



April 23, 2024

State of New Mexico Second Judicial District Court
Katina Watson, Court Executive Officer/SJDC Records Custodian
Court Administration
400 Lomas Blvd. NW
Albuquerque, NM 87102
Ph: (505) 841-7425

Dear Ms. Watson:

I am writing to call to your attention an apparent violation of the Inspection of Public Records Act (IPRA) regarding the denial of a recent public records request concerning pretrial services submitted to you by Larry Barker, an investigative reporter with KRQE News 13. As the New Mexico Supreme Court has observed, a citizen's right to know is the rule, and secrecy in governmental affairs is the exception. Moreover, the media serves a critical role in disseminating information about the government to the public, an improper denial of an IPRA request from a member of the media prevents the public's access to information about the affairs of government. Denials should therefore only be denied when there is a clear, established exception to public inspection.

IPRA enables members of the public to determine whether governmental agencies are taking the necessary steps to protect the community. Pretrial services, which exists to protect the community from dangerous criminal defendants and to ensure their appearance at court proceedings, is not exempted from public scrutiny. In fact, in light of New Mexico's bail reform being enacted by the people through a constitutional amendment, it is particularly important for the public to know whether conditions of release, as opposed to pretrial detention, adequately protect the safety of the community.

Mr. Barker requested, among other things, alerts from GPS devices to pretrial services and notifications from pretrial services to the court and the District Attorney. He did not request location data or private information, such as medical records. Nevertheless, the denial of his the request was based on a New Mexico Supreme Court Order implementing NMSA 1978, § 31-3-12 (2022). This statute, however, only exempts "global positioning system data" from inclusion as a public record and sets forth the requirements for law enforcement agencies seeking to access that information. It does not cloak pretrial services in secrecy or authorize the courts to exempt all pretrial services records from inspection by the public.

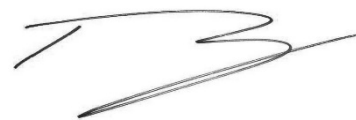
The public's right to know about the effectiveness of pretrial services and the number of violations of conditions of release is exemplified by the pretrial supervision of Devin Munford. In 2021, Munford was out on conditions of release and wearing a GPS monitoring device when he murdered Devin Heyborne. At his trial, in October 2023, a court employee testified under oath that Munford violated his GPS location restrictions more than 100 times in the weeks leading up to Mr. Heyborne's murder and that neither law enforcement nor the District Attorney's Office was notified. This shocking revelation, which was not previously disclosed to either law enforcement or the community at large, is a matter of profound public concern, and there is no legal basis for denying Mr. Barker's lawful request for additional information about other occasions when the community was placed at risk.

To the extent the Supreme Court's Order purports to make *all* pretrial services files confidential, it exceeds the plain language of NMSA 1978, § 31-3-12 (2022) and does not meet the Court's own criteria for inclusion as a recognized exception to IPRA. Indeed, with regard to this particular question, the Legislature's intent was clear: to offer criminal defendants a *limited* shield against the public disclosure of "global positioning system data" unless supported by a showing of probable cause by a law enforcement agency. There is no indication from the plain language of the statute that the Legislature intended to shield the entire judicial branch from public accountability in its management and oversight of dangerous defendants and any attempt to do so through judicial fiat runs contrary to the Supreme Court's own jurisprudence regarding narrowly crafted exceptions to IPRA.

Consequently, with respect to Mr. Barker's IPRA request for information under your control, the law requires you to produce records in redacted form and omit only that information which is expressly exempted under the statute or controlling case law.

The New Mexico Department of Justice has the statutory authority to enforce IPRA. Under this authority, I urge you to reconsider Mr. Barker's request and provide access to the pretrial services records he requested. If responsive records are not produced to Mr. Barker by May 15, 2024, the New Mexico Department of Justice will institute an enforcement action. Thank you for your attention to this matter. Please do not hesitate to contact my agency if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to be 'R. Torrez', written in a cursive style.

Raúl Torrez
Attorney General

cc: Senator Joseph Cervantes, Senate Judiciary Committee Chair
Larry Barker, KRQE News 13
Melanie Majors, Executive Director, N.M. Foundation for Open Government
Honorable Marie Ward, Chief Judge, Second Judicial District Court