

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

Human Rights Defense Center,

Plaintiff,

v.

Cause No. _____

The GEO Group, Inc., The New Mexico Corrections Department, Brian Fitzgerald, in his official capacity as records custodian for the New Mexico Corrections Department, and DOES 1 through 2, in their official capacities.

Defendants.

**COMPLAINT FOR PRODUCTION OF PUBLIC RECORDS,
FOR MANDAMUS, DAMAGES, AND
DECLARATORY AND INJUNCTIVE RELIEF**

1. The Human Rights Defense Center (“HRDC”) brings these causes of action to enforce the New Mexico Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 to -12 (“IPRA”).

I. INTRODUCTION

2. Public transparency is a key part of the foundation of a strong democracy.
3. HRDC, a nonprofit journalism and advocacy organization, brings this action under IPRA to compel production of records maintained or controlled by the GEO Group, Inc. (“GEO”)

and the New Mexico Corrections Department (“NMCD”), and for injunctive relief and damages arising from the willful failure and refusal to produce public records as required by law.

II. PARTIES, JURISDICTION, AND VENUE

4. HRDC is a nonprofit organization, incorporated in the state of Washington and with headquarters in Lake Worth Beach, Florida. It is a “person” as defined by IPRA.
5. GEO is a Florida-based, private for-profit corporation headquartered in Boca Raton, Florida which operates jails, prisons, immigration detention centers, and juvenile detention centers in countries across the world. GEO currently operates the Lea County Correctional Facility in Hobbs, New Mexico and the Guadalupe County Correctional Facility in Santa Rosa, New Mexico. GEO previously operated the Northeast New Mexico Detention Facility in Clayton, New Mexico.¹ The NMCD contracted with GEO to house prisoners at the Lea County Correctional Facility, the Northeast New Mexico Detention Facility, and the Guadalupe County Correctional Facility. In that capacity, Defendant GEO performed a public function and thus records related to its provision of services to NMCD are “public records” as defined by IPRA.
6. Defendant NMCD is a department of the State of New Mexico. It is charged with the operation of prison facilities in the State. The NMCD contracted with GEO to house prisoners at the Lea County Correctional Facility, the Northeast New Mexico Detention

¹ Upon information and belief, GEO ceased operating the Northeast New Mexico Detention Facility in October, 2019 after ten (10) years of operation. *See* <https://www.newschannel10.com/2019/07/08/geo-group-ending-contract-with-northeast-new-mexico-detention-facility/>.

Facility and the Guadalupe County Correctional Facility. Defendant NMCD is a “public body” as defined by IPRA.

7. Defendant Brian Fitzgerald is the assigned Public Records Custodian for the NMCD.
8. Upon information and belief, Defendants DOES 1 through 2 were employed by GEO or NMCD and acted as records custodians, were responsible for maintaining public records, and participated in the decision or were responsible for denying the inspection of records responsive to Plaintiff’s records requests.
9. This Court has jurisdiction over this case pursuant to NMSA 1978, § 14-2-12 and NMSA 1978, §§ 44-2-1 to -14.
10. Venue lies in the District Court for Santa Fe County pursuant to NMSA 1978, § 38-3-1(G).
11. There is an actual controversy between the parties about the Defendants’ duties under IPRA. As a result, an action for declaratory relief is authorized under NMSA 1978, § 44-6-2 and § 44-6-4.

III. FACTUAL ALLEGATIONS

12. IPRA creates a foundation for an open, functioning democracy. It is 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 further the 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.

NMSA 1978, § 14-2-5.

13. IPRA broadly defines the records which the public may access: “all documents ... 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(G).

14. IPRA also broadly defines the organizations to which it applies to include “all advisory boards, commissions, committees, agencies or entities created by the constitution or any branch of government that receives any public funding, including political subdivisions, special taxing districts, school districts and institutions of higher education.” NMSA 1978, § 14-2-6(F).
15. On February 6, 2020 HRDC sent GEO a records request for verdicts and settlements from January 1, 2010 to the present related to all claims or lawsuits brought against GEO and/or any of its agents or employees and/or or any of its subsidiaries or affiliates concerning any confinement facility GEO operates or operated under a contract within the boundaries of New Mexico in which payments totaling \$1,000 or more were disbursed. That letter is attached as Exhibit 1.
16. On February 27, 2020 GEO, through a letter from its legal counsel, responded to the request, asserting that it was not a public entity subject to IPRA, had no legal obligation to take any action in response to the IPRA request, and failing to provide any of the requested documents. That response letter is attached as Exhibit 2.
17. On February 27, 2020 HRDC sent a request to the NMCD for verdicts and settlements related to all claims or lawsuits brought against several private prison contractors. The request encompassed all documents requested in the February 6, 2020 letter to GEO. The February 27, 2020 request to the NMCD is attached as Exhibit 3.

18. On March 16, 2020 the NMCD responded to the February 27, 2020 letter via e-mail. It indicated that the requested records were in the possession of private contractors, that it had reached out to the contractors, and that it would advise HRDC if it received any responsive records.
19. On March 18, 2020 the NMCD again e-mailed HRDC, stating that since HRDC had requested the records from the private contractors and the contractors responded, the NMCD had no additional records to provide, and therefore it was closing the matter. The March 18, 2020 e-mail from the NMCD is attached as Exhibit 4.
20. To date, no records responsive to these IPRA requests have been produced by Defendants.

COUNT ONE:

VIOLATIONS OF THE INSPECTION OF PUBLIC RECORDS ACT
(Against All Defendants)

21. The Plaintiff incorporates by reference the above allegations.
22. Defendants have violated IPRA in these ways:
 - a. Defendants have failed to produce the documents requested by the Plaintiff and as required by IPRA; and
 - b. If Defendants are relying on any exemption as a basis for withholding records, then they have failed, when withholding documents responsive to the records requests, to issue a proper denial of the records requests.
23. The Plaintiff has a right to recover damages, at up to \$100 per day per violation of each denied document under Section 14-2-11(C) of the IPRA.
24. The Plaintiff has a right to recover its costs and attorneys' fees in pursuing this action under Section 14-2-12(D) of IPRA.

COUNT TWO:

DECLARATORY RELIEF

(Against All Defendants)

25. The Plaintiff incorporates by reference the above allegations.
26. There is an actual controversy between the Plaintiff and the Defendants as to whether the Defendants' conduct, as alleged above, violates IPRA.
27. The law is clear that Defendant GEO was performing a public function and records created in that capacity are public records. As such, GEO has a clear legal duty to provide public records to Plaintiff.
28. The law is also clear that Brian Fitzgerald, as the NMCD records custodian, is responsible for NMCD's public records, regardless of whether the records are in the custodian's actual physical custody and control.
29. Despite the Defendants' legal duties to provide public records to Plaintiff, neither has complied with IPRA and neither Defendant has produced any records or properly denied such records.
30. Plaintiff is entitled to declaratory relief that Defendants have violated IPRA, and that Defendants must provide the requested records to Plaintiff.

COUNT THREE:

INJUNCTIVE RELIEF AND MANDAMUS

(Against All Defendants)

31. The Plaintiff incorporates by reference the above allegations.

32. Under NMSA 1978, § 14-2-12(B) (2010), Plaintiff is entitled to a writ of mandamus or injunction ordering the Defendants comply with their mandatory, non-discretionary duties to produce all relevant public records responsive to Plaintiff's requests.

WHEREFORE, the Plaintiff prays that

1. the Court declare that the Defendants have violated IPRA in responding to Plaintiff's records requests;
2. the Court issue a writ of mandamus or injunction ordering the Defendants to produce the records and information requested without further delay, and to produce all similar such documents in the future; and
3. the Court enter an order for such other and further relief as the Court deems just and proper, including, but not limited to, damages, costs, and reasonable attorneys' fees.

Date: July 7, 2020

Respectfully Submitted:

/s/Caroline "KC" Manierre

Mark H. Donatelli
Caroline "KC" Manierre
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Human Rights Defense Center

DEDICATED TO PROTECTING HUMAN RIGHTS

February 6, 2020

The GEO Group, Inc.
Attn: Public Records Officer
4955 Technology Way
Boca Raton, FL 33431

Sent via certified mail: 7017 3380 0000 0666 2601

Re: Request for Settlement and Verdict Records

To the Public Records Officer:

The Human Rights Defense Center (“*HRDC*”) makes this request pursuant to the New Mexico Inspection of Public Records Act, N.M. Stat. Ann. § 14-2-1, *et seq.* HRDC is a non-profit dedicated to advocacy and education around criminal justice issues. Among other activities, HRDC publishes the journals *Prison Legal News* and *Criminal Legal News*.

This request is directed to any confinement facility that GEO Group or any of its subsidiaries or affiliates operates under a contract within the boundaries of New Mexico, in accordance with the recent changes to New Mexico’s public records law which affirm that private entities performing a public function for a public agency are subject to the Inspection of Public Records Act.

HRDC is seeking all records of litigation against the GEO Group and/or its employees or agents where the GEO Group and/or its insurers paid \$1,000 or more to resolve claims against it. These payments include but are not limited to settlements, damages, attorney fee awards, and sanctions, irrespective of the identity of the plaintiff or claimant. Specifically, HRDC requests the following records, provided in electronic native format where possible, and otherwise in electronic format:

1. Records, regardless of physical form or characteristics, sufficient to show for all claims or lawsuits brought against the GEO Group and/or any of its agents or employees in which payments totaling \$1,000 or more were disbursed from January 1, 2010 to the present:
 - The name of all parties involved;
 - The case or claim number;
 - The jurisdiction in which the case or claim was brought (*e.g.*, US District Court for the District of New Mexico, New Mexico Supreme Court, etc.);
 - The date of resolution;
 - The amount of money involved, if any, in the resolution and to whom it was paid,

2. For each case or claim detailed above:

- The complaint or claim form and any amended versions;
- The verdict form, final judgment, settlement agreement, consent decree, or other paper that resolved the case.

I request that the above-described public records be provided to me in electronic format if they exist in electronic format, pursuant to NMSA § 14-2-9(B). In the event that such documents are only available in hard copy format, I request an opportunity to inspect and copy the specific public records I select from the records identified above.

If this request encompasses information or records that GEO Group claims are exempt from disclosure pursuant to any applicable statute or law, then please redact such information, as required by NMSA 1978, §14-2-1(B), from the document or record rather than withhold the entire document from disclosure. If you apply any redactions, please describe the redacted information and provide a basis for your claim that the redacted information is not subject to disclosure.

If you claim that any of the requested records are not a public record, or if you claim a privilege not to disclose any record, please describe the record(s) being withheld and state the basis for your claim of privilege or confidentiality. Please produce all public records for which you do not claim an exemption or privilege, as the above requests are segregable.

HRDC is a non-profit organization. These records are not for any profit-related or commercial purpose. Should there be any fees incurred related to the production of the public records I am requesting, I request a waiver of such fees.

Please respond to this records request within fifteen (15) days of receipt of same. Note that failure to respond to this records request within fifteen (15) days will be considered a denial of my public records request, and I will duly take appropriate action. If you need additional time in which to produce the requested records, please advise in writing so I may consider your request for an extension of time.

Please contact me if this request does not describe all of the above-requested documents with sufficient specificity for you to make a reasonable response, and I will attempt to reformulate the request in a manner that meets your requirements. If you are not the custodian of the records I am requesting, please promptly forward this request to the custodian of the requested records and notify me accordingly. Please contact me via email, mdillon@prisonlegalnews.org, should you require any additional information.

Thank you for your time and attention in this matter.

HUMAN RIGHTS DEFENSE CENTER



Michelle Dillon
Public Records Manager



February 27, 2020

VIA ELECTRONIC MAIL -
mdillon@prisonlegalnews.org
AND REGULAR USPS FIRST CLASS MAIL

Ms. Michelle Dillon
720 3rd Avenue, Suite 1605
Seattle, WA 98104

Re: HRDC Request for Settlement and Verdict Records dated February 6, 2020

Dear Ms. Dillon:

YLAW, P.C. represents The GEO Group, Inc. ("GEO"). I am writing in response to your letter to GEO dated February 6, 2020, making a direct request of GEO for certain records and asserting that the terms and provisions of the New Mexico Inspection of Public Records Act ("IPRA") and alleged "recent changes to New Mexico's public records law" authorize you to make direct request of GEO for "public records" and otherwise impose independent obligations upon GEO to act in conformity with IPRA as a consequence of your purported IPRA request. For the reasons summarized below, the assertions and assumptions underlying your request are in error, and GEO has no legal obligation to take any action in response to your letter.

GEO is not a "public body" within the meaning of Section 14-2-6(F) of IPRA and it necessarily follows that no one employed by or affiliated with GEO is or even could be a "custodian" under Section 14-2-6(A) of IPRA. Consequently, no public body in New Mexico can designate any person employed by or affiliated with GEO as a custodian under IPRA. And to be sure, no public body in New Mexico has ever attempted to formally designate and publicly announce any one employed by or affiliated with GEO as a custodian under Section 14-2-7 of IPRA with attendant duties thereunder. In sum, GEO has no independent obligation to respond to your request. See, e.g., *Pena v. The GEO Group, Inc.*, D-504-CV-2015-00349, 2018 WL 790759 (Fifth Judicial District Court Order filed 1/25/18); *Pacheco v. Hudson*, 415 P.3d 505, 415 (2018) (holding that the "designated records custodian in the *only* official who is assigned IPRA compliance duties" under Section 41-2-7 and "is the *only* official who statutorily 'is subject to an action to enforce' IPRA" under Section 14-2-11(C)" (emphasis in original). *NMFOG v. Corizon Health*, -- P.3d --, 2019 WL 4551658 (Ct. App. 9/13/19) is inapposite for a variety of reasons, not the least of which is that threshold defenses under Sections 41-2-6 and 41-2-7 and the impact of *Pacheco v. Hudson* were not raised or addressed. See, e.g., *State v. Thompson*, 146 N.M. 663, 667, 213 P.3d 813, 817 (Ct. App. 2009) (citation omitted) (cases are not authority for propositions not considered).

EXHIBIT 2

Michelle Dillon
February 27, 2020
Page 2

The New Mexico Corrections Department has designated its IPRA custodian via its website. As noted in Section 14-2-6(A) of IPRA, a public body's custodian has duties and obligations extending to records that may not be in that custodian's actual physical custody and control. GEO, therefore, may have obligations to furnish to NMCD's public records custodian those public records, if any, in its possession, but GEO's obligations run solely to the NMCD's custodian, not any requester, and any such obligation by GEO to assist the NMCD's custodian and furnish any such records to that custodian is triggered only when a proper request is made in the first instance to NMCD's custodian and the custodian, in turn, contacts GEO in connection with that custodian's discharge of his or her duties and obligations to a requester. *See Pena and Pacheco, supra.*

The New Mexico court system has likewise designated custodians via its website. IPRA does not apply to the federal courts chambered in New Mexico. You may conduct your own search for judicial records at your own time and expense.

Finally, subject to and without waiving the above-noted defenses nor any defenses not explicitly set forth in this letter, and without conceding that any settlement agreement GEO may have entered into in New Mexico to resolve disputed claims asserted in New Mexico is a "public record" under IPRA, we also direct your attention to NMSA Sections 33-16-6 and 33-16-7 and suggest you make request of applicable records custodians for settlement reports, if any, submitted in accordance therewith.

Very truly yours,



Michael S. Jahner

MSJ/png

cc: Brian Johnson via electronic mail



Human Rights Defense Center

DEDICATED TO PROTECTING HUMAN RIGHTS

February 27, 2020

New Mexico Corrections Dept.
Attn: Public Records Manager
P.O. Box 27116
Santa Fe, NM 87502

Re: Request for Settlements and Verdicts Records

To the Public Records Manager:

The Human Rights Defense Center (“*HRDC*”) makes this request pursuant to the New Mexico Inspection of Public Records Act, N.M. Stat. Ann. § 14-2-1, *et seq.* HRDC is a non-profit dedicated to advocacy and education around criminal justice issues. Among other activities, HRDC publishes the journals *Prison Legal News* and *Criminal Legal News*.

This request is directed to any confinement facility or services within any confinement facility that GEO Group, Management & Training Corporation, CoreCivic, Corizon, or Centurion, or any of their subsidiaries or affiliates (collectively “private New Mexico corrections companies”) which are operating or have operated under a contract within the boundaries of New Mexico, in accordance with the recent changes to New Mexico’s public records law which affirm that private entities performing a public function for a public agency are subject to the Inspection of Public Records Act.

HRDC is seeking all records of litigation against any private New Mexico corrections companies and/or its employees or agents where the company and/or its insurers paid \$1,000 or more to resolve claims against it. These payments include but are not limited to settlements, damages, attorney fee awards, and sanctions, irrespective of the identity of the plaintiff or claimant. Specifically, HRDC requests the following records, provided in electronic native format where possible, and otherwise in electronic format:

- The relevant time period is January 1, 2010 to the present.
- “Payments” includes, without limitation, settlements, damages, attorneys’ fees, and sanctions.
- Records shall be produced in electronic native format where possible, and otherwise in electronic format. To the extent production in electronic format is not possible, records may be produced in hard copy.

EXHIBIT 3

For each Relevant Claim, HRDC requests records sufficient to show:

1. the name of all parties involved;
2. the date of resolution;
3. the amount of money paid to resolve the claim;
4. the person or entity to whom the money was paid;
5. for those Relevant Claims that did not result in litigation:
 - a. the claim form or other document that describes the claim; and
 - b. the final agreement resolving the claim; and
6. for those Relevant Claims that resulted in litigation:
 - a. the docket number;
 - b. the jurisdiction in which the action was brought (*e.g.*, US District Court for the District of New Mexico, New Mexico Supreme Court, etc.);
 - c. the complaint and any amendments thereof; and
 - d. the verdict form, final judgment, settlement agreement, consent decree, or other document that resolved the case.

If any of these requests, or any portion thereof, is denied in whole or in part, please provide an accounting of each record being withheld, and the specific exemption being invoked for such record. In addition, to the extent the New Mexico Corrections Department or any other party claims that any portion of a record is confidential or otherwise protected from disclosure, please redact the allegedly confidential or protected portion and produce the redacted record. By making this request, HRDC does not waive, but rather expressly reserves, its right to challenge a claim that any portion of a record is confidential or otherwise protected from disclosure.

Please contact me via email, mdillon@prisonlegalnews.org, should you require any additional information. My phone number is 206-257-1355. Thank you for your time and attention in this matter.

Sincerely,

HUMAN RIGHTS DEFENSE CENTER



Michelle Dillon
Public Records Manager

Michelle Dillon

From: Ahring, Catherine, NMCD <Catherine.Ahring@state.nm.us>
Sent: Wednesday, March 18, 2020 10:07 AM
To: Michelle Dillon
Cc: NMCD-IPRA
Subject: 20-169
Attachments: 20200302140332216.pdf

Ms. Dillon:

It is my understanding that you had requested this separately from the private facilities and that they have responded to you. NMCD has no additional documents to provide and is closing this matter.

IPRA PARALEGAL
NMCD-OGC
P.O. BOX 27116
SANTA FE, NM 87502
Catherine.ahring@state.nm.us
505-827-8719

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EXHIBIT 4