

Former city employee sues Albuquerque Police Department officials for obstructing public records requests

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A former Albuquerque, New Mexico city employee has filed a lawsuit against the city and four individual high-ranking Albuquerque Police Department (APD) officials, alleging that he was ordered by the officials to find ways to delay, withhold, deny and in some cases destroy public records requested in high-profile cases. The suit further claims that he was fired for complaining to department officials about those orders.

Among the four individual defendants named in the complaint is Gorden Eden, the chief of the APD, which has been the subject of a number of lawsuits involving police killings, most prominently the murder of homeless mentally ill man James Boyd by two APD officers in March 2014.

The other defendants are APD Assistant Chief of Police Robert Huntsman, APD Legal Advisor Kathryn Levy and APD Support Services Executive Director William Slausen.

The action is being pursued under the New Mexico Whistleblower Protection Act (WPA), which, according to the complaint, forbids a public employer from taking “any retaliatory action against a public employee because the public employee communicates to the public employer or a third party information about an action or failure to act that the public employee believes in good faith constitutes an unlawful or improper act.”

The plaintiff, Reynaldo Chavez, was hired as a Central Records Supervisor and Records Custodian for APD by the city in June of 2011. Among his duties were receiving and responding to requests for public records, providing “proper and reasonable opportunities to inspect” them and providing “reasonable facilities to make or furnish copies” of them.

In addition to documents, public records requests may include lapel camera videos, belt tape audio recordings, photographs, text messages, emails, cell phone videos and other materials.

Chavez received a “Civilian of the Month” award in August 2012 and a “2012 Civilian of the Year” award from the APD, at the time headed by Chief Raymond D. Schultz.

“At no time did Mr. Chavez receive a deficient employment performance review or be placed on a corrective employment performance improvement plan,” according to the complaint. Chavez was promoted to Inspection of Public Records Act (IPRA) Supervisor in November 2013.

Chavez was the point of contact for all IPRA requests, but he “had limited discretion and was required to seek approval for records releases from Defendants.” The defendants determined which requests were to be considered “high profile.” Those included requests concerning Mary Han (a defense attorney considered a thorn in APD’s side, who died in 2010 under mysterious circumstances), District Attorney Kari Brandenburg, APD use of force, APD Internal Affairs, the Police Oversight Commission, officer-involved shootings including James Boyd and Mary Hawkes, anti-police violence protests and others.

According to the lawsuit, the defendants “individually or in aggregate” instructed Chavez to tell requestors that records would not be released without any explanation other than “this won’t be released.” Levy frequently told him that “there are items we will just not release and we will pay the fines or lawsuits.”

They also told him to “creatively identify an allowable exception to the IPRA” in order to “baffle” or frustrate requestors “or otherwise burden them,” to withhold records that they claimed were exceptions to IPRA, to arbitrarily delay production of records without justification, to fabricate reasons “to burden requestors with additional [unnecessary] requirements” like case numbers or “increased particularity.”

In some instances, they told Chavez to “overproduce materials...thus requiring a given requestor to spend time consuming hours sifting through boxes of irrelevant materials when no such responsive records were produced.” They often called, texted or emailed him after hours about pending IPRA matters, and whenever possible “tactically coordinated” the release of “high profile” public records on

days before weekends or holidays to minimize media exposure.

Another of Chavez's duties was the creation of a database of information about IPRA requestors, which "Defendants tasked Mr. Chavez to build...as a means to gather intelligence on various persons and entities who sought information under IPRA from the City," the Complaint alleges.

It further states that Chavez made a number of objections and protests to the defendants, among them verbal statements and demands that they "articulate the basis" for the refusals and issue written orders to him or that they deal directly with requestors.

In April 2015, Roberta Archuleta, a subcontracted employee who was assigned to Chavez's staff, complained to an APD detective that Chavez had verbally, physically and sexually abused her. According to the complaint, she filed her complaint shortly after he had met with her and "informed her that she was on notice to provide a doctor's note if she took any more sick days off [which she often did on Mondays and Fridays] or was otherwise going to be let go for abuse of sick leave."

Chavez had previously admonished her several times about the sick leave issue and about lapses in her job performance, including frequent typos, chronic errors in providing responsive materials, misuse of equipment and resources and unprofessional conduct.

Eden placed Chavez on administrative leave.

This incident occurred two months after a meeting with the defendants, Chavez and the *Albuquerque Journal*'s editor and some personnel regarding the newspaper's problems obtaining records. After the meeting, Slausen allegedly told Chavez, "your unit needs to be disbanded, there is no need for the IPRA Unit," or, according to the complaint, "words to that effect."

An investigation of the staffer's allegations resulted in what the complaint calls "unsubstantiated conclusions" that Chavez had violated department procedures by tolerating and failing to intervene in and prevent sexual harassment, ridiculing APD and being untruthful. Chavez was terminated on August 20, 2015.

The Complaint notes, "Following Defendants' termination of Mr. Chavez's employment, Ms. Archuleta of Select Staffing, Inc. was terminated from her position in APD's IPRA Unit for conduct consistent with Mr. Chavez's concerns."

Five examples are cited and elaborated on as examples of unlawful and improper actions in the Complaint, relating to:

- The March 16, 2014 killing of James Boyd by APD officers Keith Sandy and Dominique Perez;
- Reporters' attempts to get information about the cozy relationship between APD chief Ray Schultz and the Taser

stun gun manufacturer both before and after his retirement. Taser also markets the lapel cameras that mysteriously malfunctioned or were not turned on during instances of police violence;

- Police spying on Kenneth Ellis, father of a man slain by APD officer, at a protest in June 2014;
- Efforts by Silvio Dell'Angela and Charles Arasim, activist critics of APD, to get IPRA public records;
- IPRA public records requests regarding the death of Mary Han.

In all these cases, the Complaint concludes that the requested public records remain "unproduced."

The Complaint alleges that "political calculations" account for the defendants' actions, among them: "concealing misconduct by City personnel, mitigating public reaction concerning actions by City personnel, retaliating against City personnel, depriving opposing parties of discovery related to pending actions against the City, encrypting 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."

These allegations are neither surprising nor confined to Albuquerque. As ruling classes in the US and elsewhere move ahead with militarization, mass surveillance, police violence and attacks on working-class living standards, they see openness, democratic rights and accountability—and indeed the rule of law—more and more as hindrances to their class rule that must be suppressed at every opportunity.



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