



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO *ex rel.*
RAÚL TORREZ, Attorney General,

Plaintiff-Applicant/Respondent,

v.

No. S-1-SC-41418
Rel. A-1-CA-42633
A-1-CA-42508
D-202-CV-2024-04027

KATINA WATSON, in her official
capacity as records custodian for the
Second Judicial District Court,

Defendant-Respondent/Applicant.

STATE OF NEW MEXICO'S ANSWER BRIEF

ORAL ARGUMENT REQUESTED

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CITATIONS TO THE RECORD

The digital audio recordings are playable with For The Record software. Citations to the recorded proceedings are in the form of [__/__/__ **CD** __:__:__]. The time and date stamp indicates the actual time of the day that the recording was made, not the elapsed time from the beginning of the recording.

The record proper is cited by the abbreviation **RP** followed by the page number.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 12-318(F) NMRA, I certify that the body of this Answer Brief complies with the type-volume requirement. While the page count exceeds 35 pages, the body of this Answer Brief contains 8,588 words as calculated by Microsoft Word in accordance with the rule.

/s/ Serena R. Wheaton

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SUMMARY OF PROCEEDINGS

I. INTRODUCTION

This matter is before this Court on an interlocutory denial of Defendant's Motion for Judgment on the Pleadings (Defendant's Motion). Such a motion "tests the legal sufficiency of the complaint, not the factual allegations of the pleadings which, for purposes of ruling on the motion, the court must accept as true." *N.M. Pub. Regul. Comm'n v. New Mexican, Inc.*, 2024-NMSC-025, ¶ 17. Here, the district court conducted the proper review and denied Defendant's Motion, but was prevailed upon by Defendant to certify three questions for interlocutory appeal. None of these questions have been accepted for interlocutory appeal by an appellate court. [*Compare BIC 11*, with Order Certifying to the N.M. Supreme Court, *State v. Watson*, A-1-CA-42633 (N.M. Ct. App. June 17, 2025) and Order Granting Mtn. to Consolidate, *State v. Watson*, A-1-CA-42633 (N.M. Ct. App. June 17, 2025)] The question of whether to accept Defendant's interlocutory appeal is therefore a threshold question for this Court. *See* Rule 12-203(A)-(F) NMRA (setting forth the interlocutory process: (1) application, (2) response, (3) *granting of the application*, and then (4) assignment to a calendar).¹

¹ Defendant's application for interlocutory appeal was arguably untimely filed pursuant to Rule 12-203(A) and NMSA 1978, Section 39-3-4 (1999). "Absent statutory authority or supreme court rule, appellate courts may not extend the time for appeal, even to relieve against mistake, inadvertence or accident." *See Candelaria v. Middle Rio Grande Conservancy Dist.*, 1988-NMCA-065, ¶ 6, 107

A. Contrary to Defendant’s Framing of the Issue Before This Court, Plaintiff Challenges Defendant’s Misinterpretation of Law, Not the NMSC’s Authority to Control the Judiciary.

This matter originates in the Records Custodian Defendant’s misapplication and misinterpretation of NMSA 1978, Section 31-3-12 (2022) and of New Mexico Supreme Court Order No. 22-8500-034 (NMSC Order). Plaintiff does not challenge this Court’s authority or the NMSC Order. In fact, each of the three questions certified before this Court can and should be resolved without consideration of the validity of the NMSC Order. Indeed, despite Defendant’s provocative language describing the issues before this Court—i.e., “whether the New Mexico Supreme Court has the authority to control the administrative functions of the judiciary, including records management and administration”—Plaintiff has not and does not contest this Court’s authority to control the judiciary. [*Compare* BIC 6, *with* RP generally]

It is Plaintiff’s position that the NMSC Order was meant to protect the privacy of *individuals* who are monitored by the Pretrial Services Program, and that it was never intended to cloak the entire program from the public or to avoid New Mexico’s

N.M. 579. If this Court is positioned to deny Defendant’s interlocutory appeal for untimeliness, or otherwise, Plaintiff requests this Court proceed to answer the jurisdictional question certified in this matter, but only within the context of Plaintiff’s related and timely filed interlocutory appeal regarding discovery, which is also currently pending before this Court as part of this consolidated action, and to which the certified question has application.

sunshine laws. **[See RP 87-88]** The NMSC Order defines “[p]retrial services supervision records” as “*all information contained in a defendant’s pretrial services file.*” **[RP 88 (emphasis added)]** But within this quoted language the phrase “*a defendant’s pretrial services file*” matters, as it narrows and ties the broad language of “all information” to “a defendant”—i.e., to a particular person. **[RP 88 (emphasis added)]** If information is anonymized, it is no longer tied to a particular person.

Section 31-3-12 likewise limits the protection of disclosure of an individual’s information. Section 31-3-12 states, “[a]ny public entity that possesses or controls *global positioning system data* [GPS data]” with respect to “*a defendant on pretrial release*” shall not make the GPS data part of any public record. (Emphasis added.) Additionally, although the statute’s language is narrower than that of the NMSC Order—the statute references “GPS data,” whereas the Order covers “all information”—they both operate to shield a particular defendant’s confidentiality. While individual defendants may have a right to privacy, the Pretrial Services Program does not. As such, the Records Custodian’s interpretation of the NMSC Order and Section 31-3-12 in this case improperly cloaked the Pretrial Services Program from public visibility.

Defendant maintains an erroneous legal position that permits a records custodian to review the record, determine whether and to what extent entire documents or batches of documents may be withheld in toto, and then withhold

documents without explanation and with impunity. [01-24-2025 CD 10:25:00-:26:45; 11:12:05-:29; 11:13:25-:42 (Defendant argued

[The reaction argument] works in some instances. In this instance . . . it is without merit. The entire Pretrial Services file is confidential. The entire thing . . . [As to Plaintiff's argument regarding] producing exempt vs. non-exempt and going through this process it fails . . . because the order is clear *all* Pretrial Services records are confidential. They're confidential . . . The [district court] cannot willfully defy the Supreme Court . . . unless the Supreme Court defines records that may be in the file that could be subject to a public records request. At this time, it doesn't exist.

(emphasis in audio)] In sum, Defendant asserts that any challenge to her interpretation or process is barred by this Court's NMSC Order. [*Id.*]

Such an interpretation cannot stand. Defendant's Motion was properly denied because: (1) the district court has the authority to determine whether a records custodian properly interpreted the NMSC Order; (2) the NMSC Order does not provide a valid exemption under NMSA 1978, Section 14-2-1(N) (2025); but (3) even if it did, a records custodian still has a legal obligation to produce documents, separated and redacted as appropriate, that are responsive to the request.

II. STATEMENT OF FACTS, NATURE OF THE CASE, AND PROCEEDINGS

A. Defendant Denied Two Separate IPRA Requests.

On November 15, 2023, journalist Larry Barker (Barker) submitted the following request (Barker Request) under the Inspections of Public Records Act (IPRA), NMSA 1978, §§ 14-2-1 to -12 (1947, as amended through 2025), to the

Second Judicial District Court (SJDC):

[a]ll alerts from [global position system (GPS)] devices to Pretrial Services AND all notifications as to the Court and the District Attorney from Pretrial Services including, but not limited to, correspondence memoranda, notices, reports, and emails, texts call detains, desk notes, care notes, pleadings, or any information including alerts, related to GPS violations for crossing, entering, or exhibiting inclusion and/or exclusion zones and and/or tampering with GPS devices.

[RP 5] The Barker Request specifically noted that even if portions of the request are exempted by law, those portions should be segregated and all nonexempt portions of responsive documents should be provided, along with justification for any redactions. [*Id.*] On November 20, 2023, Barker agreed to narrow the period of time associated with the Barker Request and was informed he would receive a response in ten calendar days. [*Id.*] On January 29, 2024, Defendant notified Barker that he had requested various records regarding pretrial services supervision records, cited to Section 31-3-12 and the NMSC Order, but provided no further information or analysis.

In that same communication, Defendant informed Barker that “responsive records” would be produced, but it soon became clear that the only documents Defendant deemed “responsive” contained irrelevant and non-responsive information drawn from publicly available court dockets. Barker told Defendant to cease producing non-responsive documents. But Defendant extrapolated from Barker’s request that he was withdrawing the Barker Request altogether—an

unsupported assumptive conclusion. Upon learning that Defendant intended to close his request, Barker contacted Defendant and clarified that he was not withdrawing it. On March 3, 2024, Defendant reiterated the mistaken assertion that Barker had withdrawn the Barker Request and notified Barker that it had been closed. No relevant and responsive documents were ever provided.

On April 24, 2024, journalist Ryan Laughlin (Laughlin) submitted a separate IPRA request (Laughlin Request) to the SJDC seeking:

[a]ll alerts from GPS device violations, including which agency was alerted, how they were alerted, and when, from January 1 through April 24, 2024.

[RP 8] On May 9, 2024, Defendant confirmed receipt of the request but then, premised upon Section 31-3-12 and the NMSC Order, refused to provide any documents. [RP 8-9] Defendant stated that the requested documents all “related to” GPS alerts, that “all information contained in a defendant’s pretrial service file” is exempt from IPRA, that it did not have any “reports of GPS alerts,” that it did not have to create documents, and that it had no responsive records. [*Id.*] Defendant then closed the Laughlin Request without providing *any* documents—a blanket denial. No documents have been provided to Laughlin to date.

B. Plaintiff Filed a Factually Supported IPRA Enforcement Action.

On May 15, 2024, Plaintiff brought an IPRA enforcement action against the SJDC, by way of its records custodian, alleging the following three counts: (1)

wrongful denial of the Baker Request, (2) wrongful denial of the Laughlin Request, and (3) a two-part count seeking a declaration that Defendant violated IPRA and for an injunction requiring Defendant to produce all relevant and responsive documents in Defendant's possession. **[RP 15-19]** The Complaint set forth extensive facts supporting Plaintiff's request for relief. **[RP 9-15]** None of those facts disputed that the NMSC Order states what it states. Instead, Plaintiff included forty-seven background facts in its Complaint affirmatively supporting Plaintiff's belief that Defendant misinterpreted the NMSC Order and Section 31-3-12.

Of those forty-seven fact paragraphs, five of them have become central in this matter and factored in Defendant's Motion and the appeals that followed (Five Factual Allegations). Those Five Factual Allegations narrate, in part, Plaintiff's understanding of the history of the NMSC Order and its development.² In the first of those, paragraph 36, Plaintiff contends the plain language of Section 31-3-12 provides for the confidentiality of "[GPS] data," while the NMSC Order broadens the Legislature's stated confidentiality to include "all information" contained in a pretrial services file. **[RP 11]** In the second, paragraph 44, Plaintiff avers the NMSC Order does not qualify as an exemption under Section 14-2-1 because only statutes, rules, and regulations may operate under that section to limit IPRA. **[RP 13]** In the

² Those five paragraphs are paragraphs 36 and 44-47 of the Complaint. **[RP 11, 13-15]**

third, paragraph 45, Plaintiff states that this Court’s precedent does not permit policy-based exceptions to IPRA. [RP 13] In the fourth, paragraph 46, Plaintiff contends that it is long settled that this Court may not abridge, enlarge, or modify substantive rights or law. [RP 14] Finally, in paragraph 47, Plaintiff contends the NMSC Order expands the confidentiality protections to such an extent that the NMSC Order violates IPRA.³ [RP 15] None of those paragraphs allege that Defendant’s IPRA violations are due to the NMSC Order’s expanded confidentiality protections; rather, the Complaint asserts a cause of action based on (1) Defendant’s *misinterpretation* of the NMSC Order, as written, and (2) the NMSC Order being an improper basis for an IPRA denial, as it is not a valid *exception* under Section 14-2-1 (N).

C. Defendant Sought Dismissal of the IPRA Enforcement Action Based in Large Part on the Five Factual Allegations.

On September 26, 2024, Defendant’s Motion was filed, largely based upon the Five Factual Allegations. [RP 71-86] Defendant asserted that, because of those Five Factual Allegations, the Complaint represented a direct and improper challenge to the NMSC Order and that the district court, as an inferior court, was unable to

³ See *ACLU of New Mexico v. N. M. Department of Corrections*, ___-NMSC-___, ¶ 23 (S-1-SC-40473, June 15, 2026) (setting forth the test for IPRA’s catch-all exception as (“(1) the regulation is legislatively authorized and has been formally promulgated through a process involving public notice and comment and a public hearing . . . (2) the regulation effectuates a statute or statutes revealing a clear legislative intent for the confidentiality, secrecy, or nondisclosure of records”))

grant the relief sought because of the Complaint’s allegedly inextricable ties to the NMSC Order. [RP 72] Defendant argued that only this Court has the authority to review the purported challenge. [RP 78]

To reach the above two assertions, Defendant misapplies the *Alexander* rule to suggest that the district court cannot question or interpret the NMSC Order. [RP 78 (citing *Alexander v. Delgado*, 1973-NMSC-030, ¶ 9, 84 N.M. 717 (concluding that the “general rule is that a court lower in rank than the court which made the decision invoked as a precedent cannot deviate therefrom and decide contrary to that precedent, irrespective of whether it considers the rule laid down therein as correct or incorrect” (internal quotation marks and citation omitted)))] But Defendant only reached *Alexander* through a strategic misconstruction of the Complaint, using the Five Factual Allegations, to argue the Complaint itself is “challenging the constitutionality or validity of the [NMSC Order]”—i.e., that the IPRA action and the NMSC Order are “inextricably intertwined.” [RP 78] Defendant’s Motion also reiterated several times that the records were not “public records[,]” and the records were “subject to an exception under IPRA.” [RP 80-85]

D. Plaintiff Clarified in Response That Its Complaint Does Not Challenge the Validity of the NMSC Order.

On the first page of its response to Defendant’s Motion, Plaintiff clarified it was not asking the district court to opine on the validity of the NMSC Order. [RP 107] Rather, Plaintiff maintained this action is what it always has been: a challenge

to the records custodian's misinterpretation of IPRA, which served as the basis for the improper denial of the two IPRA requests at issue. **[RP 107-08]** Additionally, Plaintiff responded that it was not seeking any of the confidential information that either the Legislature or this Court sought to protect. **[RP 108]** Plaintiff's position has been, and remains, that the requested alerts and notifications are not included within the definition of GPS "data and so are either separate records or can be redacted from the records otherwise containing this information." **[RP 108]** The two IPRA requests sought anonymized information—not data tied to any particular defendant.

Further, in responding to Defendant's Motion, Plaintiff set forth the proper standard for judicial review of a Rule 1-012(C) NMRA motion, which requires the reviewing court to accept all factual contentions as true and thereafter determine whether the complaint is otherwise legally sufficient. **[RP 109]** Defendant's Motion sought summary judgment type relief as to the Five Factual Allegations—contentions which under Rule 1-012(C) are to be taken as true. Plaintiff argued that the relief sought by the Complaint was not predicated on the Five Factual Allegations and the Complaint otherwise brought a credible and sufficient legal claim under IPRA. **[RP 108, 111, 113-26]** Notably, if those five paragraphs were struck from the Complaint, the remaining facts would fully support Plaintiff's IPRA counts, and the Complaint would again survive a Rule 1-012 motion. [*Compare RP*

13, with 15-19 and RP 106-26]

Plaintiff's response also clarified the law: a responsive record cannot be both a non-public record *and* subject to an IPRA exception. [RP 112] Either the records Defendant has refused to produce are not public records or they are public records but exempted. [RP 112] Plaintiff argued in response that the records "(a) are, in fact, public records (see Complaint ¶¶ 43, 49, 51 and 58); (b) are not exempt (see Complaint ¶¶ 50, 51, and 59); and (c) were improperly withheld due to an incorrect reading of IPRA and the NMSC Order (see Complaint ¶¶ 52, 53-56, 60-62)." [RP 112] As such, the Complaint sets forth a version of facts that is provable under its claims. Plaintiff asked the district court to determine Defendant violated IPRA as a result of Defendant's misinterpretation of IPRA, the NMSC Order, and Section 31-3-12, and asked that Defendant's Motion be denied. [RP 112, 126]

E. The District Court Denied Defendant's Motion, Granted Interlocutory Language, and Certified Certain Questions for Appellate Review.

Following a non-evidentiary hearing on Defendant's Motion, the district court denied Defendant's Motion, concluding that the Complaint articulates a viable IPRA claim despite Defendant's sideshow argument concerning the NMSC Order's "viability." However, the district court also granted interlocutory language to Defendant to challenge the court's denial and to Plaintiff to address the stay of

discovery.⁴ [RP 334-40] With respect to Defendant’s Motion, the district court certified the following three questions:

- (1) Does the district court have the authority to determine whether a record custodian properly interpreted a NMSC Order;
- (2) Does the NMSC Order provide a valid exception under NMSA 1978, Section 14-2-1(N) (2025)⁵ that authorizes/permits a records custodian to determine that all pre-trial services files remain confidential and, as such, permit the records custodian to issue a blanket denial of an IPRA Request; and
- (3) If so, does the records custodian still have a legal obligation to produce documents, separated and redacted as appropriate, that are responsive to the request.

[RP 338-39]

F. The District Court Denied Defendant’s Unfounded Motion for Reconsideration.

Defendant filed a motion for reconsideration of the court’s denial on February 21, 2025—four days before her deadline for interlocutory appeal. [RP 345] Defendant’s motion for reconsideration appeared to be predicated on the district

⁴ Plaintiff’s interlocutory appeal was timely filed and is part of this consolidated action.

⁵ In 2025, the Legislature amended Section 14-2-1. What was formerly subsection (L) became subsection (N) without any changes to the text of the subsection. In 2023, that same subsection was changed from subsection (H) to subsection (L). The caselaw and the briefing below reference “Section 14-2-1(H),” “Section 14-2-1(L),” and “Section 14-2-1(N),” to refer to the provision of IPRA creating an exception “as otherwise provided by law.” In this brief, Plaintiff uses only the designation “Section 14-2-1(N)” to refer to this section.

court choosing Plaintiff's form of order and certification language over that proposed by Defendant. Defendant argued she had not been permitted a presentment hearing or a "reasonable opportunity to examine the Order[]," despite having in fact *reviewed the proposed form of order and participated in the redlining of the same.*

[RP 345] The local rules of the First Judicial District permit the submission of redlined orders and for the district court to enter an order without a presentment hearing. LR1-114 NMRA. The process provided by local rule was followed in this case.

Accordingly, the district court denied the motion for reconsideration, stating unequivocally that its order denying Defendant's Motion was entered on February 10, 2025, and that prior to entry of that order the court reviewed the competing forms of order and the redline. **[RP 410]** The district court's April 17, 2025 order did not contain any additional certification language. **[RP 410]** Defendant filed her interlocutory appeal on May 2, 2025. **[Compare BIC 11, with RP 345, 410]**

III. ARGUMENT

Plaintiff pled sufficient legal claims under an IPRA enforcement action, and the district court properly denied Defendant's Motion. **[RP 337]** Further, Plaintiff has the right to test the breadth of the NMSC Order as it applies to an IPRA enforcement action and whether Defendant's denial of the IPRA requests was made on a good faith basis. **[RP 337]**

The district court also certified clear and unambiguous questions for appellate review. [RP 338-39] Here: (1) whether the district court has the authority to determine whether a records custodian properly interpreted a NMSC Order; (2) whether the NMSC Order provides a valid exception Section 14-2-1(N) that authorizes/permits a records custodian to determine that all pre-trial services files remain confidential and, as such, permits the records custodian to issue a blanket denial of an IPRA Request; and (3) even if the NMSC Order provide a valid exception, whether the records custodian still has a legal obligation to produce documents, separated and redacted as appropriate, that are responsive to the request.

A. Legal Standards

i. Motion for Judgment on the Pleadings and Interlocutory Appeal

Direct appeal from the *denial* of a motion for judgment on the pleadings is not permitted by the appellate rules as it is not a final order, thus the denial of a motion for judgment on the pleadings can only be reviewed as an interlocutory appeal and is subject to the requirements of Section 39-3-4 and Rule 12-203. However, whether the district court rightfully or wrongfully denied the motion for judgment on the pleadings is not one of the certified questions in this case. “Although [this Court is] not confined to the particular questions the district court certified for this interlocutory appeal, the scope of . . . review must be limited to the issues fairly contained in the order.” *Curry v. Great Nw. Ins. Co.*, 2014-NMCA-031, ¶ 8 (internal

citation omitted). While this Court could reach the question of whether the motion was properly denied, this Court's precedent would suggest that it should decline "to address an issue that was neither the basis of the district court's order nor specifically certified for interlocutory appeal." *Id.*

As to the three questions certified to this Court, interlocutory appeals are "an exception to the rule that appeals may only be taken from final judgments," and therefore an

[a]pplication for appellate review of non-final orders is allowed only in limited circumstances when the district court certifies: (1) the order involves a controlling question of law on which there is substantial ground for difference of opinion; and (2) resolution of the question will materially advance the ultimate termination of the litigation.

Candelaria, 1988-NMCA-065, ¶ 5 (citing Section 39-3-4(A)).

There does not appear to be a case where this Court has opined on the *denial* of a motion for judgment on the pleadings in an interlocutory matter. However, Rule 1-012(C) is "in all material respect[s]" the same as Federal Rule of Civil Procedure 12(c) and therefore, although this Court is not bound by federal decisions, the "reasoning of federal decisions on th[e] matter, if not in conflict with controlling New Mexico authority, can be persuasive." *Sundial Press v. City of Albuquerque*, 1992-NMCA-068, ¶ 8, 114 N.M. 236.

The Tenth Circuit has considered cases regarding the "denial of a motion for judgment on the pleadings pursuant to Fed.R.Civ.P. 12(c)" and has done so "under

the same standard of review applicable to a Rule 12(B)(6) [NMRA] motion.” *Ramirez v. Dep’t of Corr., Colo.*, 222 F.3d 1238, 1240 (10th Cir. 2000) (internal citation omitted). The Tenth Circuit determined that review of the denial of such a motion should be “de novo, applying the same standard as the district court . . . accept[ing] the well-pleaded allegations of the complaint as true and constru[ing] them in the light most favorable to the plaintiff.” *Id.* “Generally, the complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Id.* (internal quotation marks and citation omitted).

Use of this federal standard here is supported by New Mexico cases involving the *granting* of a motion for judgment on the pleadings. *See New Mexican, Inc.*, 2024-NMSC-025, ¶ 17 (stating this Court “reviews the district court’s grant of a Rule 1-012(C) motion for judgment on the pleadings de novo,” treating “a motion for judgment on the pleadings like a Rule 1-012(B)(6) motion to dismiss for failure to state a claim” (internal quotation marks and citation omitted)). A Rule 1-012(B)(6) motion “tests the legal sufficiency of the complaint, not the factual allegations of the pleadings which, for purposes of ruling on the motion, the court must accept as true” and “resolve all doubts in favor of sufficiency of the complaint.” *Id.* (internal quotation marks and citation omitted).

ii. IPRA Standards

The purpose of IPRA is to provide the public with the greatest information possible regarding government affairs and the official acts of public officers and employees. NMSA 1978, § 14-2-5 (1993). In other words, public access to government is the rule, and withholding by the government is the exception. *Cf. State ex rel. Newsome v. Alarid*, 1977-NMSC-076, ¶ 26, 90 N.M. 790 (“[F]reedom of information is now, by statute, the rule, and secrecy is the exception.” (alteration in original)). The broad statutory language of Section 14-2-6(G) of IPRA defines what constitutes a public record, and IPRA otherwise specifically sets forth the duties of a records custodian to cull through records to ascertain all those records that are public records and responsive to the IPRA request. Once a public record has been identified, the next question is whether it is subject to an exception under IPRA.

Although IPRA exempts certain “public records” from being subject to inspection, the exceptions are narrow. *See Dunn v. N.M. Dep’t of Game & Fish*, 2020-NMCA-026, ¶ 13. Through its enactment of Section 14-2-1, the Legislature established categories of exempt public records, along with the catch-all category “as otherwise provided by law.” Section 14-2-1(N). The New Mexico Supreme Court subsequently interpreted the meaning of Section 14-2-1(N), concluding that courts are to “restrict their analysis to whether disclosure under IPRA may be withheld because of a specific exception contained within IPRA, or statutory or

regulatory exception, or privileges adopted by [the New Mexico Supreme Court], or grounded in the Constitution.” *Republican Party of N.M. v. N.M. Tax’n & Revenue Dep’t*, 2012-NMSC-026, ¶ 16.

Where a public record contains both exempt and nonexempt information, IPRA explicitly establishes that a records custodian must separate the exempt information from the nonexempt information and make the nonexempt information available for inspection. *See* § 14-2-9(A). In *Henry v. Gauman*, this Court parsed out when a records custodian must redact exempt information from when the records custodian needs only to separate exempt public records from nonexempt public records. 2023-NMCA-078, ¶ 20 (concluding “[w]hen an exemption applies to a document as a whole . . . Section 14-2-9(A) requires the custodian of records to separate exempt documents from nonexempt documents. When an exemption applies only to certain portions of a document . . . redaction [is required]” (internal citation omitted)).

Thus, if a public record is exempt from inspection by a source of law contemplated under IPRA’s catch-all exemption, the public record is only exempt to the extent that the source of law in question also provides that the entire document is exempt from public inspection. In the absence of such language, IPRA demands redaction of the exempt material and production of the nonexempt material. *See* NMSA 1978, § 14-2-9(A) (2013).

B. District Courts Can Interpret New Mexico Supreme Court Orders.

The first certified question before this Court on interlocutory appeal is whether a district court can *interpret and apply* a NMSC Order, not whether the district court “correctly ruled that the right to decide the *appropriateness or validity* of a New Mexico Supreme Court order belongs to the New Mexico Supreme Court, not the district court.” [*Compare BIC 12, 13, with RP 338 (district court order) (emphasis added)*] The answer to the question actually presented to this Court is that district courts across this State interpret and apply this Court’s orders regularly, and, likewise, the district court here can interpret and apply the NMSC Order.

i. This Court should accept certification of this jurisdictional question.

The Court of Appeals had not yet specifically granted interlocutory appeal, instead certifying the case to this Court without such a ruling. This Court should respectfully answer this question, even if it refuses to accept Defendant’s application, because it presents a controlling question of law of which there is a substantial ground for a difference of opinion. The district court has not specifically concluded it had jurisdiction and where the district court’s jurisdiction is being not only challenged, but used as a basis to not answer discovery, this Court’s intervention would be critical to proceeding below.

Nonetheless, immediate review of the district court’s jurisdiction to evaluate Defendant’s interpretation and application of the NMSC Order under IPRA, as will

be discussed below, is necessary to promote efficiency and avoid protracted litigation in this matter. **[RP 337]** An interlocutory appeal in this complex IPRA matter is appropriate because the parties and the district court are expending considerable State resources—as all parties are members of State government—to bring this action to trial, and resolution of a core question of law is necessary to properly direct litigation in this matter. Indeed, it would be a waste of State resources to proceed in a trial in which the district court does not have jurisdiction to resolve the causes of action identified by Plaintiff in its Complaint.

This Court’s answer to the question of whether a district court has the authority to determine whether a records custodian properly interpreted a NMSC order will materially impact the underlying litigation, no matter what answer is given. If answered in the affirmative, Defendant’s stonewalling of the underlying litigation due to this unanswered question would be vitiated, and the lawsuit and discovery could proceed. Moreover, answering in the affirmative would prevent setting precedent that may flood this Court with district court questions seeking interpretation of this Court’s administrative orders due to district courts’ fear they do not have proper authority to proceed in interpreting and applying the orders.

ii. The district court has authority to interpret NMSC orders.

Specifically, the district court found, but did not certify to this Court, that

[a]lthough the parties contest whether Plaintiff asks [the district court] to opine on the appropriateness or validity of the NMSC Order, to the

extent such a request is present, it would not be for [the district court] to make such a determination. The right to decide on the appropriateness or validity of a New Mexico Supreme Court order would belong to the New Mexico Supreme Court, not to a district court.

[RP 338] But that is not the relief sought by the Complaint, was not before the district court, and is not before this Court. Rather, the Complaint seeks the district court's determination of whether a records custodian properly *interpreted* a New Mexico Supreme Court order, which would require the district court to read and apply the same order.

Plaintiff asserts both this Court and the district court have indisputable jurisdiction over IPRA enforcement, and the Attorney General is entitled to enforce IPRA violations. *See* § 14-2-12(A)(1) (providing for the Attorney General's right of enforcement); § 14-2-12(B) (providing that a district court may enforce IPRA). None of the causes of action brought by Plaintiff require the district court to consider or opine on the NMSC Order itself. **[RP 15-19]** The district court recognized this and denied Defendant's Motion. As part of its role in hearing IPRA enforcement matters, district courts are frequently charged with determining whether a records custodian properly interpreted the law. That is all that Plaintiff's causes of action ask of the district court here: to read the NMSC Order and Section 31-3-12 and determine whether either supports a good-faith basis for Defendant's denial of the Barker Request and the Laughlin Request. Here, the district court already found that the NMSC Order *can* operate as a basis for a good-faith denial, but that "Plaintiff has

the right to bring this action for the purpose of testing the breadth of the NMSC Order under IPRA.” **[RP 337]** That process should be permitted to proceed.

During argument on Defendant’s Motion, Plaintiff provided the district court with an analogy arising from the COVID-19 pandemic, when this Court was very active in issuing administrative orders. Those orders placed restrictions on the judiciary such as, for example, what type of trials must be held, and, if held, how many individuals might be in the same space. *See, e.g.*, New Mexico Supreme Court Or. 20-8500-002. Under such orders, hypothetically, if a district court TCAA began setting every trial, mandatory or not, or if a bailiff began allowing any number of people into a courtroom for a trial, a district court judge would have been able to step in and correct the TCAA or the bailiff’s misinterpretation or misapplication of this Court’s administrative order without the district court having to certify a question to this Court seeking guidance on its meaning. These hypothetical scenarios are different from the very real cases filed during that time actually challenging this Court’s orders as being unconstitutional.

Here, Defendant conflates jurisdiction over “validity” with jurisdiction over interpretation. Defendant avers that the district courts cannot “overturn, modify, or decline to follow the NMSC Order.” **[RP 79]** Plaintiff is not asking the district court to take any of these actions. The Complaint, while admittedly alleging that the NMSC Order may not be valid, seeks no relief on that allegation because regardless

of its validity, Defendant’s interpretation of both the NMSC Order and Section 31-3-12 are erroneous. Accordingly, the Complaint sought relief based on the Defendant’s misinterpretation and misapplication of the NMSC Order and Section 31-3-12. Despite that, and despite the posture of the underlying action being a motion for judgment on the pleadings—which tests the legal sufficiency of the complaint taking the allegations pled therein as true and in the light most favorable to Plaintiff—Defendant contends on appeal that only this Court, and not a district court, can tell Defendant her interpretation of the NMSC Order and Section 31-3-12 is wrong.

Defendant cites to various cases in an attempt to support her argument regarding the “validity” of the NMSC Order; however, while the cases are inapposite as to *that* premise because it is not at issue here, they all nonetheless support *Plaintiff’s* argument here. **[BIC 13]** In *State v. Bently*, A-1-CA-39134, mem. op., ¶¶ 13-16 (N.M. Ct. App. Nov. 21, 2023) (nonprecedential), the court of appeals reviewed determinations made by a district court regarding a New Mexico Supreme Court order. The district court in the underlying matter had interpreted and applied this Court’s order in that case, much as Plaintiff asks the district court here to do. That process was upheld by the court of appeals. The distinction between interpretation and application and validity was drawn out by the court of appeals, which, in emphasizing what that case was *not* about, stated,

[w]e note that *to the extent* [the d]efendant’s arguments in this regard imply that the Supreme Court Order is, itself, unconstitutional and conflict with existing precedent, we remind [the d]efendant that we are precluded from reviewing arguments *challenging the constitutionality or validity* of New Mexico Supreme Court orders, and *such arguments* should be made directly to the Supreme Court.

Id. ¶ 16 (emphases added). *State v. Stelle*, 2023-NMCA-053, like *Bentley*, operates to support Plaintiff’s argument that district courts are able to interpret and apply New Mexico Supreme Court Orders. *Id.* ¶¶ 2-3. Defendant’s reliance on *Alexander*, 1973-NMSC-030, ¶ 9, fares no better when the district court here is not being asked to “reverse” the superior court’s precedential opinion.

As acknowledged in *Bentley* and *Stelle*, a district court has the authority to read the plain language of the NMSC Order and Section 31-3-12 in harmony and, thereafter, to hold an in-camera hearing to see if Defendant has properly denied the IPRA requests at issue. This is the process most recently reaffirmed by this Court in *Albuquerque J. v. Bd. of Educ. of Albuquerque Pub. Schs.*, where this Court stated that it wished to

emphasize the importance of in-camera review when determining whether an exception may apply or inspection is required. In camera review has the most direct capacity to evaluate both the suitability of the sought record as a public record as well as the basis for a records custodian’s claim that the public record depicts something specifically exempted by IPRA.

___-NMSC-___, ¶ 17 (S-1-SC-40671, May 28, 2026). This is because, while the assertion of confidentiality may seem persuasive “in the abstract, in-camera review

of the actual contents” may readily demonstrate that the assertion is false or does not apply. *Id.*

Defendant’s position in this case operates a gross injustice upon the public, where Defendant is the only person to have any knowledge of the records at issue. There has been no production. There has been no in-camera review. There has been no discovery. All that exists is Defendant’s assertion that the records are all confidential, without providing any mechanism for that conclusion to be tested—*not even by this Court*. This position is untenable and unsupported by the law. This Court should therefore conclude that the district court has the authority to determine whether Defendant properly interpreted the NMSC Order.

C. The NMSC Order Is Not a Valid IPRA Exception, and Even If It Were, It Would Not Permit Blanket Denial.

If the Court reaches the second question on interlocutory appeal—whether the NMSC Order is a valid IPRA exception and, if so, whether it permits blanket denial—this does not, as alleged by Defendant in her opening brief, place judicial employees in a position of needing to choose between inviting litigation initiated by the Attorney General or suffering an employment consequence from this Court. [BIC 20] Indeed, contrary to Defendant’s sky-is-falling assertion, no court employees were harmed in the drafting or filing of the Complaint, there is no “catch-22 scenario to the separation of powers doctrine,” and Plaintiff does not argue that the Attorney General’s policy preferences should be followed over the Court’s

Order. [*Id.*] Rather, if Defendant and other court employees *correctly* interpreted the NMSC Order, as well as Section 31-3-12, there would simply be no need for litigation.

Defendant contends that Plaintiff seeks to “amend” its Complaint through briefing. [**BIC 14-15**] A review of Plaintiff’s briefing would suggest otherwise. Plaintiff has always stood behind its allegations in the Complaint *and* its belief that the district court can read the plain language of the NMSC Order—just like Defendant can—and rule that Defendant’s interpretation is wrong. [**Compare BIC 15, with RP 107-09**] Defendant’s belabored argument that only she can read and interpret the NMSC Order, and only this Court can correct her, is legally erroneous, *see supra* §§ II(C), III(B)(ii), and should be corrected so the district court may proceed with the IPRA matter and the determinations that must be made as part of that process.

In fact, despite her purported dire concerns of potentially violating the NMSC Order, Defendant did not seek clarification from this Court and, instead, simply drew an erroneous conclusion of law and, subsequently, manufactured a battle between the Attorney General and the judiciary. There is no battle; Plaintiff agrees with this Court: “Our democratic system of government necessarily assumes the existence of an informed citizenry. Without some protection for the acquisition of information about the operation of public institutions the process of self-governance

contemplated by the Framers would be stripped of its substance.” *Albuquerque J.*, ____-NMSC-____, ¶ 1.

Plaintiff likewise does not disagree with the district court in its conclusion that the NMSC Order *could* provide a valid exception under Section 14-2-1(N).⁶ What Plaintiff disagrees with is Defendant’s interpretation of this Court’s order and Section 31-3-12.

i. The NMSC Order does not provide a valid exception under Section 14-2-1(N).

As to the first portion of the second interlocutory question—whether the NMSC Order provides a valid exception under Section 14-2-1(N)—Plaintiff contends the NMSC Order does not provide a valid exception under Section 14-2-1(N) and Plaintiff is unaware of any precedent establishing otherwise. This matter is distinguishable from this Court’s other IPRA precedent, except as otherwise discussed below. Indeed, Plaintiff is unaware of any precedent that establishes that this Court’s administrative orders may function as a valid IPRA exception under Section 14-2-1(N). The closest cases Plaintiff has found on the matter is this Court’s recent opinion in *ACLU of New Mexico*, ____-NMSC-____, ¶ 23, addressing administrative regulations and its predecessor case of *City of Las Cruces v. Pub.*

⁶ To the extent Plaintiff would contest this conclusion, Plaintiff acknowledges that a proper avenue for such a contest would be through a direct appeal at the close of this case.

Emp. Labor Relations Board, 1996-NMSC-024, 121 N.M. 688, *overruled in part on other grounds by Republican Party of N.M.*, 2012-NMSC-026. Much as administrative regulations provide guidance to the administrative agencies, this Court’s administrative orders function to provide administrative guidance to the judiciary.

In *ACLU of New Mexico*, the ACLU sought records relating to use-of-force incidents at a New Mexico Corrections Department (NMCD) facility, which NMCD denied by asserting that its internal policies designated such records “confidential.” *ACLU of N.M.*, ¶ 2. This Court therefore addressed whether NMCD could withhold records requested under IPRA based on confidentiality provisions found only in NMCD’s internal policies. *Id.* The Court held that IPRA’s catch-all exception permitting withholding of records “as otherwise provided by law” under Section 14-2-1(N) incorporates only formally promulgated administrative regulations that are both (1) authorized by statute and (2) intended by the Legislature to effectuate confidentiality, secrecy, or nondisclosure of the type of records at issue. *ACLU of New Mexico*, ___-NMSC-___, ¶¶ 3, 16-24. This Court thus concluded that NMCD’s internal policies could not operate as an enforceable regulatory exception to the right of inspection under Section 14-2-1(N) because they were not properly promulgated under a process that involved public notice and comment and a public hearing. *ACLU of New Mexico*, ___-NMSC-___, ¶¶ 26-27.

As this Court stated in that case, it “could think of no better example of a regulation affecting any person or agency outside of NMCD than policies which seek to exempt records from public inspection.” *Id.* ¶ 28. The Court concluded that, as there was no formal promulgation, the “policies serve[d] only as interpretive rules which provide internal guidance about the treatment of NMCD records.” *Id.* ¶ 29. Less pertinent here perhaps, this Court also determined that NMCD lacked clear statutory grounding in a legislative intent to make the records in that matter confidential. *Id.* ¶¶ 25-30.

ACLU of N.M. has application here, where the NMSC Order functions much like NMCD’s internal policies and regulations. NMSC orders are not formally promulgated, there is no notice, there is no comment, and there is no public hearing. They are meant, as the internal policies of NMCD were, to be “interpretive rules which provide internal guidance,” here, to the judiciary. Additionally, the NMSC Order does not “effectuate” Section 31-3-12 because it broadens the specific scope of that Legislative statute. *See supra* §§I(A), II (B) (the statute references “GPS data,” whereas the NMSC Order covers “all information”). Where the Legislature was specific regarding what was to be confidential, under *ACLU of N.M.*, the NMSC Order only partially “serve[s] the purpose of the statute[.]” *Id.* ¶ 22.

As the NMSC Order here would not meet the test set forth in *ACLU of N.M.*, it too should not provide an independent exception under Section 14-2-1(N) of

IPRA. While the judiciary may certainly provide guidance procedures for the judiciary, it may not regulate outside the judiciary by carving out an additional exception under IPRA without, at least, proper notice and comment. *See ACLU of N.M.*, ___-NMSC-___, ¶ 28 (noting that there is “no better example of a regulation affecting any person or agency outside of NMCD than policies which seek to exempt records from public inspection”). Here, the NMSC Order does just that: it provides guidance procedures for the judiciary; it does not, however, create an independent IPRA exemption outside of Section 31-3-12. Thus, to the extent Defendant contends that the NMSC Order provides an exemption to IPRA disclosure beyond what is contained in IPRA and Section 31-3-12, her argument is without support and must fail.

ii. Records custodians may not determine that the NMSC Order supports a blanket denial under IPRA.

As to the second portion of the second interlocutory question—whether the NMSC Order permits blanket denial—Plaintiff contends it does not. In support of her denial of the Barker Request and her blanket denial of the Laughlin Request, Defendant points to the NMSC Order and Section 14-2-1(N). However, even assuming the NMSC Order is “valid,” neither it, nor IPRA permit a records custodian to withhold production as a whole, or in part, without proper separation and redaction. *Albuquerque J.*, ___-NMSC-___, ¶ 3 (holding that a document is “not wholly exempt from public inspection if it contains both exempt and nonexempt

information Section 14-2-9(A) requires exempt information to be separate and removed or redacted and nonexempt information to be made available for inspection.” *Id.* (internal quotation marks, alterations, and citation omitted)).

Similarly, if any of the information is electronically stored, IPRA requires that

[e]xempt information in an electronic document shall be removed along with the corresponding metadata prior to disclosure This language compels the conclusion that Section 14-2-9(A) requires records custodians to separate exempt and nonexempt information contained in a single public record by removing or redacting exempt information from a document before disclosing the nonexempt information to the public.

Id. ¶ 29.

Here, Defendant failed to properly administer IPRA when she failed to separate out the exempt and the nonexempt information. Defendant, after mistakenly arguing to the district court that the records were not public records *and* that they were otherwise exempt, points to the NMSC Order to support her exemption argument that “[p]retrial services supervision records” includes “*all information contained in a defendant’s pretrial services file*” and so, in other words, the entire file is exempt from having to be identified, separated, and redacted under IPRA. **[RP 88]**

Now before this Court, Defendant’s argument has become even further abridged where she contends that “the NMSC Order defines all PTS Records as *not public records*[.]” **[BIC 18]** First, as has already been discussed above, this is not

what the NMSC Order states. The NMSC Order does not just say “all information”; it narrows “all information” by such information found “in *a defendant’s* pretrial services file[.]” **[RP 88 (emphasis added)]** So where both IPRA requests sought *anonymized* data of alerts and notifications, and assuming the documents were indeed housed “in *a defendant’s*” pretrial services file, once any responsive record was properly redacted, it would not violate the NMSC Order because “*a defendant’s*” information would not have been made part of the public record and certainly not in a manner that could be linked back to a particular defendant. Defendant glosses over the language “a defendant” as if the NMSC Order reads only “all information in a PTS file.” That is simply not what the NMSC Order states.

Defendant nonetheless attempts to use her interpretation of the NMSC Order and Section 14-2-1(N) to authorize her to decline to: (1) identify all responsive public records, (2) cull through those records and separate exempt from non-exempt, (3) redact what must be redacted, and (4) produce records responsive to each IPRA request. Defendant argues iterations of how she is bound to comply with orders issued by this Court but fails to address whether and how she actually complied with her obligations under IPRA. **[See e.g. BIC 20]** Defendant even goes so far as to suggest that any other “reading and/or interpretation” of the NMSC Order than hers “would violate” the NMSC Order. **[BIC 19]**

Taken at face value, Defendant’s collected arguments seem to suggest that she

believes that she did not even have identify what might be in a pretrial services file because the NMSC Order precludes her from having to follow IPRA. While Plaintiff does not dispute that Defendant must generally follow this Court's orders, Defendant is not exempt from her duties under IPRA. Nothing in the NMSC Order exempts a records custodian from identifying all responsive public records, culling through those records and separating exempt from non-exempt, redacting what must be redacted, and producing records responsive to each IPRA request. In other words, even assuming the NMSC Order is a valid IPRA exception, it does not permit blanket denials.

In sum, as to the second certified question, the NMSC Order does not provide a valid exception under Section 14-2-1(N) for the reasons set forth above. But even if this Court disagrees, the NMSC Order would not permit blanket denial, and Defendant is still required by IPRA to produce, separate, and redact responsive documents.

D. Even if the NMSC Order Provides a Valid Exception under IPRA, the Records Custodian Must Still Separate, Redact, and Produce Responsive Documents.

This question flows from the two prior questions, and its answer will instruct the parties as to the interplay between the NMSC Order and IPRA here. Because Defendant claims she does not have a legal obligation to produce responsive documents—separated and redacted as appropriate—because of the NMSC Order,

both the underlying litigation and discovery have stalled. **[BIC 22]**

The district court opined that “Plaintiff has a right to bring this action to test the good-faith basis of a record custodian’s denial of an IPRA request.” **[RP 337]** But Defendant claims, as set forth more fully above, that she is exempt from her duties under IPRA because of the NMSC Order. **[BIC 21-23]** Defendant asserts that she understands the redaction process and that she “attempted to produce the publicly available records[.]” **[BIC 22]** She goes on to state that this is “not a situation whereby there was a blanket denial.” **[Id.]** Defendant reiterates the incorrect claim that “this Court’s Order makes clear all PTS Records are confidential.” **[Id.]** Finally, Defendant asserts that she has no obligation to separate and sort where the NMSC Order says “all”—pulling that “all” outside of its context within the remainder of the NMSC Order’s language. **[Id.]**

Here, Defendant improperly denied both the Barker Request and the Laughlin Request, the latter of which *was* a blanket denial. **[Compare BIC 22, with RP 8-9]** While Defendant may not appreciate that Plaintiff should have the ability to “test the breadth” of the NMSC Order—especially where the language of the NMSC Order is interpreted differently by Plaintiff and by Defendant—the district court’s determination is sound. **[Compare RP 337, with BIC 23]** The NMSC Order does not state that “everything in a pre-trial services file is confidential,” and continual attestation of that incorrect paraphrase of the NMSC Order should not result in

Defendant's argument prevailing. [*Compare* BIC 6, 18, 19, 22, 23, *with* RP 87-94] *See also supra* §§ I(A), II(B),(C). As there is not blanket confidentiality where documents might be redacted to anonymize data, Defendant has an obligation under Section 14-2-9(A) to separate and remove exempt information, to redact, and "make nonexempt information . . . available for inspection." *Albuquerque J.*, ___-NMSC-___, ¶ 3; *see also supra* § II(C)(ii).

Plaintiff continues to maintain that IPRA and the NMSC Order can be read in harmony. Defendant's apparent belief that she is empowered by the NMSC Order to decline to produce responsive—and, as appropriate, redacted—documents to IPRA requests is based in a misinterpretation of the NMSC Order and a misapplication of the law. This Court's resolution as to the three questions certified for interlocutory appeal are, therefore, critical to allowing the underlying litigation to proceed appropriately and in a manner that achieves judicial economy.

CONCLUSION

To the extent this Court were to grant all or a portion of Defendant's interlocutory application, and thereafter reach the questions certified to this Court, Plaintiff respectfully requests this Court conclude: (1) that the district court has the authority to determine whether a records custodian has properly interpreted a NMSC Order; (2) that the NMSC Order is not a valid exception under Section 14-2-1(N) and Defendant was not authorized to issue a denial, or blanket denial, of an IPRA

request based upon the NMSC Order, and (3) that Defendant still has a legal obligation to produce documents, separated and redacted as appropriate, that are responsive to the request.

Additionally, Plaintiff respectfully requests this Court affirm the district court's denial of Defendant's Motion and remand this matter for further litigation and discovery in accordance with the Rules of Civil Procedure, and for further relief as is deemed proper by this Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2026, a true and correct copy of the foregoing Answer Brief was served on all counsel of record via electronic transmission through the Odyssey File & Serve System.

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