

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

Human Rights Defense Center,
Plaintiff,

v.

**Management & Training
Corporation, The New Mexico
Corrections Department,
Brian Fitzgerald, in his official
capacity records custodian for the
New Mexico Corrections
Department, and DOES 1 through
2, in their official capacities.**
Defendants.

Cause No. _____

**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. The HRDC, a nonprofit journalism and advocacy organization, brings this action under IPRA to compel production of records maintained or controlled by Management & Training Corporation (“MTC”) and the New Mexico Corrections Department

(“NMCD”) 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. The 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. Defendant MTC is a Utah-based corporation. MTC provides correctional operation management services to state and local governments around the world. MTC operates the Otero County Prison Facility in Chaparral, New Mexico. The New Mexico Corrections Department has contracted with MTC to house prisoners at the Otero County Prison Facility. In that capacity, Defendant MTC 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 has contracted with MTC to house prisoners at the Otero County Prison 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 MTC 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 the HRDC sent to MTC a records request for verdicts and settlements related to all claims or lawsuits brought against MTC 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. That letter is attached as Exhibit 1.

16. Through a letter from its legal counsel, MTC acknowledged receipt of the request on February 14, 2020. MTC's counsel stated she was determining the applicability of IPRA in that instance.
17. On February 24, 2020 MTC responded to the request, asserting that it was not a public entity subject to IPRA, noting the response addressed the IPRA request in full so the matter was considered closed, and failing to provide any of the requested documents. That response letter is attached as Exhibit 2.
18. 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 MTC. The February 27, 2020 request to the NMCD is attached as Exhibit 3.
19. On March 16, 2020 the NMCD responded to the February 27, 2020 letter via email. 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.
20. On March 18, 2020 the NMCD again emailed 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 email from the NMCD is attached as Exhibit 4.

21. 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)

22. The Plaintiff incorporates by reference the above allegations.
23. 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.
24. 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.
25. 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)

26. The Plaintiff incorporates by reference the above allegations.
27. There is an actual controversy between the Plaintiff and the Defendants as to whether the Defendants' conduct, as alleged above, violates IPRA.

28. The law is clear that Defendant MTC was performing a public function and records created in that capacity are public records. As such, MTC has a clear legal duty to provide public records to Plaintiff.
29. 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.
30. 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.
31. 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)

32. The Plaintiff incorporates by reference the above allegations.
33. 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
Rothstein Donatelli, LLP
P.O. Box 8180
Santa Fe, NM 87504
Tel: (505) 988-8004
mhd@rothsteinlaw.com
cmanierre@rothsteinlaw.com

/s/ Eric Taylor

Eric Taylor
Pro Hac Vice application forthcoming
Human Rights Defense Center
P.O. Box 1151
Lake Worth, FL 33460
Tel: (561) 360-2523
etaylor@humanrightsdefensecenter.org



Human Rights Defense Center

DEDICATED TO PROTECTING HUMAN RIGHTS

February 6, 2020

Management & Training Corporation
Attn: Public Records Officer
500 N. Marketplace Drive
Centerville, Utah 84014

Sent via certified mail: 7017 3380 0000 0666 2564

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 Management & Training Corporation (“*MTC*”) 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 MTC and/or its employees or agents where MTC 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 MTC 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 MTC 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

SUTIN THAYER  BROWNE
A PROFESSIONAL CORPORATION
LAWYERS

IRWIN S. MOISE (1906-1984)
LEWIS R. SUTIN (1908-1992)
FRANKLIN JONES (1919-1994)
RAYMOND W. SCHOWERS (1948-1995)
GRAHAM BROWNE (1935-2003)
NORMAN S. THAYER (1933-2018)
STEPHEN CHARNAS (1934-2018)
MICHAEL G. SUTIN (1935-2019)

ROBERT G. HEYMAN (Of Counsel)

NOE ASTORGA-CORRAL
LILIANA BENITEZ DE LUNA

ANNE P. BROWNE
SUZANNE WOOD BRUCKNER
STEFAN R. CHACÓN
MARIA MONTOYA CHAVEZ
EDUARDO A. DUFFY
TINA MUSCARELLA GOOCH
ALISON K. GOODWIN
JESSE D. HALE
SUSAN M. HAPKA
WADE L. JACKSON
DAVID H. JOHNSON
ROBERT J. JOHNSTON
CHRISTINA M. LOONEY

STEVAN DOUGLAS LOONEY
DEBORAH E. MANN
BRANA L. MEECH
LYNN E. MOSTOLLER
CHARLES J. PIECHOTA
JAY D. ROSENBLUM
FRANK C. SALAZAR
JUSTIN R. SAWYER
ANDREW J. SIMONS
BARBARA G. STEPHENSON
MARIPOSA PADILLA SIVAGE
BENJAMIN E. THOMAS
L. CURTIS VERNON

6100 UPTOWN BLVD NE, SUITE 400
ALBUQUERQUE, NEW MEXICO 87110
POST OFFICE BOX 1945
ALBUQUERQUE, NEW MEXICO 87103
505-883-2500
FAX 505-888-6565

150 WASHINGTON AVE, SUITE 210
SANTA FE, NEW MEXICO 87501
POST OFFICE BOX 2187
SANTA FE, NEW MEXICO 87504
505-988-5521
FAX 505-982-5297

WWW.SUTINFIRM.COM

February 24, 2020

VIA ELECTRONIC MAIL ONLY:

mdillon@prisonlegalnews.org

Michelle Dillon
Human Rights Defense Center
720 3rd Avenue, Suite #1605,
Seattle, WA 98104

Re: February 6, 2020 Request to Inspect Public Records

Dear Ms. Dillon:

This firm has been retained by Management & Training Corporation (“MTC”) with regard to your Public Information Request, dated February 6, 2020 (the “Request”) submitted to MTC under the New Mexico Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 to 14-2-12 (“IPRA”). Your Request asked for the following:

HRDC is seeking all records of litigation against MTC and/or its employees or agents where MTC 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 MTC 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;

EXHIBIT 2

- 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.

MTC objects to your IPRA Request because MTC is not a public entity that is subject to IPRA. IPRA mandates that “[e]ach public body shall designate at least one custodian of public records.” NMSA 1978, § 14-2-7 (2011). To submit a public records request, “[a]ny person wishing to inspect public records may submit an oral or written request to the custodian.” NMSA 1978, § 14-2-8(A) (2009). MTC is not required to designate a custodian. Section 14-2-7. Therefore, the Request is ineffective as a matter of law.

I believe that the foregoing addresses the Request in full and, as such, this matter is considered closed.

Sincerely,

SUTIN, THAYER & BROWNE
A Professional Corporation



Christina Muscarella Gooch

5399437



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.

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