

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

FILED 1st JUDICIAL DISTRICT COURT
Santa Fe County
5/24/2024 1:36 PM
KATHLEEN VIGIL CLERK OF THE COURT
Latisha B Garcia Trujillo
Case assigned to Sanchez-Gagne, Maria

JARED O'SHELL,

Plaintiff,

v.

Case No. D-101-CV-2024-01275

CYNTHIA WHITING, records custodian for the City of Santa Fe,

Defendant.

COMPLAINT

COMES NOW, Plaintiff, by and through counsel, Stalter Law LLC (Kenneth H. Stalter),
and for his cause of action states as follows:

Parties and Jurisdiction

1. This Complaint is brought under the New Mexico Inspection of Public Records Act, NMSA 1978, Section 14-2-1 through -12.
2. At all times material to this complaint, Plaintiff was and is a resident of Santa Fe County, New Mexico.
3. Defendant Cynthia Whiting is records custodian for the City of Santa Fe and has her principal offices in Santa Fe County, New Mexico.
4. This Complaint and the damages alleged herein arise from
5. This Court has personal jurisdiction over the named parties.
6. This Court has subject matter jurisdiction over this matter.
7. New Mexico law governs the claims in this case.
8. Venue is proper in this Court.

Facts

9. On April 30, 2024, Plaintiff submitted a written request for inspection of public records to Defendant through the City of Santa Fe's NextRequest portal. Plaintiff requested, "all information regarding investigations, complaints, or actions pertaining to 'Jay Baker.'" Defendant received the request, which was assigned number 24-3367.

10. On May 15, 2024, Defendant responded to request number 24-3367, stating "A search of City Clerk and City Attorney Department files did not locate any records that are responsive to your request with the information provided." Defendant closed the request that day.

11. Defendant did not produce any records responsive to request number 24-3367.

12. Defendant did not claim that any legal exemption authorized the denial of request number 24-3367.

13. The City of Santa Fe possesses records responsive to request number 24-3367, which Defendant did not produce.

14. On or about November 30, 2023, Pilar Faulkner filed a complaint against "Jay Baker" with the Ethics and Campaign Review Board, complaint number 2023-5. Defendant did not produce this complaint or any associated documents in response to request number 24-3367.

15. On or about December 14, 2023, the Ethics and Campaign Review Board voted to authorize the board's chair to contract an investigator to investigate the allegations against "Jay Baker." Defendant did not produce the contract or any associated documents in response to request number 24-3367.

16. On or about December 19, 2023, members of the Ethics and Campaign Review Board received evidence of the amounts paid for the advertisements at issue in complaint number 2023-5. Defendant did not produce the correspondence or evidence in response to request number 24-3367.

17. On or about February 5, 2024, the City of Santa Fe paid \$5,428.45 to Robert Caswell Investigations, Inc. Defendant did not produce the contract, invoice, purchase order, or other documentation in response to request number 24-3367.

18. On April 19, 2024, the Ethics and Campaign Review Board held a meeting, in which the Chair stated that following the Board's vote in December, 2023, he had hired and consulted an investigator regarding complaint number 2023-5. Defendant did not produce any of the documents associated with the investigation in response to request number 24-3367.

19. Defendant violated by IPRA by closing the request unreasonably; by failing to produce responsive records within fifteen days; by failing to produce responsive records within a reasonable period of time; by failing to issue a written explanation denial that complies with Section 14-2-11(B); and by withholding responsive records to which no IPRA exception applies.

COUNT I: Violation of the Inspection of Public Records Act, Section 14-2-11

20. Defendant received Plaintiff's written requests for inspection of public records.

21. Defendant did not produce the requested records within fifteen days of Plaintiff's requests.

22. Defendant did not deliver or mail a written explanation of denial that complies with Section 14-2-11(B) within fifteen days of the requests.

23. Defendant's failure to provide a timely written denial was unreasonable.

24. Defendant has not permitted inspection within a reasonable time period.

25. By withholding documents without identifying a claim of exemption, Defendant violated IPRA Section 14-2-11.

26. Defendants violated Section 14-2-11 of the Inspection of Public Records Act.

27. Plaintiff is entitled to compensatory damages, nominal damages, statutory damages, attorney's fees, and costs.

COUNT II: Violation of the Inspection of Public Records Act, Section 14-2-12

28. Defendants' denial of the requests in this case is wrongful because Defendants withheld documents in their possession without valid grounds to withhold the records.
29. Defendants' failure to produce the records was unreasonable.
30. Defendants violated Section 14-2-12 of the Inspection of Public Records Act.
31. Plaintiff is entitled to compensatory damages, attorney's fees, and costs.

COUNT III: Injunctive Relief

32. Plaintiff requests a mandatory injunction ordering Defendant to produce all documents responsive to Plaintiff's request.

Relief Requested

WHEREFORE Plaintiff prays for judgment against Defendant as follows: declaratory judgment that Defendant violated the Inspection of Public Records Act; an injunction ordering Defendant to produce responsive documents; compensatory damages; nominal damages; statutory damages; costs and expenses of this action; and attorney fees.

Respectfully submitted,

STALTER LAW LLC

/s/ *Kenneth H. Stalter*

Kenneth H. Stalter

4801 All Saints Rd NW

Albuquerque, NM 87120

ken@stalterlaw.com

telephone: (505) 315-8730

Attorney for Plaintiff