



State of New Mexico

Michelle Lujan Grisham
Governor

April 6, 2023

Bruce Wetherbee, Editor
60 Thoreau Street
Unit 103
Concord, Massachusetts 01742
editor@thecandlepublishing.com

RE: Your Request for Public Records

Dear Mr. Wetherbee:

On March 22, 2023, the Office of the Governor received your request for the following records under the New Mexico Inspection of Public Records Act (NMSA 1978, §§ 14-2-1 to -12) (“IPRA”):

- 1) Emails (including any related attachments), texts, transcripts, letters, memos, and all other communications of all Office of the Governor employees, including Governor Michelle Lujan Grisham, and contractors and consultants of the Office of The Governor, about/related to the incident or incidents described in the NM DOH press release of March 10, 2023 which is headlined on the DOH website as ***“Department of Health terminates agreements with four providers delivering services to people on the developmental disabilities waiver”*** and which states:

“The New Mexico Department of Health has terminated its agreements with four providers who deliver services to 708 individuals on the developmental disabilities waiver and is investigating allegations of misconduct that resulted in severe and life-threatening injuries to a client. The providers include:

***“At Home Advocacy, Inc., Albuquerque
A New Vision Case Management, Corrales
Lynn Barbour, LLC, Albuquerque
Sylvester & Company, Los Ranchos de Albuquerque ...”***

to and from the following individuals and entities:

- a. All employees and contractors of the department of health, including but not limited to those employees responsible for communications for the department of health;
 - b. Governor Michelle Lujan Grisham;
 - c. General Counsel employees of the Governor;
 - d. All advocacy organizations and individual advocates for the Developmentally Disabled clients of the Department of Health and the agency's providers;
 - e. At Home Advocacy, Inc., Albuquerque
 - f. A New Vision Case Management, Corrales
 - g. Lynn Barbour, LLC, Albuquerque
 - h. Sylvester & Company, Los Ranchos de Albuquerque
 - i. All employees and officers of the entities identified as "e." through "h." above;
 - j. All clients and or guardians (or similarly defined individuals) of DOH and DOH providers of Developmental Disability services;
 - k. Any other providers of Developmental Disability services, and their employees;
 - l. Members of the New Mexico Legislature and their staff and committee staff and leadership staff;
- 2) Emails (including any related attachments), texts, transcripts, letters, memos, and all other communications of employees and contractors and consultants of the Office of The Governor, including Governor Michelle Lujan Grisham, to and from members of the media and the public about/related to the incident or incidents described in the NM DOH press release of March 10, 2023, and subsequent media information to present date.
 - 3) Emails (including any related attachments), texts, transcripts, letters, memos, and all other communications of employees and contractors and consultants of the Office of The Governor, including Governor Michelle Lujan Grisham, to and from members of all law enforcement and related prosecution agencies about/related to the incident or incidents described in that press conference.
 - 4) Emails (including any related attachments), texts, transcripts, letters, memos, and all other communications of employees and contractors and consultants of the Office of The Governor, including Governor Michelle Lujan Grisham, to and from all federal agencies of the Government of the United States about/related to the incident or incidents described in that press conference.
 - 5) Emails (including any related attachments), texts, transcripts, letters, memos, and all other communications of employees and contractors and consultants of the Office of The Governor, including Governor Michelle Lujan Grisham, to and from all federal and state (or similarly described) agencies of the Government of Mexico and its political subdivisions, about/related to the incident or incidents described in that press conference.

Materials available for your inspection

Enclosed with this letter please find materials responsive to your request possessed by the Office of the Governor. Please note that no responsive materials have been withheld.

Redactions

We have redacted in black sensitive personal information (marked as “SPI”), such as personal phone numbers and personal email addresses. *See* § 14-2-1(H) (public records are exempt from disclosure “as otherwise provided by law”); *Cox v. N.M. Dep’t of Pub. Safety*, 2010-NMCA-096, ¶¶ 30-31, 148 N.M. 934, 242 P.3d 501 (encouraging agencies to redact sensitive personal information unrelated to the substance of a public records request).

Potentially responsive materials not yet available for inspection

Per Section 14-2-10 of IPRA, I am writing to inform you that your request has been deemed excessively burdensome and broad due to the large volume of potentially responsive materials. Therefore, an additional reasonable amount of time is needed to respond to your request.

Practically speaking, what this means is that we are still searching our records to ensure that there are no additional responsive documents to your request and this search is taking longer than usual due to the nature of your request. Thank you for your patience, we will finish processing this request as quickly as we can.

If any additional responsive materials exist, we anticipate making those materials available for your inspection or confirming that there are no other responsive materials on or before **April 21, 2023**.

If you have any questions, please do not hesitate to contact us.

Kind Regards,

/s/ Kyle P. Duffy

Kyle P. Duffy

Deputy General Counsel

KPD/dh

Encls.



State of New Mexico

Michelle Lujan Grisham
Governor

April 21, 2023

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New materials available for your inspection

Enclosed please find the additional responsive materials to your request possessed by the Office of the Governor.

Redactions

We have redacted in black portions of records protected by Section 14-2-1(A), Section 14-2-1.2(A)(1), NMSA 1978, § 14-6-1(A), and/or the federal Health Insurance Portability and

Accountability Act. Personal identifier information, such as day and month of birth, has also been redacted and marked as “PII.” See § 14-2-1.1; § 14-2-6(E).

Materials withheld

Please note that executive privilege has been invoked over 10 emails, 2 attachments, and 1 embedded link to an attachment that were otherwise responsive to your request. The Separation of Powers Clause in the New Mexico Constitution creates “a limited form of executive privilege,” which is “similar in origin, purpose, and scope to the presidential communications privilege recognized by federal courts and the executive communications privilege recognized by some other state high courts.” *Republican Party v. N.M. Taxation & Revenue Dep’t*, 2012-NMSC-026, ¶ 43, 283 P.3d 853. The purpose of executive privilege is to preserve candor, openness, and genuine deliberation in the Governor’s decision-making processes and in her communications with her advisers as part of those processes. See *Pacheco v. Hudson*, 2018-NMSC-022, ¶ 41, 415 P.3d 505 (“[T]he Constitution requires an executive privilege protecting the confidentiality of the Governor’s decision-making through processes in order to protect the full and independent functioning of the executive branch, despite the fact it is not spelled out in a statute or court rule.”); *Republican Party*, 2012-NMSC-026, ¶ 44 (observing that executive privilege exists to protect the executive’s access to candid advice).

Executive privilege has been invoked here because the records in question meet the following three criteria: (1) they are “communicative in nature;” (2) they “concern[] the Governor’s decisionmaking in the realm of her core duties;” and (3) they are communications “to or from individuals in very close organizational and functional proximity to the Governor,” meaning that they were “authored, or solicited and received, by either the Governor or an immediate adviser, with broad and significant responsibility for assisting the Governor with . . . her decisionmaking.” *Republican Party*, 2012-NMSC-026, ¶¶ 44-46 (internal quotation marks and citations omitted).

Additionally, please note that portions of these emails and attachments are also protected under exceptions applicable to medical information, law enforcement information, attorney-client privilege, and attorney work product. See 42 U.S.C. § 1320d-6; § 14-2-1(A); § 14-6-1(A); § 14-2-1.2(A)(1); § 14-2-1(G); Rule 1-026(B)(4) NMRA; *Santa Fe Pac. Gold Corp. v. United Nuclear Corp.*, 2007-NMCA-133, ¶ 38, 143 N.M. 215, 175 P.3d 309. Lastly, please note that non-privileged attachments to privileged emails have been produced as separate files.

Our office has completed this search and will close this IPRA request.

If you have any questions, please do not hesitate to contact us.

Kind Regards,

/s/ Kyle P. Duffy

Kyle P. Duffy

Deputy General Counsel

KPD/dh

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