

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

NEW MEXICO FOUNDATION
FOR OPEN GOVERNMENT,

Plaintiff,

v.

No. D-202-CV-2025-04287

LOS LUNAS SCHOOLS BOARD OF EDUCATION
and BRIAN BACA, records custodian,

Defendants.

COMPLAINT TO ENFORCE THE INSPECTION OF PUBLIC RECORDS ACT

Plaintiff New Mexico Foundation for Open Government (“NMFOG”), for its complaint against Defendants Los Lunas Schools Board of Education (“LLS”), and the LLS records custodian, Brian Baca (“Baca”), alleges and states as follows:

Introduction

1. This case concerns a denial of the public’s right to inspect records of a public school district in New Mexico, Los Lunas Schools, under the Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 – 12 (“IPRA”).
2. The Defendants wrongfully denied access to public records of Los Lunas Schools pertaining to an investigation of former Los Lunas Schools Superintendent, Ryan Kettler, when they failed to produce records for inspection or explain their redactions in response to Plaintiff’s request and failed to respond to a subsequent IPRA request.

Parties

3. Plaintiff NMFOG is a New Mexico nonprofit, nonpartisan organization whose mission is to help individuals, businesses, students, educators, journalists, lawyers, and other engaged

citizens understand, obtain, and exercise their rights under IPRA, the Open Meetings Act, the Arrest Record Information Act, the First Amendment to the United States Constitution and Article II Section 17 of the New Mexico Constitution, as well as to help public officials understand and discharge their obligations under those statutes and constitutional provisions. NMFOG has its principal place of business in Bernalillo County, in the state of New Mexico.

4. Defendant LLS, located in Valencia County, in the state of New Mexico, is the Board of Education of a public school district Los Lunas Schools and a “public body” within the meaning of IPRA, NMSA 1978, § 14-2-6(G).
5. On information and belief, at all material times, Defendant Baca has been the designated custodian of LLS’s public records. On information and belief, Defendant Baca is a resident of Valencia County.

Jurisdiction and Venue

6. The Court has jurisdiction over the parties and subject matter of the action under NMSA 1978, § 38-31.1 (1998) and § 14-2-12.
7. Venue is proper under NMSA 1978, § 38-3-1(A).

General Allegations

8. IPRA declares “all persons are entitled to the greatest possible information regarding the affairs of the government and the official acts of public officers and employees” and that “provid[ing] persons with such information is an essential function of a representative government.” NSMA 1978, § 14-2-5. Under IPRA, “the citizen’s right to know is the rule and secrecy is the exception.” *Republican Party of N.M. v. N.M. Tax’n & Revenue Dep’t*, 2012-NMSC-026, ¶ 12.

9. This complaint alleges that Defendants failed to comply with their statutory obligations under IPRA to allow inspection of public records of the Los Lunas School district.
10. First, Defendants unlawfully a) refused to allow inspection of records in response to Plaintiff's September 30, 2024, IPRA request for public records related to the hiring of an outside agency to investigate former Superintendent Kettler and b) failed to adequately explain what records it withheld.
11. Second, Defendants unlawfully failed to respond at all to Plaintiff's February 19, 2025, IPRA request to inspect the investigative report concerning former LLS Superintendent Ryan Kettler and other related public records.
12. According to reporting by the *Valencia County News-Bulletin*, Kettler was hired as the superintendent of Defendant LLS in July 2023, put on administrative leave pending an investigation into allegations of misconduct on July 16, 2024, and terminated from his position of Superintendent on November 14, 2024.¹
13. Despite multiple requests for public records related to the investigation and reasons for Kettler's termination from his position as superintendent, Defendant LLS has released no details about the allegations of misconduct, the results of the investigation, or reasons for Kettler's termination.
14. The *Valencia County News-Bulletin* reported that LLS Board of Education President Michelle Osowski stated at an August 2024 board meeting, that the name of the company hired to investigate Kettler would not be released at that time, but that it was a firm selected

¹ Felina Martinez, *Former LLS superintendent claims termination result of filing complaint of board misconduct*, Valencia County News-Bulletin (Nov. 21, 2024), [Former LLS superintendent claims termination result of filing complaint of board misconduct | Education | news-bulletin.com](https://www.valencianewsbulletin.com/news/former-lls-superintendent-claims-termination-result-of-filing-complaint-of-board-misconduct).

by Defendant LLS's attorney.²

15. It is now known that the company that conducted the investigation is DDSK Group LLC.³

I. Request for Records related to the hiring of an outside investigative firm

16. On August 23, 2024, reporter Julia Dendinger with the *Valencia County News-Bulletin* submitted the following request to Defendant LLS:

1. Any contract for services with DDSK Group LLC.
2. Any scope of work services from DDSK Group LLC.
3. Any and all invoices from and payments to DDSK Group LLC.
4. Any and all correspondence between DDSK Group LLC and Los Lunas Schools employees to include electronic correspondence and messages on district issued and personal devices.
5. Any and all correspondence between DDSK Group LLC and LLS Board of Education members to include electronic correspondence and messages on district issued and personal devices.

17. On September 6, 2024, Defendant LLS, through its attorneys Cuddy & McCarthy, responded to Ms. Dendinger, stating, “[t]he District has no records responsive to **Requests 1 through 3** pertaining to contracts, scope of work and invoices between DDSK Group LLC and Los Lunas Schools.” Cuddy & McCarthy further indicated Defendant LLS would need additional time pursuant to NMSA 1978 § 14-2-10 to respond to Ms. Dendinger’s requests numbers 4 and 5, claiming the requests were “excessively burdensome and broad.”

18. On September 10, 2024, Ms. Dendinger requested to inspect the following records of Defendant LLS, this time, not naming the investigative entity:

1. Any contract for services with the company investigating allegations and concerns brought against Los Lunas Schools Superintendent Ryan Kettler;

²Julia M. Dendinger, *Investigation of Los Lunas superintendent ongoing; district refuses records request*, Valencia County News-Bulletin (Oct. 3, 2024), [Investigation of Los Lunas superintendent ongoing; district refuses records request](https://www.news-bulletin.com/news/education/investigation-of-los-lunas-superintendent-ongoing-district-refuses-records-request) | Education | news-bulletin.com.

³Julia M. Dendinger, *Former Los Lunas superintendent hired to investigate new superintendent*, VALENCIA COUNTY NEWS-BULLETIN (Oct. 31, 2024), [Former Los Lunas superintendent hired to investigate new superintendent](https://www.news-bulletin.com/news/education/former-los-lunas-superintendent-hired-to-investigate-new-superintendent) | Education | news-bulletin.com.

2. Any scope of work with the company investigating allegations and concerns brought against Los Lunas Schools Superintendent Ryan Kettler; and
3. Any and all invoices from and payments made to the company investigating allegations and concerns brought against Los Lunas Schools Superintendent Ryan Kettler.

19. On September 24, 2024, Cuddy & McCarthy responded to Ms. Dendinger, stating:

Los Lunas Schools does not have records responsive to your **Request 1 thru 3** that pertain to contracts, scope of work and invoices with “the company” and Los Lunas Schools. Any company hired to conduct an investigation was done through this law firm and is protected by attorney-client privilege and not subject to the Inspection of Public Records Act.

Los Lunas Schools considers all items of your **September 10, 2024 IPRA Request** to be completed.

20. On September 30, 2024, Plaintiff submitted the following IPRA request on Defendant

LLS’s online IPRA portal:

I respectfully request to inspect the following records in possession of Los Lunas Schools or any of its contractors subject to IPRA. Please provide electronic copies of the requested records, if available. Please provide the following:

1. The contract between Los Lunas Schools and the company retained to investigate allegations against Superintendent Ryan Keller;⁴
2. Records reflecting the scope of work to be performed by the company investigating allegations against Superintendent Ryan Keller;
3. Records of any and all invoices and payments made to the company investigating allegations against Los Lunas Schools Superintendent Ryan Keller.

21. On October 15, 2024, Cuddy & McCarthy law firm responded to Plaintiff, stating the following:

Los Lunas Schools does not have records responsive to your **Request 1 thru 3** that pertain to contracts, scope of work and invoices with “the company” and Los Lunas Schools. The District did not contract with any investigator to conduct an investigation into Superintendent Kettler.

⁴ Plaintiff inadvertently misspelled former superintendent Kettler’s last name as “Keller” in the initial IPRA request, but all subsequent communications and requests correctly identified Ryan Kettler as the subject of the requested records.

Los Lunas Schools considers all items of your **September 30, 2024 IPRA Request** to be completed.

22. On October 15, 2024, and again on October 17, 2024, Plaintiff emailed Defendant Baca requesting an original copy of Plaintiff's September 30, 2024, IPRA request, as the original request was not available on Defendant LLS's IPRA portal nor did Plaintiff receive an electronic copy of the original request when it was submitted.
23. Defendant Baca did not respond to either Plaintiff's October 15, 2024 or October 17, 2024, emails; however, Defendant Baca did provide a "read receipt" at Plaintiff's request to the October 17th email, on October 21, 2024.
24. On October 17, 2024, Plaintiff submitted the following IPRA request on Defendant LLS's online IPRA portal system:

On September 30, 2024, I submitted a request to inspect public records of the Los Lunas School District via this online Public Records Request Form. Los Lunas Schools never sent a copy of my original request, nor is there any way for me to retrieve it on this online system. On October 15, 2024, and again on October 17, 2024, I contacted Brian Baca, Records Clerk, requesting a copy of my written request from September 30, 2024. Mr. Baca did not respond to either of my emails. I am submitting this request to inspect an exact copy of my request from September 30, 2024, requesting to inspect public records. For reference, I am attaching the response to my September 30th request received from the law firm Cuddy & McCarthy. Please provide an electronic copy of my September 30th request. Thank you.
25. On October 21, 2024, Defendant Baca emailed Plaintiff and stated he had been out of the office and did not see Plaintiff's emails until that morning. He further indicated that Plaintiff's September 30, 2024, IPRA request had been processed by Cuddy & McCarthy, and that subsequent requests from Plaintiff would be forwarded to the firm so that they "may respond accordingly."
26. On October 22, 2024, Cuddy & McCarthy produced an electronic copy of Plaintiff's September 30, 2024, IPRA request.
27. On October 23, 2024, Plaintiff sent an email to Defendant Baca and Defendant LLS's

attorneys with the Cuddy & McCarthy law firm, clarifying the scope of the IPRA request.

The email states in relevant part:

I am in receipt of Cuddy & McCarthy's response to my IPRA request from 10/1/2024.⁵ The response indicates that Los Lunas Schools does not have any responsive records to my requests; however, you can see that my original request is for records that are either in possession of Los Lunas schools *or its contractors*. I understand that Los Lunas Schools has contracted with Cuddy & McCarthy to provide professional services and act on behalf of the Los Lunas School District. I also understand that Cuddy & McCarthy hired an independent entity to conduct an investigation into Superintendent Ryan Kettler, on behalf of Los Lunas Schools District. As you are likely aware, the New Mexico Court of appeals held *State ex rel. Toomey v. City of Truth or Consequences*, 2012-NMCA-104, ¶ 23, 287 P.3d 364, 370, that when a private third-party entity acts on behalf of a public agency, it is the functional equivalent of a public agency and subject to IPRA. Los Lunas Schools may not circumvent the public's right of access to records by contracting out a public function. *Id.* ¶ 26.

Please provide any records responsive to my request that are in the possession of Cuddy & McCarthy, including: any contract for services related to the investigation into Superintendent Ryan Kettler; records reflecting the scope of work to be performed by the entity investigating Mr. Kettler; and records of any payments or invoices to the entity investigating Mr. Kettler.

28. On November 8, 2024, having received no response to the email sent October 23, 2024, Plaintiff again emailed Defendant Baca and representatives of the Cuddy & McCarthy law firm, inquiring whether they intended to respond to Plaintiff's IPRA request.
29. Defendant Baca and Susan Chavez, now acting superintendent of Defendant LLS, sent "read receipts" to Plaintiff's November 8th email, indicating they had read the email, but did not otherwise respond.
30. On November 11, 2024, Laura Castille, attorney for Defendant LLS, replied to Plaintiff indicating a response to the October 23, 2024, email was forthcoming.
31. On November 18, 2024, Ms. Castille sent Plaintiff a letter in response to Plaintiff's October

⁵ Plaintiff's request was submitted September 30, 2024, at 4:45 pm; however, Defendant LLS and its attorneys, Cuddy & McCarthy, identify this request as received October 1, 2024.

23, 2024, email. In that letter, Ms. Castille acknowledged that Cuddy & McCarthy, LLP is a “third-party entity” contracting with the Los Lunas Schools and subject to IPRA. She further asserted “the vast majority of the documents held by Cuddy McCarthy are protected by the [attorney-client] privilege,” that the records requested by Plaintiff “are not in existence,” however, if they did exist, they would be protected by the attorney-client privilege. The letter went on to state, “[w]e agree that there are certain documents, which are not subject to the privilege and must be produced, i.e. invoices. The majority of the documents held by Cuddy McCarthy, however, will be attorney-client communications and work product – all protected by the privilege.”

32. Ms. Castille disputed the *Toomey* case as authority in this matter, as *Toomey* “did not involve any documents protected by attorney-client privilege, or any other exception.” The letter went on,

we have produced, and will continue to produce, those documents, which are not protected by the privilege. In this particular case, in spite of our ongoing assertion of privilege, we are unaware of any documents responsive to your request. If documents were responsive; however, they would be produced only if such production did not violate the privilege.

33. While the November 18, 2024, stated the attorneys were unaware of any documents responsive to Plaintiff’s request, the law firm’s previous communications indicated that all documents related to the hiring of the firm to investigate Kettler were shielded from inspection under the attorney-client privilege. At no point did defendants or their attorneys explain what records were withheld pursuant to the attorney-client privilege.

34. Defendants did not claim the requested records as potentially exempt under any other exception to IPRA, other than attorney-client privilege.

35. On November 18, 2024, Plaintiff replied to Ms. Castille for further clarification, inquiring whether the letter should be interpreted as affirmation that “there is no contract between Cuddy & McCarthy and an investigative firm to investigate Superintendent Keller, no invoices paid to that firm, or any records reflecting the scope of the work to be performed by the firm/investigating entity?”
36. Ms. Castille replied, “[a]t the time you submitted your request, there were no invoices. There are currently invoices. Are you requesting those invoices? They have been provided to other requestors. There are no other responsive documents.”
37. In response, Plaintiff, for at least the third time, reiterated its request for the invoices and other requested records.
38. Ms. Castille informed Plaintiff that Defendants’ attorneys would be processing “today as a new request.”
39. That same day, on November 18, 2024, the Cuddy & McCarthy firm produced a four-page redacted invoice directed to its client, Defendant LLS, showing an itemized bill for legal fees. The invoice shows billing for at least 47 hours of legal work related to responding to IPRA requests during the time frame of Plaintiff’s requests for public records, a bill for a total of \$9,614.50 in legal fees related to work on IPRA requests and other legal work for Defendant LLS,⁶ and a payment of \$21,685.00 to DDSK Group LLC for “professional services.”
40. Although the invoice to Defendant LLS shows a payment made to DDSK Group LLC, Defendants did not produce for inspection the invoice from DDSK to the law firm

⁶ This total amount also includes billing for approximately 21 hours of legal work that is unknown in nature, as several itemized billing lines in the records were redacted without explanation.

requesting this payment nor any contract or letter retaining DDSK's services, both of which were covered by Plaintiff's requests.

41. According to its website, DDSK Group LLC is a business made up of three retired superintendents who are licensed administrators in the state of New Mexico, and who are "nationally certified to conduct Title IX investigations and personnel/student misconduct independent investigations, student disciplinary hearings, and other related services."⁷
42. Defendants and their attorneys, Cuddy & McCarthy, did not provide an explanation for redactions in the billing records or cite an exception to IPRA on which the redactions were based.
43. Defendants and their attorneys did not respond to Plaintiff's inquiries regarding the existence of a contract for services with a firm hired to investigate former Superintendent Kettler, or other records reflecting the scope of work, other than their statement, "there are no other responsive documents."

II. Request for Investigation into Ryan Kettler

44. On February 19, 2025, Plaintiff submitted the following request to inspect public records to LLS records custodian Defendant Baca, at his publicly listed school email address, bgbaca@llschools.net, the email he previously used to communicate with Plaintiff:

I am requesting to inspect reports or other records in possession of Los Lunas Public schools that relate to any investigation performed by DDSK Group, or other work performed by DDSK Group, on behalf of Los Lunas Public Schools or its contractors. Specifically, I am requesting to inspect any records related to any investigation of former Superintendent Ryan Kettler. Please provide electronic copies of these records, if available.

45. After receiving no response, on March 7, 2025, approximately 16 days after submission of

⁷ <https://ddskgroupllc.org/>

Plaintiff's request, Plaintiff again contacted Defendant Baca at bgbaca@lsschools.net, to advise that Plaintiff had not received a response to the February 19, 2025 IPRA request, and to inquire whether Los Lunas Schools intended to fulfill the request.

46. As of the date of this filing, Defendants have not responded to or acknowledged Plaintiff's February 19, 2025, IPRA request.

Violations of the Inspection of Public Records Act

47. Section 14-2-1 of IPRA guarantees the right of every person to inspect public records of this state. NMSA 1978, § 14-2-1.
48. Section 14-2-5 of IPRA provides, "[...] 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 the further 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.
49. The New Mexico Supreme Court has held that "[a] citizen has a fundamental right to have access to public records. The citizen's right to know is the rule, and secrecy is the exception. Where there is no contrary statute or countervailing public policy, the right to inspect public records must be freely allowed." *State ex rel. Newsome v. Alarid*, 1977-NMSC-076, ¶ 34, 568 P.2d 1236.
50. "A custodian receiving a written request shall permit the inspection immediately or as soon as is practicable under the circumstances, but not later than fifteen days after receiving a written request." NMSA 1978, § 14-2-8. "[A] written request for inspection of public records that has not been permitted within fifteen dates of receipt by the office of the

custodian may be deemed denied. The person requesting the records may pursue the remedies provided in [IPRA].” NMSA 1978, § 14-2-11.

51. “[T]he custodian shall provide the requestor with a written explanation of the denial. The written denial shall: (1) describe the records sought; (2) set forth the names and titles or positions of each person responsible for the denial; and (3) be delivered or mailed to the person requesting the records within fifteen days after the request for inspection was received.” NMSA 1978, § 14-2-11.

Count I

Violation of NMSA 1978, §§ 14-2-1 and 14-2-11
Plaintiff’s September 30, 2024, Request

52. The president of the LLS School Board told the media that Defendant’s attorney hired a firm to investigate the allegations of misconduct against former Superintendent Ryan Kettler.
53. DDSK Group LLC is a private entity that conducts school personnel investigations.
54. Defendants’ attorneys at Cuddy & McCarthy paid \$21,685 to DDKS Group LLC and sent a bill to Defendant LLS to be reimbursed for said payment.
55. Defendants’ attorneys evidently believe that any and all records related to its hiring of DDSK Group LLC are protected by the attorney-client privilege, as evidenced by their response to the *Valencia County New-Bulletin*’s request for contracts, invoices, and records reflecting the scope of work by the company it hired to investigate Kettler. In that response, Defendant’s attorneys stated, “any company hired to conduct an investigation was done through this law firm and is protected by attorney-client privilege and not subject to the Inspection of Public Records Act.”
56. Although Defendants’ attorneys insist there are no responsive documents to Plaintiff’s

September 30, 2024, request other than the law firm's invoice to Defendant LLS, there is irrefutable evidence that the firm contracted with DDSK to investigate Ryan Kettler, and it is inconceivable that there would not be a single record in existence relating to this contractual relationship that would be responsive to Plaintiff's request.

57. Most importantly, the attorney-client privilege does not cover the records requested by Plaintiff. The privilege exempts only those public records from inspection that are communications "made for purposes of facilitating or providing legal services to a client." *Tawater v. Board of Commissioners for County. of Sandoval*, 2023-NMCA-052, ¶ 10.

58. Defendants violated Plaintiff's rights under § 14-2-1 of IPRA when they unlawfully withheld requested records of any contract with DDSK Group LLC, records reflecting the scope of the work to be performed by DDSK Group LLC, and invoices from DDSK Group LLC, that were not communications "made for purposes of facilitating or providing legal services to a client."

59. On information and belief, DDSK Group LLC is not a client of Cuddy & McCarthy, but a contractor who provided investigative services for Defendant LLS.

60. Defendants also violated IPRA when they unlawfully failed to explain what records were withheld pursuant to the attorney-client privilege and failed to explain the redactions in the invoice produced for inspection.

61. Defendants' evasive and inconsistent statements indicate there are responsive records they withheld pursuant to the attorney-client privilege. Through their attorneys, defendants stated the company "hired to conduct an investigation was done through this law firm and is protected by attorney-client privilege," also that they are "unaware of any documents responsive" to Plaintiff's request, but even if there were responsive records, "they would be

produced only if such production did not violate the privilege.” The attorneys also stated, that “[t]he District did not contract with any investigator to conduct an investigation into Superintendent Kettler,” when they knew Plaintiff sought the contract for services entered into by either the school district or its attorneys. Defendants apparently believe their attorneys’ records are privileged and not subject to inspection, however, assuming there are some records responsive to Plaintiff’s request, they have failed to identify what records they have shielded from view.

62. When a public body denies a request to inspect public records under § 14-2-11(B)(1), it must provide a written explanation of the denial that describes the records. Defendants did not cite an exemption for the redactions in the invoice or otherwise explain in writing why the redactions were made. Likewise, Defendants failed to identify what records were withheld under the attorney-client privilege or provide any analysis as to how this limited privilege would cover any and all records related to the hiring of DDSK Group LLC other than the one invoice produced for Plaintiff’s inspection, in violation of §14-2-11(B)(1).
63. Defendants’ violations of IPRA require a remedy under §§ 14-2-11(C) and 14-2-12(D).

Count II

Violation of NMSA 1978 §§ 14-2-1 and 14-2-8 Plaintiff’s February 19, 2025, IPRA Request

64. Defendants violated Plaintiff’s right to inspect public records under § 14-2-1 of IPRA by not producing any records for inspection and utterly failing to respond to Plaintiff’s February 19, 2025, written request to inspect public records.
65. Defendants also violated their statutory obligations under § 14-2-8 to respond to Plaintiff’s request within 15 days of receiving the request.
66. Defendants’ violations of IPRA require a remedy under §§ 14-2-11(C) and 14-2-12(D).

Prayer for Relief

WHEREFORE, Plaintiff NMFOG prays that the Court enter judgment in Plaintiff's favor and against Defendants for the following relief:

- A. An order directing Defendants to satisfy the above-described IPRA requests in full;
- B. An award of damages, costs, and reasonable attorneys' fees under IPRA, NMSA 1978, §§ 14-2-11(C) and 14-2-12(D); and
- C. Such other relief as the Court deems just and proper.

Respectfully submitted,

NEW MEXICO FOUNDATION
FOR OPEN GOVERNMENT



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