

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT**

**AMERICAN CIVIL LIBERTIES UNION
OF NEW MEXICO,**

Plaintiff,

vs.

No. D-202-CV-2017-04971

CITY OF ALBUQUERQUE,

Defendant.

**COMPLAINT TO ENFORCE THE INSPECTION OF
PUBLIC RECORDS ACT, FOR PRODUCTION OF PUBLIC
RECORDS, AND FOR DAMAGES, COSTS, AND ATTORNEYS' FEES**

Plaintiff brings this action seeking the disclosure of public records pursuant to the Inspection of Public Records Act, NMSA 1978, Sections 14-1-1 to -14 (1993, as amended through 2013) (“IPRA”). On May 22, 2017, Plaintiff submitted an IPRA request to Defendant City of Albuquerque regarding the use of Stingrays (also known as “International Mobile Subscriber Identity (ISMI) catchers” or “cell site simulators”) by the Albuquerque Police Department (attached as Exhibit 1). On June 5, 2017, Plaintiff received a response from Defendant denying several of Plaintiff’s requests on the basis of NMSA 1978, §14-2-1(A)(4) of IPRA, which exempts a narrow category of information relating to law enforcement investigations from public inspection. Defendant’s refusal to allow Plaintiff to inspect the requested records is a violation of IPRA. *See Exhibit 1.*

To ensure public safety and trust in local government and local law enforcement, it is imperative that people have access to information of the sort sought by Plaintiff regarding the

Albuquerque Police Department's use of Stingray technology. It is crucial that these records be disclosed to the public as required by IPRA.

JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to NMSA 1978, § 14-2-12.
2. Venue is proper pursuant to NMSA 1978, § 38-3-1.

PARTIES

3. Plaintiff American Civil Liberties Union of New Mexico ("ACLU-NM") is a nonprofit corporation, organized pursuant to the laws of the State of New Mexico, and with its principal place of business in Albuquerque, Bernalillo County, New Mexico.
4. Defendant City of Albuquerque is a local governmental entity located in the state of New Mexico and has a designated records custodian to whom requests to inspect records are addressed.

FACTS

5. Stingrays are cell phone surveillance devices that simulate cell phone towers and trick nearby mobile devices into connecting with them, thereby revealing their location and identifying information. When used to track a particular person's phone, they also gather information about the phones of countless bystanders who happen to be nearby.
6. On May 22, 2017, Plaintiff submitted an IPRA request to Defendant, seeking seven separate categories of records. *See Exhibit 1.*
7. On June 5, 2017, Defendant responded to Plaintiff's request.
8. Regarding three of the requests, Defendant responded that there were no responsive records that met Plaintiff's request.
9. The remaining four requests sought the following information:

- Policies and procedures regarding the collection, retention, and storage of data collected from cellphones and digital devices through the use of ISMI catchers or other related technologies used to collect and analyze digital data. This includes how the APD handles data that it obtains from innocent bystanders who are not the targets of investigation.
- Policies and procedures regarding the personnel authorized to use ISMI catchers, including whether or not such personnel are required to obtain warrants and/or go through training before utilizing such technologies.
- Policies and procedures, official guidelines, agency directives, or any information regarding the use of ISMI catchers to be used in conjunction with federal agencies including the Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE) in immigration related investigations.
- Contracts or purchase agreements with the Harris Corporation, federal law enforcement agencies, or manufacturers of technology used to capture, store and analyze digital data.

10. Defendant responded to each of these requests by stating that the “records are confidential law enforcement records protected under Section 14-2-1 (A)(4) of the Inspection of Public Records Act.”

11. The law enforcement exemption under NMSA 1978, §14-2-1(A)(4) of the IPRA statute narrowly exempts the following information:

[L]aw enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime. Law enforcement records include evidence in any form received or compiled in connection with a criminal investigation or prosecution by a law enforcement or prosecuting agency, including inactive matters or closed

investigations to the extent that they contain the information listed in this paragraph[.]

12. Plaintiff's requests do not seek records that fall under the law enforcement exemption set out in NMSA 1978, §14-2-1 (A)(4) and, thus, are public records that must be made available to Plaintiff for inspection pursuant to IPRA.

CLAIM FOR VIOLATION OF THE INSPECTION OF PUBLIC RECORDS ACT

13. Plaintiff incorporates by reference the preceding paragraphs as though fully stated herein.
14. IPRA provides that “[e]very person has a right to inspect public records of this state.” NMSA 1978, § 14-2-1 (2011).
15. The records requested by Plaintiff constitute public records as defined by IPRA. NMSA 1978, § 14-2-6(G) (2013).
16. Defendant violated IPRA by failing to permit inspection of the public records requested by Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

- A. Order Defendant to provide the requested public records to Plaintiff;
- B. Award damages, costs and reasonable attorneys' fees to Plaintiff; and
- C. Grant such other and further relief as the Court deems proper.

DATE: July 6, 2017

Respectfully submitted,

/s/ María Martínez Sánchez
María Martínez Sánchez
ACLU of New Mexico
P.O. Box 566
Albuquerque, NM 87103-0566
P: (505) 266-5915 Ext. 1004
F: (505) 266-5916
msanchez@aclu-nm.org

From: City of Albuquerque Public Records [mailto:cityclerk@cabq.gov]
Sent: Monday, June 05, 2017 9:42 AM
To: Katie Hoepfner
Subject: [External Message Added] City of Albuquerque public records request 17-2116

-- Write ABOVE THIS LINE to post a reply --



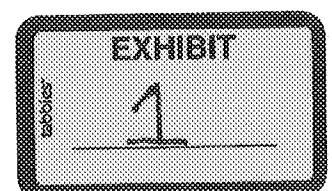
City of Albuquerque Public Records Requests

A message was sent to you regarding record request #17-2116:

Katie Hoepfner,

This email will acknowledge closure of your public records request dated May 22nd, 2017.

- *How many ISMI catchers the Albuquerque Police Department (APD) currently owns and operates.*
- *Policies and procedures regarding the collection, retention, and storage of data collected from cellphones and digital devices through the use of ISMI catchers or other related technologies used to collect and analyze digital data. This includes how the APD handles data that it obtains from innocent bystanders who are not the targets of investigation.*
- *Policies and procedures regarding the personnel authorized to use ISMI catchers, including whether or not such personnel are required to*



obtain warrants and or go through training before utilizing such technologies.

- *Records or statistics that depict how often the APD has used ISMI catchers since acquiring them.*
- *Policies and procedures, official guidelines, agency directives, or any information regarding the use of ISMI catchers to be used in conjunction with federal agencies including the Department of homeland Security (DHS) and Immigrations and Customs Enforcement (ICE) in immigration related investigations.*
- *Contracts or memorandums of understanding with external agencies, including the New Mexico Department of Public Safety, Bernalillo County Sheriff's Office, or any federal agencies regarding the shared use of ISMI catchers and the data collected.*
- *Contracts or purchase agreements with the Harris Corporation, federal law enforcement agencies, or manufacturers of technology used to capture, store and analyze digital data.*

The Following are numbered as requested items list received above :

- #1 - There are no responsive records to your request
- #2 - The records requested are confidential law enforcement records protected under Section 14-2-1(A)(4) of the Inspection of Public records Act.
- #3 - The records requested are confidential law enforcement records protected under Section 14-2-1(A)(4) of the Inspection of Public records Act.
- #4 - There are no responsive records to your request
- #5 - The records requested are confidential law enforcement records protected under Section 14-2-1(A)(4) of the Inspection of Public records

Act.

- #6 - There are no responsive records to your request
- #7 - The records requested are confidential law enforcement records protected under Section 14-2-1(A)(4) of the Inspection of Public records Act.

Please do not hesitate to contact me if you have any questions or comments.

Kind regards,

Office of the Acting APD Records Custodian

Valerie Barela

Acting APD Records Custodian/ Acting Records Supervisor

400 Roma Avenue NW, Alb., NM 87102

Office (505) 768-2137

Cell (505) 270-5863 between the hours of 8:00 AM – 4:30 PM.

apdipra@cabq.gov

View Request 557,2416

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