

STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT COURT

HAUSSAMEN PUBLICATIONS, INC.,

Plaintiff,

v.

Cause Number: D-307-CV-2018-01655

Martin, James T.

NEW MEXICO SPACEPORT AUTHORITY,

Defendant(s).

PLAINTIFF'S ORIGINAL COMPLAINT TO ENFORCE THE NEW
MEXICO INSPECTION OF PUBLIC RECORDS ACT AND FOR WRIT OF MANDAMUS

COMES NOW Plaintiff, by and through undersigned counsel, and hereby complains
against Defendant(s) as follows:

PARTIES

1. Plaintiff Haussamen Publications, Inc. (hereinafter "Plaintiff"), is a corporation formed pursuant to the laws of the State of New Mexico and whose principal place of business is in Dona Ana County, State of New Mexico.

2. Defendant New Mexico Spaceport Authority (hereinafter "Defendant CLC") is a New Mexico state agency formed pursuant to the laws of the State of New Mexico and conducts business at 901 E. University, Suite 965L, Las Cruces, New Mexico, located in Dona Ana County, State of New Mexico. Defendant operates as "Spaceport America."

JURISDICTION AND VENUE

3. Plaintiff hereby incorporates in their entirety paragraphs 1 through 2 as set forth above and by reference make said paragraphs a part hereof as if fully set forth herein.

4. This cause of action seeks to enforce the provisions of the New Mexico Inspection of Public Records Act, NMSA 1978 § 14-2-1, et. seq.

5. Jurisdiction in the District Court is proper pursuant to NMSA 1978 § 38-3-1.1.

6. Venue in the Third Judicial District Court of New Mexico is proper pursuant to NMSA 1978 § 38-3-1, as Plaintiff and Defendant are both located in Dona Ana County, State of New Mexico.

FACTUAL ALLEGATIONS

7. Plaintiff hereby incorporates in their entirety paragraphs 1 through 6 as set forth above and by reference make said paragraphs a part hereof as if fully set forth herein.

8. On March 12, 2017, Plaintiff served a written request on Defendant to inspect public records in the possession, custody and control of Defendant for (1) documents which supported an economic analysis touted by the Defendant and (2) any lease agreements or other agreements between the Defendant and “permanent tenants” at Spaceport America. A copy of this written request is attached hereto as Exhibit A.

9. On March 27, 2017, Defendant responded to the March 12, 2017, request and stated that it had fully disclosed all documents related to the economic analysis and that it was not in possession, custody or control of any other documents that would be responsive to the request.

10. On March 27, 2017, Defendant responded to Plaintiff’s request regarding the lease agreements and stated it would release redacted copies of the documents. Defendant also charged \$290 fee to provide electronic copies of the public records requested by Plaintiff.

11. On June 28, 2017, Plaintiff served a written request on Defendant to inspect public records in the possession, custody, and control of Defendant related to the “blocked account” list for the Twitter account operated by Defendant. A copy of this written request is attached hereto as Exhibit B.

12. On June 29, 2017, Defendant responded to Plaintiff's June 28, 2017, request and stated that no documents responsive to the request existed and, "The inspection of public records act does not reference Twitter."

COUNT I

NEW MEXICO INSPECTION OF PUBLIC RECORDS ACT (NMSA 1978 § 14-2-1, et. seq.)

(UNLAWFUL DENIAL OF REQUEST OR REFUSAL OR TO DISCLOSE)

13. Plaintiff hereby incorporates in their entirety paragraphs 1 through 12 as set forth above and by reference make said paragraphs a part hereof as if fully set forth herein.

14. NMSA 1978 § 14-2-12 creates a cause of action for any person or entity to whom disclosure or inspection of public records is denied.

15. The information requested in Exhibit A and Exhibit B are public records as defined by the Inspection of Public Records Act (see NMSA 1978 § 14-2-6(G)).

16. Upon information and belief, Defendant is in possession of the information requested in Exhibit A and Exhibit B.

17. No exemption applies which gives Defendant lawful authority to withhold the public records from disclosure or to redact the portions of the documents disclosed to Plaintiff.

COUNT II

NEW MEXICO PUBLIC RECORDS ACT (NMSA 1978 § 14-2-1, et. seq)

(UNLAWFUL ASSESSMENT OF FEES TO COPY OR PRODUCE)

18. Plaintiff hereby incorporates in their entirety paragraphs 1 through 17 as set forth above and by reference make said paragraphs a part hereof as if fully stated herein.

19. NMSA 1978 § 14-2-9(C) provides that a state entity may assess up to \$1.00 per page of printed copies of public records.

20. NMSA 1978 § 14-2-9-(C) provides that a state entity may charge for the actual costs associated with downloading copies of public records to computer disk or storage device, including the actual cost of the computer disk or storage device.

21. Plaintiff requested electronic copies of Spaceport America lease agreements and the \$290 fee assessed was well in excess of reasonableness and actual cost of downloading the documents to any storage device.

COUNT III

WRIT OF MANDAMUS OR ALTERNATE RELIEF

22. Plaintiff hereby incorporates in their entirety paragraphs 1 through 21 as set forth above and by reference made said paragraphs a part hereof as if fully set forth herein.

23. A Writ of Mandamus should issue to Defendant to order the Defendant to compel disclosure to Plaintiff of the information sought in Exhibit A and Exhibit B as provided by the New Mexico Inspection of Public Records Act (see NMSA 1978 § 14-2-12(B)).

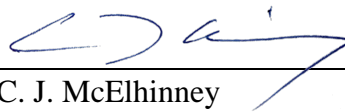
224. In the alternative, Defendant should be ordered by this Court to disclose to Plaintiff all information sought by Plaintiff in Exhibit A and Exhibit B (see NMSA 1978 § 14-2-12(B)).

WHEREFORE Plaintiff prays for a judgment against Defendant on all counts, that the Court order that Plaintiff be permitted to inspect, receive and copy all documents, items, or tangible things sought in Plaintiff's Inspection of Public Records Act requests identified herein, that a Writ of Mandamus or alternate relief issue to enforce the provisions of the New Mexico Inspection of Public Records Act, that the Court order Defendant to reimburse the \$290 paid by

Plaintiff for electronic copies of public records, and that the Court award damages, attorneys fees, and costs as provided by the New Mexico Inspection of Public Records Act, NMSA 1978 § 14-2-1, et. seq., pre and post judgment interest, and for any other relief that this Court deems just and proper.

Respectfully Submitted,

McELHINNEY LAW FIRM LLC



C. J. McElhinney
Attorney for the Plaintiff
P.O. Box 1945
Las Cruces, NM 88004
(575) 288-1989
(575) 556-9388 (FAX)
cjm@cjmlawfirm.com

From: Heath Haussamen [mailto:heath@haussamen.com]
Sent: Sunday, March 12, 2017 8:56 PM
To: Anderton, Tammara, NMSA <Tammara.Anderton@spaceportamerica.com>
Cc: Gutman, Bill, NMSA <bill.gutman@spaceportamerica.com>; DeGregorio, Zach, NMSA <zach.degregorio@spaceportamerica.com>; Lonergan, Michael, GOV <Michael.Lonergan@state.nm.us>; Sanchez, Chris j, GOV <Chrisj.Sanchez3@state.nm.us>
Subject: Re: NMPolitics.net and Spaceport America

Hello,

Please consider this a formal request under the state's Inspection of Public Records Act for the following documents:

- Any and all lease and other agreements between Spaceport America and all "permanent tenants" at Spaceport America, including, but not limited to, Virgin Galactic, Space-X, Up Aerospace, EXOS Aerospace, and EnergeticX.

- Any and all documents that support the analysis that in Fiscal Year 2016 the spaceport's economic impact was \$20.8 million – including, but not limited to, the estimates that the commercial spaceport industry generated \$11,021,000, that non-aerospace spaceport business was \$1,089,000, that tourism generated \$1,789,000, that additional taxes earned were \$861,000, that indirect purchases in N.M. businesses were \$3,852,000, and that investment in STEM education was \$2,200,000.

I request that you provide the documents in electronic form if they exist in that form. Please let me know the cost of the documents before preparing them for me. If you have any questions, please email me at heath@haussamen or call me at (575) 644-5129.

Thank you.

On Tue, Feb 14, 2017 at 5:46 PM, DeGregorio, Zach, NMSA <zach.degregorio@spaceportamerica.com> wrote:

Hello,

Attached please find the detail behind the economic impact slide. This slide presentation was briefed to the NMFA Oversight Committee in Las Cruces, NM on Sept 21, 2016.

Thank you!

Zach De Gregorio, CPA

PLAINTIFF'S EXHIBIT A



Heath Haussamen <heath@haussamen.com>

Re: Records request

1 message

Heath Haussamen <heath@haussamen.com>
To: "IPRA, NMSA, NMSA" <NMSA.IPRA@spaceportamerica.com>
Bcc: Heath Haussamen <heath@haussamen.com>

Thu, Jun 29, 2017 at 9:42 PM

Thank you for your response. Please preserve the @spaceport_nm Twitter account's list of blocked accounts as it existed at the date/time of my request, as I'm seeking advice on the legality of your response.

On Thu, Jun 29, 2017 at 6:38 PM, IPRA, NMSA, NMSA <NMSA.IPRA@spaceportamerica.com> wrote:

Mr. Haussamen:

Thank you for your request. No such document exists. The Inspection of Public Records Act does not reference Twitter.

Sincerely,

Records Custodian

From: Heath Haussamen [mailto:heath@haussamen.com]
Sent: Wednesday, June 28, 2017 6:17 PM
To: IPRA, NMSA, NMSA <NMSA.IPRA@spaceportamerica.com>
Cc: Haussamen, Heath <heath@haussamen.com>
Subject: Records request

Hello,

Please consider this a formal request under the state's Inspection of Public Records Act for the complete list of Twitter accounts that Spaceport America's Twitter account (@Spaceport_NM) has blocked from following @Spaceport_NM or seeing that account's tweets.

Given that the list exists in electronic format, I'm requesting that you provide the list electronically, as is required by law if I request it. I'm also expecting that there will be no cost for this document and you should be able to provide it immediately, given that a PDF or screen shot of the list can be easily made and emailed to me.

Thank you for your prompt attention to this matter.

--

Plaintiff's Exhibit B

9/11/2017

Heath Haussamen Mail - Re: Records request

Heath Haussamen
Editor and publisher
NMPolitics.net

Mobile: (575) 644-5129

Twitter: @haussamen

Facebook: /haussamen

haussamen.com

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Heath Haussamen
Editor and publisher
NMPolitics.net

Mobile: (575) 644-5129
Twitter: @haussamen
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Plaintiff's Exhibit B