

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO**

JIMMY (BILLY) McCLENDON, et al.,

Plaintiffs,

vs.

CIV 95-24 JAP/KBM

CITY OF ALBUQUERQUE, et al.,

Defendants,

vs.

E.M., R.L., W.A., D.J., P.S., and  
N.W. on behalf of themselves and  
all others similarly situated,

Plaintiff-Intervenors.

**PLAINTIFF INTERVENORS' REPLY TO  
CITY OF ALBUQUERQUE'S RESPONSE TO  
PLAINTIFF INTERVENORS' MOTION FOR AN ORDER TO SHOW CAUSE  
AND FOR FURTHER REMEDIAL RELIEF REGARDING CITY DEFENDANTS**

COMES NOW the Plaintiff Intervenor sub class, by counsel, and replies to Doc. 1195, *City Of Albuquerque's Response To Plaintiff Intervenors' Motion For An Order To Show Cause And For Further Remedial Relief* (the Response).

The Response continues the approach that the City Defendants have followed in recent years; treating federal court orders to which they stipulated as mere past promises that can be disregarded whenever the City Defendants choose. The entire Response is predicated upon this foundation: "[T]his Court has repeatedly limited the scope of this litigation to conditions of confinement." Doc. 1195 at p. 1. However, as this Court knows all too well, and as anyone who had attended the Court's status conferences and hearings over the past five years would also know full well, that statement is untrue. This class action has been focused upon keeping people

out of jail who don't belong there since its inception. Accordingly, the foundation of the City's Response is patently false.

The City Defendants' blasé attitude toward their responsibilities to this federal class action lawsuit and to this Court is further demonstrated by the fact that only one of the two City Defendants even responded to *Plaintiff Intervenors' Motion For An Order To Show Cause And For Further Remedial Relief* (the Motion). The Response is submitted solely on behalf of "the City of Albuquerque." The original complaint in this action (Doc. 1 at p. 7) and Plaintiff Intervenor's Complaint in Intervention (Doc. 150 at p. 4) both name as the second City Defendant "the Mayor of the City of Albuquerque." Counsel who filed the Response entered an appearance only on behalf of "defendant City of Albuquerque." Doc. 1194 at p. 1. Accordingly, the second City Defendant, the Mayor of the City of Albuquerque, has not even responded to the Motion, even though it explicitly alleges direct culpability by him. ("The root cause of many inappropriate detentions and arrests of sub class members, and the attendant unconstitutional uses of force against them, is the City Defendants' de facto policy of "sweeping the streets" of people who appear to have a mental disability . . . Upon information and belief, the Mayor of Albuquerque has told business owners that he will reduce the numbers of 'homeless mentally ill' people in the downtown area.") Doc. 1191 at p. 13

The Response does not actually deny any of the three asserted bases for this Court granting further remedial relief ("The City Defendants Are Violating Orders To Which They Stipulated." Doc. 1191, at p. 4; "The City Defendants Are Also Violating The Constitutional Rights Of Plaintiff Intervenors." Id. at p.8; and "The City Defendants Continue to Discriminate Against Sub Class Members By Reason Of Their Disabilities, Violating The Rehabilitation Act And The ADA." Id. at p. 12). Rather, as to the allegation that the City Defendants are currently

violating the Court's stipulated orders, the City cavalierly suggests that those stipulated orders shouldn't be enforced against them because the orders were entered when the City administered the jail, even though the provisions of the orders at issue have nothing to do with jail administration and explicitly address the City's law enforcement practices. As to the alleged constitutional violations, the City merely argues that only Judge Brack can address them in another case, *United States v. City of Albuquerque*, Civil No. 1:14-cv-1025 RB/KK, notwithstanding that Judge Brack ruled on June 20, 2015 that Plaintiff Intervenors' claims regarding the City Defendants targeting people with mental or developmental disabilities for discriminatory stops, searches, arrests and incarceration are not before his Court. As to Plaintiff Intervenors' alleged violations of the ADA and Rehabilitation Act, the Response correctly describes them ("Plaintiff-Intervenors also allege that the City is discriminating against sub class members by virtue of their disabilities, allegedly by targeting sub class members, segregating them from the community, and allegedly failing to reasonably accommodate Plaintiff-Intervenors' disabilities and not reasonably accommodating them in the course of police investigations and arrests" Doc. 1195 at p.8); then does nothing to even address them, much less deny them.

For those reasons, and for the reasons set forth below and those reasons set forth in Doc. 1191 (the Motion), the Court should now enter its order for both City Defendants to show cause why they should not be held in contempt, then adopt a discovery schedule for the Motion and set a three day evidentiary hearing to determine what further remedial relief should be granted.

**A. The Response Does Not Deny Current Violations of the Court's Orders**

The Response does not deny the allegation in the Motion that "the Defendants have not created a plan to implement an effective jail diversion program for persons with psychiatric or developmental disabilities." Doc. 1191 at p. 7. Nor does the Response deny Plaintiff Intervenors' assertion that "the City Defendants have not continued to employ the 'population management

tools' in effect in 2002." Id. at p 8. Instead, the City argues, without citation to any authority, that they cannot be held accountable for their current and ongoing noncompliance with those orders merely because the City stopped administering the jail in 2006. Response at pp. 6-7. Accordingly, it is undisputed that the City is not currently complying with those two orders.

The City's only claim of *ever* making any efforts to comply with the stipulated court orders at issue is that, on June 7, 2001, (before Doc. 319, the June 27, 2001 *Supplemental Order* was issued) the former Chief of Police issued Special Order 01-41 directing that people charged with misdemeanors "be cited and released rather than booked." Doc. 1195-1. That assertion is unavailing for two reasons. First, on April 19, 2014 Plaintiff Intervenors' counsel's requested, under the state Inspection of Public Records Act, "A copy of every memo, directive, policy or procedure or other writing that explains to APD personnel how they should comply with the federal court's orders in the McClendon lawsuit." On May 6, 2014, the APD Records Custodian responded, "We do not have custody or control of any documents responsive to this portion your request." See email chain, attached as Exhibit 1. Between May 6, 2014 and the time the City responded to the instant motion on August 31, 2015, the City and its counsel repeatedly stated in response to that request, that the City could not find any document setting forth how APD law enforcement personnel should comply with this Court's orders. Since the City was reportedly unaware of the existence of the 2001 Special Order, the City, its current Police Chief and its police officers could not, and do not, claim to have been following Special Order 01-41.

Second, the Response did not in any way attempt to refute the alleged violations of the stipulated order set forth in detail at pp. 13-16 of the Motion, describing the inappropriate arrests and unnecessary incarceration of sub class members during recent years.<sup>1</sup> Even assuming,

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<sup>1</sup> On September 10, 2015, the New Mexico Supreme Court issued an opinion reversing the Court of Appeals decision in *State v. Paananen*, 2014-NMCA-041, ¶ 27, 321 P.3d 945. *State v Paananen*, No. 34,526, 2015 WL

*arguendo*, that Albuquerque law enforcement personnel were told of the 2001 directive, they certainly have not been following it.

**B. The Response Contains Several Misstatements Of Material Fact**

In addition to the foundation of the Response being incorrect, the Response also contains other incorrect assertions that this case only involves the conditions inside the local jail.

1. “The monitoring done both by class counsel and the Court has also been limited to the jail conditions outlined in the original Settlement Agreement” *Id.* at p. 2
2. “in Plaintiff-Intervenors’ Prayer for Relief at the conclusion of their Amended Complaint in Intervention for Declaratory and Injunctive Relief, all requests for relief are related to conditions at the jail.” *Id.*
3. “In the Order dated November 5, 1996 . . . the issues agreed upon focused exclusively on the issue of conditions at the jail” *Id.*
4. “All remedial relief requested by Plaintiff Intervenors is outside the scope of this litigation” *Id.* at p. 7

None of those statements are true.

For several years, retired United States Magistrate Judge Alan C. Torgerson, now Special Master Torgerson, has spent countless hours working with the parties and with other participants in the criminal justice system to reduce unnecessary incarceration, and many of those hours have been spent working with City officials to reduce the incarceration of sub class members. During the past two years, the work of the Bernalillo County Criminal Justice Review Commission (the CJRC) has been the subject of several status conferences with the Court. For example, on June 13, 2014, the City’s law enforcement practices and its poor participation in the CJRC were subjects of the Court’s status conference. (“Mr. Cubra complains that law enforcement representatives are not actively participating in the CJRC meetings and in the working groups. . . Ms Levy responds. . . Mr. Cubra outlines continued problems with law enforcement’s treatment

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5269909 (New Mexico Supreme Court, September 10, 2015). That recent decision expands the circumstances under which it is permissible under the New Mexico Constitution for a law enforcement officer to arrest a person without a warrant.

of mentally ill suspects and arrestees. . . . Ms. Levy responds.” Doc. 1153 at pp. 3-4.) In March of 2012, at the direction of then U.S. Magistrate Judge Torgerson, counsel for Plaintiff Intervenor wrote a letter to the City’s counsel regarding APD’s practices with respect to improper arrests of people with mental disabilities, asking a number of questions. At Judge Torgerson’s August 10, 2012 status conference, then-Deputy Albuquerque Police Chief Allen Banks responded to the letter before the court, and stated that “Officers have discretion when to arrest an individual who does not have an address. A homeless shelter is an insufficient address.” The Deputy Chief also stated, “APD keeps track of the number of people who go to mental health facilities versus jail. He will provide these statistics.” Doc. 956 at pp. 4-5.<sup>2</sup> Clearly, the “monitoring” by the Court and by class counsel has never been limited to “jail conditions.”

No authority was cited for the City’s suggestion that the words in the prayer clause of a complaint would dictate the contours of a lawsuit (“at the conclusion of their Amended Complaint in Intervention for Declaratory and Injunctive Relief, all requests for relief are related to conditions at the jail”) Response, at p.2. Tenth Circuit authority suggests otherwise. *See Johnson v. City of Tulsa*, 489 F.3d 1089, 1110 (10th Cir. Okla. 2007) (“Ordinarily, all matters relating to the class action must be handled by class counsel. See Fed. R. Civ. P. 23(g)”). However, the possible significance of a prayer clause that did not ask for injunctive relief beyond “jail conditions” is irrelevant. Contrary to the City’s assertion, the requests for relief in the complaint in intervention *did* explicitly seek relief beyond improving conditions within the jail:

Plaintiffs pray that this Court: . . . Issue injunctive relief directing Defendants to immediately propose and promptly implement a plan to: . . . Divert all people needing and wanting in-patient treatment to an appropriate treatment facility . . . ensure that whenever possible, class members receive services in the setting that most integrates into their communities

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<sup>2</sup> Those statistics were never provided and, during 2014, the City acknowledged that no such statistics exist.

Doc. 150 at p. 42

Also contrary to the City's misstatements, both of the November 5, 1996 stipulated orders that were signed by the City to settle the both the Plaintiffs' original complaint and the Plaintiff Intervenors' complaint in intervention go beyond jail conditions and also explicitly address jail diversion. The *Order Regarding the Prison Litigation Reform Act* provides, in part:

During 1996, officials from the City of Albuquerque will meet with officials from Bernalillo County to develop solutions to the continuing resident population pressures at BCDC, ... such discussions will include at least possible ... development of additional drug treatment and/or mental health treatment facilities. Doc. 255 at p. 4.

The City of Albuquerque will seek additional sources of funding for pre-trial services at BCDC. *Id.*

By the end of 1996 BCDC will contract with a licensed psychologist to provide written competency evaluations to BCDC residents charged with misdemeanors who are ordered by the Courts to undergo such evaluations. *Id.*

The parties, through their counsel, shall meet at least once each month to discuss:  
a. the defendants' efforts to reduce overcrowding ... *Id.* at p.5.

The November 5, 1996 *Order* settling most of the claims unique to Plaintiff Intervenors' claims, Doc. 256, provides, *inter alia*:

Defendants shall develop and implement, or cause to be developed and implemented, adequate formal procedures for seeking psychiatric hospitalization or other appropriate residential mental health care for residents who need and would benefit from such care, and who are eligible for such placement . . . Defendants shall instruct UNMHSC to establish formal policies and procedures requiring the initiation of civil commitment proceedings whenever an individual diagnosed as having a mental or developmental disorder requests placement in a residential treatment or evaluation facility, assuming the court imposed conditions of confinement are consistent with such placement. Doc. 256, pp. 12-13.

Residents shall be released for day treatment or habilitation whenever appropriate. *Id.* p. 17

Clearly, this case has never been limited to jail conditions.

**C. Plaintiff Intervenor's Allegations Regarding the City Defendants Targeting Them To Be Stopped, Searched, Subjected to Excess Force and Jailed Are Not Being Addressed, And Cannot Be Addressed, in *United States v. City of Albuquerque***

The Response does not deny the allegations about biased policing that harms Plaintiff Intervenor, including that the City Defendants “do not provide sufficient training to city personnel” to “not inappropriately arrest people with mental or developmental disabilities.” *Id.* at p. 10. Instead, the Response argues that this Court should not address those violations of the Constitution and federal law because “Judge Brack has exercised jurisdiction over matters involving APD and virtually all interactions with sub class members,” Response at p. 10. That assertion is wrong in three ways: (1) The Department of Justice (DOJ) case over which Judge Brack presides solely addresses uses of force, not wrongful arrest and incarceration. (2) Judge Brack has already ruled that the discrimination claims raised in the Motion, that City personnel target people with mental or developmental disabilities, were not raised in the DOJ complaint and, accordingly, are *not* before Judge Brack (“The Court cannot ask the parties to include a non-biased policing provision, because the [DOJ] Complaint does not allege that there were biased policing practices.” Case 1:14-cv-01025-RB-KK, Doc. 134 at p. 7. (3) The DOJ case is brought under the Fourth Amendment and does not involve the ADA and the Rehabilitation Act. This Court is the only forum in which sub class members can obtain injunctive relief to remedy violations of their rights under those statutes.

While coordination between the two related cases is necessary, Judge Brack cannot afford the sub class any remedies for the violations of their federal rights alleged in the Motion.

**D. Plaintiff Intervenor's Have Previously Attempted, Unsuccessfully, To Resolve These Issues, And Have Filed Motions Regarding The Lack Of Jail Diversion By The City And Regarding The City's Violations Of The ADA And Rehabilitation Act**

The Response suggests that one reason for denying the Motion could be that Plaintiff Intervenor's counsel waited too long to raise the issues with the Court. That argument is erroneous as a factual matter and unfounded as a matter of law.

In terms of factual defects with the argument, Section B, *supra*, sets forth some of the efforts made by counsel for the Plaintiff Intervenor since 2012 to halt the City Defendants' violations of this Court's stipulated orders and of the federal rights of the sub class. In addition, those efforts were preceded by two earlier enforcement actions in this Court that directly addressed the City Defendants' violations of the Court's orders with respect to Albuquerque's law enforcement personnel and of the ADA and Rehabilitation Act.

On August 24, 2007, just one year after the July 2006 date to which the Response attaches significance, when the City stopped administering the jail, the Plaintiff Intervenor brought a motion for an order to show cause directed at all Defendants. The motion alleged, *inter alia*,

Defendants are currently in violation of the ADA because the law enforcement officials employed by the Defendants continue a pattern and practice of discrimination against people with mental or developmental disabilities. Members of the sub class are not reasonably accommodated by the Defendants and their agents with respect to the decisions made by law enforcement officials whether to issue citations to them or to incarcerate them in the jail while they await adjudication of alleged misdemeanor offenses.

Doc. 562 at p. 23.<sup>3</sup>

On August 22, 2011, the Plaintiffs and Plaintiff Intervenor jointly initiated a motion for further remedial relief. In it, Plaintiffs and Plaintiff Intervenor alleged, *inter alia*:

On June 27, 2001 the court ordered Defendants' law enforcement officials to issue citations where appropriate, rather than incarcerating people, and to initiate other justice system reforms. (Doc. 319 at pp. 5-7). . . On January 31, 2002 the Court adopted a Stipulated Agreement ordering the Defendants to undertake several population management and reduction measures, "to employ all existing population

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<sup>3</sup> On March 28, 2008, the motion was denied without prejudice for administrative reasons. Doc. 652.

management tools,” to provide sufficient assistance to the *pro tem* judge and to provide a full time benefits manager. (Doc. 361 at p. 2)

Doc. 871 at p. 39.

Additionally, counsel for Plaintiff Intervenors alleged:

The ADA applies to the conduct of law enforcement officers with respect to arrests, both in the context of wrongful arrests of persons with disabilities and failing to make reasonable accommodations of person with disabilities who are arrested. . . . Members of the subclass are not reasonably accommodated by the defendants and their agents with respect to the decisions made by law enforcement officials whether to issue citations to them or to incarcerate them in the jail while they await adjudication of alleged offenses. People without disabilities routinely receive citations and are not arrested by City and County police and sheriff officials when charged with the same misdemeanor offenses that routinely result in the arrest of people with mental disabilities.

Doc. 871 at pp. 35-36.<sup>4</sup>

The City’s complaint that Plaintiff Intervenors waited “fourteen years” to address the City’s violations of the Court’s orders and the ADA and the Rehabilitation Act is entirely unfounded. Furthermore, the City has offered no authority for the proposition that court orders that have been in effect for a long time cannot be enforced if enforcement actions had not previously been brought. Moreover, nothing in the Response attempts to refute the Plaintiff Intervenors’ position that this Court is the only forum in which sub class members can obtain injunctive relief to remedy violations of their rights under the ADA and the Rehabilitation Act, with respect to the claims that were brought against the City within this class action lawsuit. Accordingly, whether the City Defendants’ current statutory violations of federal anti-discrimination statutes has been ongoing for fourteen years, or began last week is irrelevant to the holdings of the Tenth Circuit in *Johnson v. City of Tulsa*, 489 F.3d 1089, 1110 (10th Cir.

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<sup>4</sup> On May 3, 2012, the motion was denied without prejudice for administrative purposes. Doc. 936.

Okla. 2007) and *McNeil v. Guthrie*, 945 F.2d 1163, 1165-1166 (10th Cir. Okla. 1991). This Court is the forum in which those allegations must be litigated.

### **CONCLUSION**

The City's Response makes it clear that the only way to remedy the City Defendants' ongoing violations of Plaintiff Intervenors' rights under the Court's orders, the Constitution and the federal statutes prohibiting disability discrimination is for this Court to enter its order to show cause and bring the matters alleged in the Motion before the federal court.

Respectfully submitted,

*/signed electronically*

Peter Cubra  
Kelly K. Waterfall  
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(505) 256-7690

LAW OFFICES OF NANCY L. SIMMONS  
Nancy L. Simmons  
120 Girard SE  
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(505) 232-2575  
*Attorneys for Plaintiff Intervenors*

### **CERTIFICATE OF SERVICE**

I hereby certify that on September 28, 2015 I filed the foregoing document electronically through the CM/ECF system, which caused all counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

*Signed electronically*  
Peter Cubra

9/28/2015

FW IPRA McClendon et al. v. City of Albuquerque et al. Civ. No. 95-24 JAP-KBM (Completed 05 06 2014).htm

**Subject:** FW: IPRA / McClendon, et al. v. City of Albuquerque, et al. Civ. No. 95-24 JAP-KBM (Completed 05 06 2014)

**From:** Chavez, Reynaldo L. [mailto:chavezr@cabq.gov]

**Sent:** Tuesday, May 06, 2014 3:41 PM

**To:** Pcubra@qwestoffice.net

**Subject:** IPRA / McClendon, et al. v. City of Albuquerque, et al. Civ. No. 95-24 JAP-KBM (Completed 05 06 2014)

**Re:** Cubra/McClendon IPRA Request

**Dear Mr. Cubra:**

On Monday, April 21, 2014, we received your request to inspect certain records. We have obtained documents responsive to your request. Please contact my office to schedule an appointment, and we will provide you a location to inspect the documents. If you would prefer a copy of the entire responsive documents without inspection, then notify me and my office can provide you an invoice. Copies will be provided at the cost of .50 cents per page. After we hear from you, the documents will be available for inspection at the following location:

Office of the City Clerk  
600 2<sup>nd</sup> Street NW  
Plaza del Sol Building, 7<sup>th</sup> Floor  
Albuquerque, NM 87102

Our response to your IPRA Request is as follows:

- A. *See Responsive Documents.*
- B. *See Responsive Documents. Outside of those documents, we do not have any documents that are compiled and responsive to sections B(1)-(5) of your request. Furthermore, pursuant to NMSA 1978, § 14-2-8(B) "[n]othing in the Inspection of Public Records Act shall be construed to require a public body to create a public record," as such, we will not create documents responsive to sections B(1)-(5) of your request.*
- C. *See Responsive Documents. Outside of those documents, we do not have any documents that are compiled and responsive to section C(1)-(3) of your request. Furthermore, pursuant to NMSA 1978, § 14-2-8(B) "[n]othing in the Inspection of Public Records Act shall be construed to require a public body to create a public record," as such, we will not create documents responsive to sections C(1)-(3) of your request.*
- D. *See Responsive Documents. Outside of those documents, we do not have any documents that are compiled and responsive to sections D(1), (3), and (4) of your request. Furthermore, pursuant to NMSA 1978, § 14-2-8(B) "[n]othing in the Inspection of Public Records Act shall be construed to require a public body to create a public record," as such, we will not create documents responsive to sections D(1)-(4) of your request.*
- E. *See Responsive Documents.*

9/28/2015

FW IPRA McClendon et al. v. City of Albuquerque et al. Civ. No. 95-24 JAP-KBM (Completed 05 06 2014).htm

- F. *We do not have custody or control of any documents responsive to this portion your request.*
- G. *We do not have custody or control of any documents responsive to this portion your request.*

Kind Regards,

Office of the APD Records Custodian  
Reynaldo Chavez  
APD Records Custodian/IPRA Manager  
400 Roma Avenue NW, Alb., NM 87102  
Office (505) 768-2007  
Cell (505) 235-2160  
[chavezr@cabq.gov](mailto:chavezr@cabq.gov)

**From:** Chavez, Reynaldo L.  
**Sent:** Monday, April 21, 2014 12:01 PM  
**To:** 'Pcubra@qwestoffice.net'  
**Subject:** IPRA / McClendon, et al. v. City of Albuquerque, et al. Civ. No. 95-24 JAP-KBM

Mr. Cubra,

This email will acknowledge receipt of your public records request dated April 19, 2014, which was received by my office on April 21, 2014. It is my understanding you made an oral request last Thursday and this written request is more extensive, but covers everything from the oral request. My office will consider the April 19 written request as the only official request, and will respond within the required time-frame of the April 19 written request. Please indicate if you would prefer the oral request to remain separate.

Please be advised we are reviewing your April 19 written request to determine what public records are responsive and whether any exceptions to their production apply. We will continue our review and contact you prior to the expiration of fifteen (15) days from the receipt of your April 19 written request. Please do not hesitate to contact me if you have any questions or comments.

Kind regards,

Office of the APD Records Custodian  
Reynaldo Chavez  
APD Records Custodian/IPRA Manager  
400 Roma Avenue NW, Alb., NM 87102  
Office (505) 768-2007  
Cell (505) 235-2160  
[chavezr@cabq.gov](mailto:chavezr@cabq.gov)

**From:** Peter Cubra <Pcubra@qwestoffice.net>  
**Date:** April 19, 2014 at 4:10:05 PM MDT  
**To:** "Peter Cubra" <Pcubra@qwestoffice.net>, <kkwaterfall@netzero.net>, "Amanda Lavin" <alavin@swcp.com>, <nlsimmons@swcp.com>  
**Cc:** "Tourek, David J." <dtourek@cabq.gov>, "Levy, Kathryn C." <KLevy@cabq.gov>  
**Subject:** FW: McClendon, et al. v. City of Albuquerque, et al. Civ. No. 95-24 JAP-KBM

David and Kathy,

Thank you for our meeting last Tuesday.

I am writing, as Kathy requested, to follow up our oral requests for information that we discussed during our meeting. As we stated, we believe that APD is currently violating the rights of sub class members in the McClendon case and, accordingly, we will need to bring these issues before the federal court soon if the City does not promptly agree to change its actions with respect to sub class members.

In order to make our conversations more productive, I am repeating here our requests for public records and data in the possession of the City with respect to these issues. I am also requesting, pursuant to IPRA, other public records we need to better inform our conversation with you.

We request that the following public records be provided to us as soon as possible, and at least within the 15 days required by the Inspection of Public Records Act. In the event that you do not consider yourselves to be the proper agents of the City for producing any of the following public records, please forward this email to the appropriate City officials and notify us to whom we should direct any future requests for such public records.

A. Please provide us the public record that sets forth all codes for which APD officers can be dispatched. As we discussed, the codes used for designating the nature of a dispatch for responding to people with apparent mental health issues are needed to track how APD is, and has been, responding to people with mental disabilities.

B. Please provide us the public records which document all the data compiled by the City during the past five years with respect to events that indicates that someone at the scene may be having a mental health issue, including but not limited to all data regarding:

1. How many people have been transported by APD to a mental health evaluation facility, each month;

2. How many times per month has an APD officer been dispatched to respond to a report of attempted suicide or self-injury;
3. How many times per month has an APD officer been dispatched to conduct a "welfare check" due to a person's behavioral episode or reported concern regarding their mental health;
4. How many times per month has an APD officer been dispatched to serve a "pick up order" or to bring a person to a facility or to a mental health professional for assessment or treatment;
5. How many times has an APD officer charged a person with assault on a health care worker;

C. All reports issued in the past five years, and all data compiled by APD's full time CIT detectives, or by the CIT Unit, or by the leader of the CIT Unit, regarding:

1. their level of staffing;
2. Any requests to their superiors for resources, including but not limited to staffing;
3. Their activities and statistics regarding the activities.

D. All reports issued by any City official or employees or contractor that sets out the activities of the COAST team, including:

1. their staffing;
2. how many encounters they have had;
3. the nature of their work; and
4. all data the City keeps regarding the percentage of calls when COAST responds which result in the individual being arrested.

E. A copy of all current policies, procedures and other written protocols that describe:

1. what CIT officers should do, including but not limited to full time CIT detectives;
2. what Dr. Nils Rosenbaum should do;
3. what COAST team members should do;
4. how dispatchers should determine how to respond to an event that apparently involves a person having a mental health problem, including whether a CIT certified officer or the COAST Team should be dispatched to a scene; and
5. Under what circumstances should APD law enforcement issue a citation and not arrest an individual who is alleged to have committed a citable offense, including how an officer should decide whether to arrest a person who does not have a home address and a phone number.

F. A copy of every memo, directive, policy or procedure or other writing that explains to APD personnel how they should comply with the federal court's orders in the McClendon lawsuit.

G A copy of the documents that set forth the activities that have been undertaken by the City, or which are currently planned by the City to address the concerns identified during the November 10, 2011 Community Summit with Behavioral Health and Criminal Justice.

Thank you for your willingness to discuss these important concerns. Please reply and let us know when we can start obtaining the requested information.

We request that you provide us first the information that is already compiled regularly by APD, without waiting to transmit all the documents to us at once.

Thank you.

We look forward to meeting with you again soon to try to identify steps APD can take to improve its treatment of sub class members in the McClendon case.

Peter Cubra  
3500 Comanche NE  
Suite H  
Albuquerque NM 87107  
505-256-7690

-----Original Message-----

From: Peter Cubra [<mailto:Pcubra@qwestoffice.net>]  
Sent: Friday, April 04, 2014 9:59 AM  
To: 'klevy@cabq.gov'; 'dtourek@cabq.gov'  
Cc: 'nlsinmons@swcp.com'; 'kkwaterfall@netzero.net'  
Subject: McClendon, et al. v. City of Albuquerque, et al. Civ. No. 95-24 JAP-KBM

Kathy and David,

Please get back to me ASAP regarding the attached letter.

Thank you.

Peter Cubra

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No virus found in this message.

Checked by AVG - [www.avg.com](http://www.avg.com)

Version: 2013.0.3466 / Virus Database: 3722/7417 - Release Date: 04/30/14