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1           **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2           **RICHARD LEIRER,**

3                     Plaintiff-Appellant,

4           **v.**

**No. 35,154**

5           **NEW MEXICO DEPARTMENT OF**  
6           **PUBLIC SAFETY, GREGORY J.**  
7           **FOURATT, Cabinet Secretary for the**  
8           **New Mexico Department of Public**  
9           **Safety, PETE N. KASSETAS, Chief**  
10           **of the New Mexico State Police, and**  
11           **REGINA CHACON, Records**  
12           **Custodian for the New Mexico**  
13           **Department of Public Safety,**

14                     Respondents-Appellees.

15           **APPEAL FROM THE DISTRICT COURT OF TAOS COUNTY**

16           **Sarah C. Backus, District Judge**

17           Richard Leirer

18           Taos, NM

19           Pro Se Appellant

20           Keitha A. Leonard

21           Tesuque, NM

22           for Appellees

1 **MEMORANDUM OPINION**

2 **SUTIN, Judge.**

3 {1} Plaintiff has appealed from the denial of his petition for writ of mandamus. We  
4 previously issued a notice of proposed summary disposition in which we proposed to  
5 uphold the district court’s decision. Plaintiff has filed a memorandum in opposition.  
6 After due consideration, we remain unpersuaded. We therefore affirm.

7 {2} To briefly summarize the pertinent background, Plaintiff sought an order  
8 compelling Appellees to produce records, including the contents of a personnel file  
9 and an internal affairs file, pursuant to the New Mexico Inspection of Public Records  
10 Act (IPRA), NMSA 1978, §§ 14-2-1 to -12 (1947, as amended through 2013). The  
11 district court concluded these specific documents were exempt from IPRA disclosure  
12 requirements. [RP 326]

13 {3} The record before us reflects that the undisclosed materials were withheld  
14 pursuant to Section 14-2-1(A)(3). This provision has been interpreted to exempt  
15 “documents concerning infractions and disciplinary action, personnel evaluations . . .  
16 and other matters of opinion” from disclosure. *State ex rel. Newsome v. Alarid*, 1977-  
17 NMSC-076, ¶ 12, 90 N.M. 790, 568 P.2d 1236, *superseded by statute as stated in*  
18 *Republican Party of N.M. v. N.M. Taxation & Revenue Dep’t*, 2012-NMSC-026, 283  
19 P.3d 853. This Court has further held that this subsection exempts “information

1 regarding the employer/employee relations” from disclosure, “such as internal  
2 evaluations; disciplinary reports or documentation; promotion, demotion, or  
3 termination information; or performance assessments.” *Cox v. N.M. Dep’t of Pub.*  
4 *Safety*, 2010-NMCA-096, ¶ 21, 148 N.M. 934, 242 P.3d 501.

5 {4} The record before us reflects that the documents in question were created for  
6 the purpose of conducting internal disciplinary proceedings. [RP 321; SRP 343] This  
7 is sufficient to establish that the documents concern disciplinary action, such that they  
8 were properly withheld. *Newsome*, 1977-NMSC-076, ¶ 12.

9 {5} Plaintiff asserts that the documents relating to the internal affairs investigation  
10 should not be regarded as exempt because such documents were not specifically listed  
11 in *Cox*. [MIO 2-3] However, that list, premised with “such as,” is illustrative. 2010-  
12 NMCA-096, ¶ 21. And as previously mentioned, the reference to “disciplinary reports  
13 or documentation,” *id.*, which dovetails with the recognition in *Newsome* that  
14 “documents *concerning* infractions and disciplinary action” are exempt from IPRA  
15 disclosure requirements, 1977-NMSC-076, ¶ 12 (emphasis added), clearly applies. *See*  
16 *generally The Meriam-Webster’s Dictionary* 102 (2005) (defining “concerning” as  
17 “relating to: [regarding]”).

18 {6} Plaintiff argues that there should be no cognizable privacy interest in the  
19 withheld documents [MIO 4-5] and that the public interest in open government

1 militates against non-disclosure. [MIO 5-7] However, insofar as Section 14-2-1(A)(3)  
2 applies, it constitutes legislative recognition of privacy interests in the documents in  
3 question that overrides the more general public interest in disclosure. We will not  
4 second-guess this determination. *See generally State v. Maestas*, 2007-NMSC-001,  
5 ¶ 14, 140 N.M. 836, 149 P.3d 933 (“[The appellate courts’] role is to construe statutes  
6 as written and we should not second guess the [L]egislature’s policy decisions.”).

7 {7} Plaintiff further contends that the “rule of reason” should apply in a fashion that  
8 would favor disclosure. [MIO 8-9] However, the “rule of reason” is no longer  
9 applicable. *See Republican Party of N.M.*, 2012-NMSC-026, ¶ 16 (holding that in  
10 light of the Legislature’s enumeration of specific exceptions to disclosure, there is no  
11 longer any need to apply the rule of reason). For the reasons previously stated, we  
12 conclude that the specific exemption set forth in Section 14-2-1(A)(3) applies. This  
13 ends our inquiry.

14 {8} Finally, Plaintiff argues that his request to inspect “any and all records, police  
15 reports, investigation records[,] and offers of employment” relating to a specific police  
16 officer should have been deemed sufficiently broad to encompass one or more “use  
17 of force forms” and incident reports that were not produced. [MIO 9] However, IPRA  
18 requires that requested records be identified with “reasonable particularity[,]” Section  
19 14-2-8(C), and on the record before us, it is not at all clear that Plaintiff’s broad and

1 general request was sufficiently specific to apprise the custodian that use of force  
2 form(s) and incident report(s) were sought. [RP 52 (¶¶ 25-27), 53 (¶ 30)] Moreover,  
3 one or more incident reports appear to have been produced. [RP 321-22] And finally,  
4 to the extent that Plaintiff wishes to inspect these documents, it appears that the  
5 materials will be provided if a request is made. [RP 52 (¶ 26)] We therefore perceive  
6 no merit to Plaintiff's assertion of error.

7 {9} Accordingly, for the foregoing reasons, as well as the reasons set forth in the  
8 notice of proposed summary disposition, we affirm.

9 {10} **IT IS SO ORDERED.**

10  
11 \_\_\_\_\_  
**JONATHAN B. SUTIN, Judge**

12 **WE CONCUR:**

13 \_\_\_\_\_  
14 **MICHAEL E. VIGIL, Chief Judge**

15 \_\_\_\_\_  
16 **MICHAEL D. BUSTAMANTE, Judge**