

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

**DANNY HAWKES, MARY ALICE HAWKES
and ANGELA HAWKES, as the Personal
Representatives of the ESTATE OF MARY
S. HAWKES, deceased.**

Plaintiffs,

v.

No. D-202-CV-2016-01373

CITY OF ALBUQUERQUE,



Defendant.

Affidavit of Reynaldo Chavez

I, Reynaldo Chavez, the affiant, being over the age of eighteen, having been duly sworn, state under oath and penalty of perjury that:

1. I was hired for the position of Central Records Supervisor and Records Custodian for the Albuquerque Police Department (“APD”) in June of 2011.
2. I was assigned a permanent position as a classified employee of the City of Albuquerque on December 3, 2011.
3. I was the designated “custodian of public records” for APD pursuant to NMSA 1978, § 14-2-7 (2011) and as further defined by NMSA 1978, § 14-2-6 (2013), both subsections of New Mexico’s Inspection of Public Records Act (“IPRA”).
4. In compliance with the statutory requirements of NMSA 1978, § 14-2-7 (2011) (hereinafter IPRA), in addition to other assigned duties, I was tasked, by the City of Albuquerque to: A. receive requests, including through electronic mail or facsimile, to inspect public records; B. respond to requests in the same medium, electronic or paper, in which the request was made in addition to any other medium that the custodian deemed appropriate; C. provide proper and reasonable opportunities to inspect public records; D.

provide reasonable facilities to make or furnish copies of the public records during usual business hours.

5. As a consequence of being APD's Records Custodian, when parties brought forward legal actions against the City of Albuquerque for alleged violations of IPRA, I was named as a party to lawsuits.
6. On November 18, 2013, City Chief Administrative Officer Robert J. Perry ("CAO Perry") approved my promotion to the position of "IPRA Supervisor."
7. My job description, duties, and responsibilities included, but were not limited to restructuring the process of how APD received and responded to Inspection of Public Records Act ("IPRA") requests, receiving IPRA requests, coordinating the gathering of records, including lapel camera and cell phone videos held by the City of Albuquerque and APD, satisfying IPRA requests, and responding to subpoenas served upon APD as well.
8. In determining what records and videos were responsive to IPRA requests concerning "high profile" officer involved shooting cases, I had limited discretion and was required to seek approval for records and videos released from the City of Albuquerque Police Department.
9. As APD's Records Custodian, my name was publicly presented by the City of Albuquerque as the point of contact for all persons seeking to submit IPRA requests to APD concerning officer involved shooting cases.
10. Additional duties the City assigned to me included developing, creating, and maintaining an electronic database to track all IPRA requests from the initial request to final dissemination of public records that was heralded as a benchmark program.

11. The City provided to me one Apple iPhone, two Apple iPads, a premium high performance Hewlett Packard desktop computer, a four-terabyte external hard drive, a ten-stage CD burner to copy lapel video or other video, a government vehicle, a private parking space, a City corporate VISA or MASTERCARD, and large volume scanning equipment (purchased with JAG grant funds) in support of my position along with a large private office.
12. As Records Custodian, I supervised two City employees. In support of the new unit, APD contracted with Select Staffing, Inc. to provide up to three temporary workers to assist in receiving, processing, and responding to IPRA requests.
13. With the volume of IPRA requests received by APD numbering up to two dozen requests a week, I divided the workload into four categories: high profile requests, media requests, citizen requests, and law firm requests. Of those, I processed the highest profile requests with the other two employees handling the other requests. Support activities were assigned to employees of Select Staffing, Inc.
14. City of Albuquerque employees told me what requests were considered "high profile" and thereafter specifically assigned me direct responsibility to respond to those specific requests they identified as "high profile."
15. Every officer involved shooting including of James Mathew Boyd, Mary Hawkes, and Jeremy Robertson, constituted a high profile IPRA request.
16. As Records Custodian, I was tasked with specific responsibility to address IPRA requests relating to APD use of force (2011 through 2015), including every APD officer involved shooting, and specifically, James Matthew Boyd, Mary Hawkes, and Jeremy Robertson.

17. In support of fulfilling the duties and responsibilities of my position, I requested records from APD units and departments including: documents, lapel camera video, belt tape audio, field investigative reports, photographs, homicide/detective interviews/investigative reports, tactical operation plans, citizen police complaints, cell phone video, cell phone audio, full supplemental reports, witness statements, safe-house interviews, text messages, and email correspondences responsive to a given IPRA request.
18. Upon collection of responsive records, I would seek approval or confirmation from my supervisors concerning the records to be released.
19. In response to IPRA requests related to the deaths of James Matthew Boyd, Jeremy Robertson, and Mary Hawkes, Deputy City Attorney Kathy Levy, and/or a Deputy Chief, told me to deny, withhold, obstruct, conceal, or even destroy records from matters being produced in contravention of IPRA by: A. telling me that records would not be released without any explanation other than “this won’t be released” or words to that effect. Deputy City Attorney Kathy Levy frequently stated simply, “there are items we just will not release and we will just pay the fines or lawsuits.” B. Deputy City Attorney Levy told me to creatively identify an allowable exception to IPRA to withhold production of responsive public records in an effort to “baffle” or frustrate the requestor or otherwise burden them. C. I was told to arbitrarily delay production of responsive public records without justification supporting such delay and to fabricate reasons to burden requestors with additional requirements when such requirements were not needed such as case numbers or increased particularity in a given request such as requiring the IPRA requestor to provide the email addresses of public employees.

20. I know that “political calculations” motivated City employees to commit such unlawful or improper actions. Such political reasons included but were not limited to: concealing misconduct by City personnel, mitigating negative media and public reaction concerning actions by City personnel, retaliating against City personnel, depriving opposing parties of discovery related to pending civil actions against the City and shooting APD officers, encrypting or altering audio and video so that requestors were not able to access information contained therein, and concealing relevant records from the United States Department of Justice.

21. Specifically, I know that from 2013 to the spring of 2014, the primary person in the Criminal Forensic Unit of the City of Albuquerque Police Department, Frank Pezzano, knew how to encrypt and/or erase Taser lapel camera video with a possible result being lapel camera video would either appear blank, encrypted, altered, or corrupted when produced to media and/or attorneys or to any person searching for information concerning the Mary Hawkes shooting.

22. When I learned that Frank Pezzano was erasing, altering, corrupting and/or encrypting lapel camera video, I told his chain of command that it was unlawful.

23. I learned that Lieutenant Aragon was allowing Frank Pezzano to erase, corrupt, alter or encrypt camera video and I told him that it was illegal and unlawful to do so.

24. In response to my telling Lieutenant Aragon that erasing, corrupting, altering, and/or encrypting camera video was unlawful, I was told later that day by Deputy City Attorney Kathy Levy that she was handling the situation.

25. I know that the Scorpion Camera SD cards were easy to make disappear. I know that because I was present in Deputy Chief Garcia’s office when Assistant Chief Huntsman

said “we can make this disappear,” in response to an IPRA request for Jason Peck’s camera with an SD card in it.

26. Prior to April of 2014, I also knew that SD cards were easy to erase. I had heard many people working in and around the APD Evidence Unit that SD Cards were easily “bleached” or “deleted” or “altered,” by APD personnel in the Forensics Unit.

27. From 2013-2015, I had so many IPRA requests for SD card or lapel video that there were approximately five to six new people, at the APD Forensic Unit, tasked with burning copies of video. That is how I learned about SD cards and lapel camera video being either deleted, encrypted, altered, or destroyed.

28. When the City of Albuquerque Police Department had access to Evidence.Com and after the City purchased software for Frank Pezzano to use, I learned that City of Albuquerque administrators, including myself, could edit lapel camera video in any number of ways.

29. I was one of a handful of City of Albuquerque administrators instructed on how to edit in Evidence.com. I was able to see, via the Evidence.com audit trail, that people had in fact deleted and/or altered lapel camera video. Videos, other than Taser videos, could be uploaded to Evidence.com. We were able to build cases on Evidence.com. We were able to alter videos by inserting or blurring images on the videos or by removing images from the video.

30. I learned that Detective Christopher B. Whigham was training other units, specifically, PIOs (public information officers) and Command Staff (located on the 5th floor); and those in the Forensics Unit and the Major Gangs Unit on how to edit video, meaning you could delete video and add images and blur video and/or corrupt the videos so that they were either not usable or altered.

31. With the advent of Evidence.com it became easier to alter video: cell phone video, lapel video or surveillance video as Evidence.com was a very robust and powerful program.
32. When I learned that Albuquerque Police Department employees could alter video using Evidence.com, I voiced my concern first to Detective Whigham who then went to my chain-of-command and in response, Deputy City Attorney Kathy Levy told me to allow Detective Whigham access to Evidence.com.
33. What I would see happen was when an officer wrote a police report and it went through Report Review and then UCR (Unified Crime Reporting) and when it was finalized it became more difficult to claim that there was not video. When a police report noted or mentioned any type of evidence had been submitted to the Evidence Unit, the APD Forensic Unit knew that it would have to account for the video. In those cases, the video would be altered or corrupted if it was damaging to the police department.
34. As a result, I learned that officers working the graveyard shift or those involved in officer involved shootings or the specialized units, like Major Gangs, were instructed not to write their reports until their videos had been reviewed. If their videos did not contain images harmful to the Department, then the officers could indicate that they had recorded a given incident in their report. If the videos contained images that were "problematic" for the Department, the officer was instructed not to mention that there was a recording in the report and/or state that the recording equipment had malfunctioned or that the officer had failed to engage the recorder.
35. The City's motivation was two-fold. The City wanted to appear to be following Chief Eden's edict to record all encounters with civilians on the one hand, while, at the same time, preventing any damaging recordings from reaching the public.

36. I am familiar with the operations of Evidence.com; having been trained by the City of Albuquerque police department to use Evidence.com.

37. I have reviewed the lapel camera video of Officer Brokaw and the lapel camera video Isaac Romero provided to APD Forensic after the shooting of Mary S. Hawkes. Based on my knowledge of Evidence.com, I can see that Officer Brokaw's lapel camera video has been altered by changing the gradient of the resolution on the video. I can see as much as the first twenty seconds of Officer Isaac Romero's video has been deleted. I have reviewed Tanner Tixier's lapel camera video. I can tell looking at Tanner Tixier's video that it has been altered by using the functionalities within Evidence.com where you can make the slides of the video blurry or unclear. I know that these alterations to Taser lapel camera video are possible using Evidence.com and that an audit trail on these videos is also available on Evidence.com. I also know that the Department can delete and alter video and has done so in the past.

38. I recall in the Jeremy Robertson case, I spent almost a day looking at video in response to IPRA requests. I watched video of the Robertson shooting. During this time, I knew that the City of Albuquerque police department was able to alter the videos in a number of ways, as described above.

39. I reviewed a surveillance video taken from a salon in the Jeremy Robertson case. Based on my knowledge of Evidence.com, I can see the salon video has the tell-tale signs that it has been altered and images that had been captured are now deleted. One of the deleted images captured the officers shooting Jeremy Robertson. The Department is capable of deleting images in Evidence.com and has done so in the past.

I declare, under penalty of perjury, that these facts are true and correct to the best of my knowledge and belief.

Affiant:

Reynaldo Chavez
Reynaldo Chavez

SUBSCRIBED AND SWORN to before me this 28 day of October, 2016,

by Reynaldo Chavez.

Erin S. Pearson

Notary Public

My Commission Expires:

3-29-18

