup> The Candle appears on the World Wide Web at: <https://thecandlepublishing.com/>

4. The HRB is located in the County of Santa Fe, at 1596 Pacheco Street, Santa Fe, NM.
5. The HRB is, according to the official state of New Mexico website, *“a neutral agency created to enforce the New Mexico Human Rights Act. The Bureau accepts and investigates claims of discrimination based on race, color, national origin, religion, ancestry, sex, age, physical and mental handicap, serious medical condition, spousal affiliation, sexual orientation, and gender identity in the areas of employment, housing, credit or public accommodation.”*
6. Defendant Workers Compensation Administration (WCA) is a division of the State of New Mexico, and as such is a public agency operating under the laws of the State of New Mexico.
7. Defendant Office of the Governor is a division of the State of New Mexico, and as such is a public agency operating under the laws of the State of New Mexico.
8. Employees of the Office of the Governor are appointed directly by the governor, are considered exempt employees under the personnel system of the state of New Mexico and are required to operate under the laws of the state of New Mexico pertaining to public records.
9. It is commonly known that employees in the Office of the Governor serve at the pleasure of the governor, and as such are considered “political” appointees.
10. Michelle Lujan Grisham is the governor of the state of New Mexico, and is responsible for, among other things, the actions of all of the identified Defendant agencies, and is required to operate under the laws of the state of New Mexico pertaining to public records.

***Facts Regarding Request***

11. 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.

12. Communications, that are used, created, received, maintained, or held by or on behalf of any public body and relate to public business are subject to the public's right to inspect public records, regardless of the records being contained or existing in private devices and files.

13. This court has jurisdiction to hear this matter.

14. Venue for this action is appropriate in the First Judicial District Court, in the County of Santa Fe, in the State of New Mexico.

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

16. Defendants have wrongfully and illegally refused and failed to produce the public records sought by Plaintiff as set out in the following paragraphs.

17. The public is entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees.

18. The public's right to access to public records is the rule and secrecy is the exception.

19. The public has a right to the disclosure of the information requested as it has an interest in the activities of state agencies, particularly when those agencies, among other matters, are responsible for the protection of human rights of employees as described in Chapter 28 - Human Rights Article 1 - Human Rights (NM Stat § 28-1-7).

20. The procedures of the HRB, the WCA, the WFS, the office of the governor, the governor and supporting agencies must be assessed to assure citizens that the New Mexico state constitution is being upheld through the proper adherence to rules and procedures.

21. In this matter, the public's right to access the public records sought by Plaintiff outweighs

any interest in confidentiality or administrative claims of privilege for the specific request, particularly as a purpose of the filing of human rights complaints with a public agency is not only to provide relief to an aggrieved party but also to discourage the commission of other such human rights violations.

22. 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.

23. 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).

24. Between August of 2020 and January of 2021 Plaintiff made several written requests of the Defendants and other state agencies for public records pursuant to IPRA. (i.e., See Exhibit 1.)

25. Plaintiff was seeking substantiation regarding rumored favored treatment of certain individuals for pay increases while the governor and legislature had placed a freeze, except for extraordinary reasons, on any salary increases due to the strain that the COVID-19 coronavirus pandemic had placed on state revenues.

26. Plaintiff made IPRA requests of several state agencies, including the State Personnel Office (SPO).

27. SPO was the only state office which appropriately responded with all the information requested in Plaintiffs IPRA requests.

28. Other agencies, including Defendants WCA and the Office of the Governor, provided partial responses. On information and belief Defendants WCA and the Office of The Governor

withheld public records sought by the Plaintiff (see Exhibit 1.) that do not qualify as documents deemed excepted under Inspection of Public Records Section 14-2-1.

29. Defendant Human Rights Bureau replied it had records sought by the Plaintiff but would not release the documents due to pending investigations, citing an exception in the IPRA law.

30. Plaintiff does not believe that documents that are part of a complaint filed with the HRB can be considered records covered by any of the eight exceptions of IPRA, even when asserting the so-called catch-all type of exception, “as otherwise provided by law.”.

31. Furthermore, Plaintiff asserts the original HRB complaints are public records, as they stand alone and do not by meet the standards of the eight exceptions as identified in the IPRA.

32. Much like a civil complaint filed in this Court, an HRB complaint is a public record upon filing, and as such serves as a notice to the public of alleged grievance(s).

33. Plaintiff has reason to believe that the complaints withheld by the HRB are related to his reporting on stories about alleged abuse of supervisory power by a former assistant attorney general and sex discrimination in promotions within a public agency.

34. In those stories Plaintiff wrote how the WCA, with the approval of the governor, appointed a less qualified male candidate, Kenneth Owens, to a supervisory position over other more qualified women attorneys who had worked at the WCA for longer than the male candidate.

35. Plaintiff also reported that Owens had been accused of bullying and inappropriate behavior towards women employees of a non-profit organization for which he had oversight duties while he was an assistant attorney general in the New Mexico office of attorney general.

36. Owens separated from the office of attorney general within days of the filing of a June 22, 2015 complaint, in the First Judicial Court, in which his alleged behavior was detailed. (First Judicial District, County of Santa Fe No. D-101-CV-2015-01491.)

### ***Background***

37. More than two years later Owens was hired by the Defendant WCA, to a position of Mediation Attorney II.

38. He was later promoted to Attorney Supervisor over women attorneys who were more qualified, experienced, and who had more longevity of service to the WCA than Owens.

39. Owens also received a second promotion to the position of Acting Deputy Director which was an executive appointment to what is normally an exempt government position. A position that required involvement and approval by the governor's office, and on information and belief needed approval of the governor.

40. The double promotion increased Owens' annual salary by more than \$24,000, at a time when a 4% cost of living salary increase for other state employees had been taken back by the legislature and governor due to the economic problems arising from the COVID-19 coronavirus.

41. In the course of doing initial research to determine the accuracy of the information, Plaintiff was made aware of litigation filed in New Mexico during 2015, alleging bullying and inappropriate behavior on the part of Owens towards women employees of a non-profit organization under contract with the New Mexico Office of Attorney General to provide certain housing and mortgage advice to New Mexico residents. Owens was an assistant in the attorney general's office during the time the alleged behavior occurred. At the time, the Albuquerque Journal published a story by Associated Press reporter Russel Contreras, which stated among other things:

*“An inexperienced New Mexico Attorney General’s Office staffer bullied nonprofit employees and harassed a female worker on social media while using the name “Mr. Smooth,” according to a new lawsuit.*

*“Court papers filed Monday in Santa Fe District Court say Assistant Attorney General Kenneth Casares Owens tried to control the day-to-day operations of the United South Broadway Corp. and prevented staff from doing outreach on foreclosure prevention while he was assigned to monitor homeowner consumer protection services.*

*“In addition, the lawsuit said Owens invited a female employee for drinks and tried to connect with her via Facebook while other staffers felt intimidated.”*

42. On or about August 13, 2020, Plaintiff sought and received from the New Mexico court, copies of the original complaint brought against the office of attorney general, the defendant’s answer, the stipulation of settlement, and other related documents.

43. In the 2015 civil case, among other things, Owens was accused of bullying and alleged to have *“pursued an inappropriate relationship with at least one employee of USBC. With regard to this housing counselor, he undertook the following actions:*

- 1) He invited her for drinks;*
- 2) Gave her his cell number and invited her to call him anytime;*
- 3) He asked to be a “friend” on her personal Face book page, something no other Housing Counselor was asked to submit to;*
- 4) He adopted strangely informal nicknames for himself. While on Face book he identified himself as “Mr. Smooth.””*

44. As mentioned in paragraph 36., above, Owens left the Office of Attorney General shortly after the lawsuit was filed. There is no record in the Office of Attorney General as to whether he resigned on his own or was asked to leave.

45. Plaintiff requested separation records for Owens but has received nothing indicating a reason for his leaving.

46. Although the lawsuit was eventually settled, there was no record of resolution as to the alleged claims of Owens' inappropriate behavior and bullying.

47. After receiving the 2015 civil lawsuit records, Plaintiff attempted on numerous occasions to interview Owens and his superiors at the WCA, including Loretta Lopez (Lopez), Director of the WCA.

48. Owens, and his supervisors, including Lopez refused to be interviewed and answer any questions regarding Owens' fast-tracked promotion over more qualified and experienced women attorneys, with one exception.

49. On August 17, 2020, through the WCA public information officer, Lopez provided the following emailed response to Plaintiff's inquiries:

*““In my discretion as Director, I have hired Kenneth Owens as acting Deputy Director and on a short term basis he is being paid a temporary salary increase (TSI) to assist in that position. I am aware that you have also been given this information by the State Personnel Office. We have no further comment.””*

50. After receiving documents from the courts regarding the 2015 lawsuit, Plaintiff also contacted the New Mexico State Personnel Office (SPO) seeking information about Owens' promotions and the reasons behind the promotions.

51. On August 13, 2020, SPO's general counsel responded after a few calls with Plaintiff, with the following emailed statement, *“Good afternoon, Mr. Wetherbee, The State Personnel Office is not prepared to make a statement at this time. But you are welcome to submit additional IPRA Requests.”*



### *History of Evasive Acts by Defendants Relative to IPRA Requests*

52. At the outset of his reporting on questionable pay raises and sex discrimination related to promotions within state agencies, Plaintiff encountered resistance from Defendants Office of the Governor and the WCA.

53. On August 14, 2020 and again on September 8, 2020, Plaintiff reached out to the governor via emails to her communications employees seeking information relative to Owens' promotions, particularly as it relates to interviews conducted of Owens by the Office of the Governor.

54. In each emailed correspondence, Plaintiff asked, among other things, the following questions:

- 1) *When an employee, such as Mr. Owens, assumes the position and duties of an exempt senior executive, is the governor's office involved in the decision to appoint?*
- 2) *More specifically, was Governor Lujan Grisham, or any of her senior staff, involved in the selection and/or approval of Mr. Owens for the Acting Executive Deputy Director, Operations, at WCA?*
- 3) *To the governor's knowledge, or that of her staff, was Mr. Owens vetted for the two promotions?*

55. The governor's communications team ignored the questions, never responding.

56. Plaintiff also attempted on several occasions to interview Mr. Owens.

57. Owens never returned calls, nor did he respond to emailed questions.

58. Both the Office of the Governor and the WCA have public information employees who are paid to respond to inquiries from the public. Notwithstanding there being no law requiring that any of the Defendants respond to requests for interviews, answer questions, or provide statements, they are subject to the IPRA.

59. The only agency which spoke with the Plaintiff and fully and appropriately responded to the Plaintiff's IPRA requests was SPO. The information provided by SPO informed the Plaintiff sufficiently to pursue with further questions and requests for information from the Defendants.

60. Plaintiff continued requests for interviews of WCA Director Loretta Lopez, leaving phone messages, and submitted emails with specific questions to Director Lopez, and to Mr. Owens.

61. Plaintiff has been rebuffed and delayed by several of the state agencies controlled by the governor in receiving the information sought in order to write an accurate report on abusive behavior by supervisors and the failure to provide for the equitable treatment of women employees of the state of New Mexico.

#### ***Forgotten Campaign Promise***

62. In 2017, gubernatorial candidate Lujan Grisham called for a candidate to remove himself from the race for Lieutenant Governor due to alleged behavior similar to the behavior alleged to have been committed by Owens.

63. Regarding the alleged behavior of the candidate she had demanded remove himself from the race at that time, Lujan Grisham stated to Associated Press reporters Russell Contreras and Morgan Lee, "*My position on sexual harassment is clear: it is totally unacceptable and will not be tolerated by me or in my administration.*"

64. Despite the campaign rhetoric to the contrary, the governor not only tolerated such behavior but permitted Owens, similarly accused of sexual harassment and bullying, to be promoted to a supervisory position in a division of the Workers Compensation Administration where the majority of employees are women.

65. The governor raised no objection to Owens being appointed to an acting deputy director position, one of the most senior positions in the Workers Compensation Administration.

66. Plaintiff received copies of communications between Owens and the Office of the Governor dated in late 2019, when he first applied for the position of Deputy Director at WCA.

67. He had an interview with one of the governor's two chiefs of staff and her general counsel.

68. According to the partial response of records Plaintiff received to an IPRA request he made of the Office of the Governor, Owens seemed pleased with the interview.

69. However, shortly thereafter, he was questioned again by the governor's chief of staff about issues that came up in a background check.

70. Days later Owens withdrew his name from consideration for the position of Deputy Director. Despite removing himself from consideration for the position, a few months later he and Director Lopez coordinated his appointed to the position in an acting capacity with the full salary of a deputy director.

### ***The Missing Background Check***

71. Plaintiff submitted an IPRA request for a copy of the background check.

72. The governor's associate general counsel responded to Plaintiff writing:

*"...In regard to the second part of your request, it is unknown if any of those documents existed at any point in time. Although Mr. Owens does refer to a background check in a December 11, 2019 email, I do not have any knowledge that we ever had a copy of his background check. All I can say is our office does not currently have any background check for Mr. Owens. From my understanding, it is our office's practice to retain copies of background checks when the individual is selected for the position. It is possible that*

*because Mr. Owens was not hired, we did not retain his background check. For more information on our duty to retain records, please see the Public Records Act, NMSA 1978, §§ 14-3-1 to -25, and related regulations. I hope this answers your questions.”*

73. Plaintiff pointed out that in fact Owens did get promoted to the position, albeit in an acting capacity, and wrote to the Defendant Office of the Governor quoting New Mexico statute Section 14-3-13, “the administrator and every other custodian of public records shall carefully protect and preserve such records from deterioration, mutilation, loss or destruction...”

74. Over the course of several more days, Plaintiff informed Defendant Office of The Governor of his intent to file a complaint with the courts for the unlawful destruction of government records.

75. Shortly thereafter the assistant counsel wrote back,  
*“I apologize for not getting back to you sooner—as you know our office is pretty busy nowadays. We performed another search and have located the background check you have requested. We will be supplementing our production this afternoon. I apologize for the faulty information we provided earlier and can assure you that we undertake every effort to locate responsive records. Also, I am cc’ing out new Chief Counsel Holly Agajanian. Thank you.”*

76. On information and belief, while a document was eventually produced, not all the background information requested was produced.

#### ***More Roadblocks***

77. As mentioned above, Plaintiff made numerous IPRA requests of the Defendants and other state agencies, including one to the HRB.

78. In response to Plaintiff's IPRA to the HRB, Andrea Christman, Office of General Counsel of the Department of Workforce Solutions, the Defendant HRB, denied Plaintiff's IPRA requests, writing,

*"The Human Rights Bureau has received your request for all complaints filed against the Worker's Compensation Administration from September 2019 through the present. There are two cases that have been received by HRB, but neither are available for release under the IPRA statutes since both are currently pending investigation. Once the investigation is complete, the files will be available for request."*

79. Plaintiff turned to the New Mexico Foundation for Open Government (FOG) and asked if such an exemption existed, as he could not find it in the statute. FOG referred him to a July 2020, New Mexico Supreme Court decision establishing that an 'ongoing investigation' is not a basis for withholding records.

80. Plaintiff attempted to speak with Ms. Christman, but she did not return his phone calls.

81. Plaintiff then called Bill McCamley, Secretary of the New Mexico Workforce Solutions, the parent agency of the Human Rights Bureau, and left a message that he wanted to discuss the fact that HRB had not provided a legal reason to delay the release of the two complaints they had identified as responsive to Plaintiff's IPRA request.

82. Secretary McCamley, like the employees in the Office of the Governor, is appointed by and serves at the pleasure of the governor.

83. Secretary McCamley asked Plaintiff to write him an email explaining his complaints.

84. On information and belief, HRB is not releasing the complaints it has in its possession at the request of Defendants WCA and the Office of the Governor with the consent of the Governor and is doing so to protect the Governor's political interests.

85. As requested, Plaintiff wrote to Secretary McCamley and referred to the New Mexico Supreme Court decision which overturned the practice of denying a release of documents pending investigation.

86. In his communication Plaintiff again asserted the HRB complaints are public records and requested they be released immediately.

87. Plaintiff also reminded McCamley that in New Mexico courts a civil complaint is routinely available to the public once it is filed regardless of any investigation or discovery process.

88. In a subsequent email, HRB's counsel claimed that due to a work sharing agreement with an agency of the federal government, the constraints preventing the federal agency from releasing information prior to a lawsuit being filed, means that HRB *"is also prohibited by law from sharing any information during an active investigation."*

89. IPRA represents a profound legislative commitment ensuring public access to public records and is critically important to the concept of government being responsive to the people.

90. HRB's use of an intergovernmental agreement with a federal agency to deny access to the complaints, if allowed to prevail, could become a potent tincture prepared by any state agency to thwart the full legislative intent of IPRA.

91. There is no overpowering federal interest represented in this matter which is sufficient to justify depriving Plaintiff access to the HRB complaints filed against the WCA.

92. The federal interest is not so dominant that the federal system should preclude enforcement of state laws fostering transparency on the same subject.

93. In addition, HRB provided no timeline as to the completion of the pending investigation, nor did they provide an unequivocal commitment to release the documents upon completion of the pending investigation.

94. By delaying the release of the original complaints in its possession Defendant HRB is interfering with Plaintiff's and the public's right to know how an agency of their government is functioning and if there is danger of additional Human Rights violations being perpetrated against a protected class of employees within the WCA.

95. HRB's actions suggest that there will likely be other roadblocks prior to the Plaintiff and the public having access to the details of the complaints filed against the WCA.

96. Although writing in one email response, "*once the investigation is complete, the files will be available for request*" HRB asserted in a second communication to Plaintiff,

*"... Once the investigation is complete, the files will be available for release for inspection. As you have noted, upon completion of investigation, these complaints may be taken to district court. Once in district court, the complaints would be available to the public as a matter of course. District court cases are public records once filed and would not be limited based upon the discovery process..."*

97. HRB seems to be moving the goal posts. In the latest statement there appears to be an additional requirement that a complaint needs to be taken to district court before it will be available for public examination.

98. The failure to release the information or delaying its release interferes with the public right to the information.

99. The reprehensible exercise of delaying and hiding public documents needs to be ended immediately.

100. The Inspection of Public Records Act, states in 14-2-5.,  
*“Recognizing that a representative government is dependent upon an informed electorate, the intent of the legislature in enacting the Inspection of Public Records Act is to ensure, and it is declared to be the public policy of this state, that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees. It is the further intent of the legislature, and it is declared to be the public policy of this state, that to provide persons with such information is an essential function of a representative government and an integral part of the routine duties of public officers and employees.”*
101. The public has a right to the disclosure of the information requested as it has an interest in the activities of state agencies and those who are empowered to enforce state policies, particularly when those policies relate to the matters of discrimination in hiring, promotion, bullying, retaliation, and sexual intimidation verbal or nonverbal, which has the effect of subjecting members of either sex to humiliation, embarrassment or discomfort because of their gender or actual or perceived sexual orientation, and coercion in the workplace.
102. 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.
103. In this enforcement action, Plaintiff has incurred damages, costs, expenses and is entitled to an award of reasonable costs.
104. 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 Defendants to produce the Public Records sought by Plaintiff.

105. 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 materials relevant to Plaintiff's records requests between August 2020 and the end of January 2021.
- B. Award damages, costs, and reasonable attorneys' fees to Plaintiff.
- C. Grant such other and further relief as to the Court seems proper.

Respectfully Submitted,

Electronically Filed

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