



Administrative Office of the Courts

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Supreme Court rules “catch-all” exception in public records law does not apply to prison use-of-force records

SANTA FE – The New Mexico Corrections Department (NMCD) cannot deny public inspection of records about the use of force against inmates under a statutory provision exempting records from disclosure “as otherwise provided by law,” the state Supreme Court ruled today.

The justices unanimously concluded that departmental policies designating use-of-force records as confidential did not have the force of law under the Inspection of Public Records Act (IPRA) exception for records exempted “as otherwise provided by law.”

In an opinion written by Justice Michael E. Vigil, the Court explained that the IPRA exception “incorporates an administrative regulation that has been formally promulgated and which effectuates a clear legislative intent for the confidentiality, secrecy, or nondisclosure of records. As NMCD’s policies meet neither of these requirements, the policies do not create an enforceable regulatory bar under IPRA’s catch-all exception.”

The Court sent the case back to the district court in Santa Fe “with instructions to order that the requested records be made available for inspection to the extent that they are not exempt under another law or IPRA exception.”

The American Civil Liberties Union of New Mexico requested records about the use of force against inmates at the Southern New Mexico Correctional Facility in Doña Ana County. The records included incident reports on the use of force, names of employees involved in such incidents, and departmental policies and procedures related to the use of force. The state agency denied the request under the “as otherwise provided by law” exception.

ACLU filed a lawsuit to enforce its IPRA request. The district court concluded that the department could withhold certain portions of the requested documents but that others must be disclosed under IPRA. Both ACLU and the department challenged the ruling. The state Court of Appeals reversed the district court and the department asked the Supreme Court to review the decision.

In today’s opinion, the Court clarified the requirements for an agency’s regulation to fall under IPRA’s catch-all exception. The justices concluded “that courts should take a narrow approach

when incorporating regulatory bars to disclosure under IPRA’s ‘as otherwise provided by law’ exception.”

The Court held that “IPRA’s catch-all exception incorporates regulatory bars to disclosure when (1) the regulation is legislatively authorized and has been formally promulgated through a process involving public notice and comment and a public hearing, as required by applicable administrative law, and (2) the regulation effectuates a statute or statutes revealing a clear legislative intent for the confidentiality, secrecy, or nondisclosure of the records.”

The Court stated that NMCD’s confidentiality policies “serve only as interpretive rules which provide internal guidance about the treatment of NMCD’s records” because they were not established through formal rulemaking procedures. Additionally, the justices explained, the agency failed to identify any state law that clearly expressed a legislative intent for its confidentiality policies on the use of force records.

The Court wrote, “NMCD may issue interpretive rules guiding its staff about the internal treatment of its records. However, NMCD may not create an enforceable regulatory exception to IPRA’s right of inspection in the absence of a clear legislative delegation of authority to do so. NMCD must instead appeal to the Legislature if it believes that its prison safety concerns support an exemption for these records.”

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To read the decision in *Am. Civ. Liberties Union of N.M. v. N.M. Corr. Dep’t.*, No. S-1-SC-40473, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/538328/index.do>