

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

**JOSEPH HERRERA,**

Plaintiff,

v.

Case No. D-101-CV-2025-02352

**NEW MEXICO REGULATION AND  
LICENSING DEPARTMENT,**

Defendant.

**RESPONSE TO PLAINTIFF’S PARTIAL SUMMARY JUDGMENT AS TO  
COUNT FOUR (IPRA VIOLATION)**

COMES NOW Defendant New Mexico Regulation and Licensing Department (“RLD”), by and through its counsel of record, Park & Associates, LLC (Alfred A. Park and James J. Grubel), and hereby responds to Plaintiff’s Motion for Partial Summary Judgment as to Count Four as follows:

**I. INTRODUCTION**

Defendant does not oppose entry of partial summary judgment solely as to IPRA liability. Based on the statutory language and relevant case law, including *Henry v. New Mexico Livestock Board*, No. A-1-CA-40127, 2024 WL 964734 (N.M. Ct. App. Mar. 6, 2024), the failure to include a responsive email in the agency’s original IPRA response renders the request “deemed denied” pursuant to NMSA 1978, § 14-2-11(A).

However, Plaintiff’s motion is confined to the issue of liability and does not request statutory damages or attorneys’ fees. The undisputed evidence demonstrates that Defendant acted reasonably and in good faith, that the omission was promptly corrected upon discovery, and that the record was never intentionally withheld. Accordingly, the Court should find, based on the

undisputed facts, that statutory damages are not warranted and that any award of attorneys' fees should be limited to a reasonable amount consistent with the minor and inadvertent nature of the violation.

To assist the Court in making these determinations, Defendant submits the Declaration of Heather Sanchez Martinez, the agency's designated IPRA custodian. The declaration confirms that the omission was an isolated clerical oversight, promptly remedied once identified, and that the content of the missing email was already referenced in the original production. These undisputed facts establish that the agency's conduct was reasonable and that no statutory damages should be awarded under § 14-2-11(C).

## **II. RESPONSE TO STATEMENT OF MATERIAL FACTS**

Defendant does not dispute Plaintiff's statement of material facts for purposes of this motion, except to add the following undisputed facts relevant to the Court's exercise of discretion on statutory relief:

1. On January 29, 2025, Defendant received Plaintiff's written IPRA request.
2. On February 14, 2025, Defendant disclosed responsive documents believed to be complete.
3. On September 15, 2025, Plaintiff filed the Complaint in this action.
4. On September 26, 2025, Defendant voluntarily disclosed the omitted email, without court order or compulsion.
5. The omitted email was referenced in previously disclosed records.
6. Defendant's IPRA staff relied on the physical file, which did not contain the email, in accordance with their usual practice.
7. Upon learning of the error, Defendant conducted a renewed search and promptly produced the missing record.

8. Defendant has cooperated fully with Plaintiff throughout and has not withheld any records intentionally. (See Decl. of Heather Sanchez Martinez.)

### **III. ARGUMENT**

#### **A. Defendant Concedes Partial Summary Judgment Is Appropriate on the Narrow Issue of Liability**

Pursuant to NMSA 1978, §-2-11(A), a failure to produce all responsive records within fifteen days of receipt renders the request “deemed denied.” Defendant concedes that the omission of a responsive email, although later disclosed, creates technical liability under this provision. See *Henry v. New Mexico Livestock Board*, No. A-1-CA-40127, 2024 WL 964734, at \*2–3 (N.M. Ct. App. Mar. 6, 2024).

However, this is not a case involving bad faith or intentional noncompliance. The record does not support the imposition of the maximum statutory penalty, and while an award of attorneys’ fees is mandatory upon a finding of liability, the amount of such fees must be reasonable and should reflect the limited and inadvertent nature of the violation.

#### **B. The Court Should Find, Based on the Undisputed Evidence, That There Was No Bad Faith and That No Statutory Damages Are Warranted**

Although Plaintiff seeks only a determination of liability under the Inspection of Public Records Act (IPRA), Defendant respectfully requests that the Court also make a finding, based on the undisputed record, that no statutory damages are warranted and that any attorneys’ fees awarded must be reasonable. This case is not proceeding to a jury, and the material facts are undisputed. The agency’s conduct is supported by the sworn declaration of its custodian of records, and the Court, as fact finder, is well positioned to conclude that Defendant acted reasonably and in good faith and that no further relief under IPRA is justified.

Statutory damages under Section 14-2-11(C) are not automatic. They require a finding that the custodian unreasonably failed to provide a timely and adequate explanation for denying a

request. See *Henry*, 2024 WL 964734, at \*4. Even if a request is “deemed denied” under Section 14-2-11(A), the Court retains discretion to determine whether any statutory damages should be awarded, and if so, in what amount—up to \$100 per day—based on the purposes and context of the statute.

Here, the undisputed facts do not support any award of statutory damages. Plaintiff submitted his request on January 29, 2025. The agency responded on February 14, 2025, providing what staff reasonably believed to be a complete response. See Ex. A, Sanchez Martinez Decl. ¶¶ 2–4. The Construction Industries Division (CID) staff located responsive records by reviewing the physical project file, which is CID’s standard and customary practice. The responsive email was not printed or included in the paper file, and its omission resulted from that inadvertent gap in practice, not from any intent to withhold information. *Id.* ¶¶ 3–5.

After the Complaint was filed in September 2025, and based on the allegations therein, the agency conducted a renewed search and promptly disclosed the missing email on September 26, 2025, without the need for court intervention. *Id.* ¶¶ 6–7. Significantly, the email had already been referenced in the originally disclosed records. *Id.* ¶ 8. This confirms that there was no intent to obscure the document’s existence and that the omission was neither misleading nor prejudicial. These facts warrant a finding that Defendant acted reasonably and in good faith.

Nothing in the record suggests that the agency acted with bad faith or sought to obstruct access to public records. On the contrary, the facts support the conclusion that this was a technical, non-prejudicial error that was promptly corrected. In *Henry*, the Court of Appeals emphasized that statutory damages are intended to promote compliance with IPRA, not to punish reasonable mistakes. See *Henry*, at \*4. Accordingly, based on the undisputed evidence and the agency’s

reasonable and good faith conduct, the Court should find that no statutory damages are warranted under Section 14-2-11(C).

With respect to attorneys' fees, Section 14-2-12(D) provides for a mandatory award to a prevailing party. However, the amount must still be reasonable and proportionate. See *Britton v. Office of Attorney General*, 2019-NMCA-002, ¶ 40, 433 P.3d 320. Factors relevant to this determination include the limited nature of the violation, the agency's cooperation, the absence of delay or obstruction, and the fact that the omitted record was disclosed shortly after the lawsuit was filed—without the need for litigation to compel production. *Id.*

Because there are no genuine factual disputes and the agency's conduct is fully documented, Defendant respectfully requests that the Court find: (1) there was no bad faith; (2) no statutory damages should be awarded; and (3) any award of attorneys' fees should reflect the minor and inadvertent nature of the violation.

#### **IV. CONCLUSION**

Defendant does not oppose entry of partial summary judgment on the issue of liability under the Inspection of Public Records Act. However, the undisputed facts before the Court demonstrate that the agency's conduct was reasonable, that the missing email was disclosed promptly after discovery, and that no evidence supports a finding of bad faith or intentional delay.

Accordingly, the Court should find that no statutory damages are warranted under Section 14-2-11(C). The Court should also evaluate any claim for attorneys' fees under Section 14-2-12(D) in light of the limited scope of the violation and the prompt, voluntary disclosure of the omitted record.

Respectfully Submitted,

PARK & ASSOCIATES, LLC

/s/ James J. Grubel

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I hereby certify a true and correct copy  
of the above pleading was filed and served by the  
Courts e-filing system on this 14<sup>th</sup>  
day of November 2025 to all counsel of record.

/s/ James J. Grubel

James J. Grubel

## DECLARATION OF HEATHER SANCHEZ MARTINEZ

I, Heather Sanchez Martinez, hereby declare as follows:

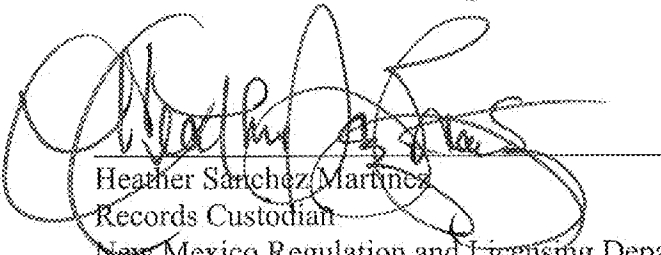
1. I am employed by the New Mexico Regulation and Licensing Department (“RLD”) and serve as the records custodian for the agency in matters involving the Inspection of Public Records Act (IPRA).
2. On January 29, 2025, RLD received an IPRA request from Plaintiff Joseph Herrera.
3. The request was assigned to staff within the Construction Industries Division (CID), which is a division within RLD.
4. On February 14, 2025, CID staff responded to the request and produced records to the records custodian that they believed to be complete. Staff identified responsive documents by reviewing the physical project file maintained by CID, which is the division’s customary practice for compiling IPRA responses.
5. At the time of the response, CID staff were unaware of a responsive email that had not been printed and was therefore not included in the paper file. The omission of this email was inadvertent and not intentional.
6. After the Complaint in this matter was filed in September 2025, Compliance Manager, Carla Roybal, conducted a new search based on the information that a document was omitted.
7. During that renewed search, CID staff located the previously omitted email and provided it to Plaintiff on September 26, 2025, without the need for a court order.
8. The content of the omitted email had already been referenced in the documents previously disclosed to Plaintiff as part of the February 2025 production.

9. At no time did the agency assert any exemption or privilege with respect to the omitted record. The omission was not the result of an intent to withhold information but was instead a product of CID's standard reliance on its physical file.

10. RLD has cooperated in good faith with Plaintiff's requests and this litigation and has not intentionally withheld any public records.

I declare under penalty of perjury under the laws of the State of New Mexico that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 14 day of November 2025, in Santa Fe, New Mexico.



Heather Sanchez Martinez  
Records Custodian  
New Mexico Regulation and Licensing Department