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

2 Opinion Number: _____

3 Filing Date: May 31, 2024

4 **No. A-1-CA-40486**

5 **AMERICAN CIVIL LIBERTIES UNION**
6 **OF NEW MEXICO,**

7 Plaintiff-Appellee/Cross-Appellant,

8 v.

9 **NEW MEXICO CORRECTIONS**
10 **DEPARTMENT and KEVIN NAULT,**
11 **in his official capacity,**

12 Defendants-Appellants/Cross-Appellees.

13 **APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY**

14 **Bryan P. Biedscheid, District Court Judge**

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1 **OPINION**

2 **BUSTAMANTE, Judge, retired, sitting by designation.**

3 {1} We are presented with an appeal and cross-appeal arising from the American
4 Civil Liberties Union of New Mexico’s (the ACLU) action to compel the New
5 Mexico Corrections Department (NMCD) to provide documents requested by the
6 ACLU, pursuant to the Inspection of Public Records Act (IPRA), NMSA 1978,
7 §§ 14-2-1 to -12 (1947, as amended through 2023). The district court ordered some
8 documents to be produced, but ruled that some were exempt. On appeal, NMCD
9 argues that all of the records requested are subject to the “as otherwise provided by
10 law” catch-all exemption of IPRA. *See* § 14-2-1(L).¹ On cross-appeal, the ACLU
11 argues the district court erred in concluding certain portions of the records could be
12 withheld pursuant to a “clear necessity” standard. We conclude that all of the records
13 at issue are subject to disclosure and therefore reverse in part and affirm in part.

14 **BACKGROUND**

15 {2} In August 2019, the ACLU sent an IPRA request to NMCD seeking public
16 records including NMCD’s use of force policy as well as any and all records related

¹The amendment of the IPRA exemption in effect at the time the ACLU made its IPRA request was Section 14-2-1(H) (2019). Despite being renumbered in the 2023 amendment, the provision of IPRA relevant to this appeal is the same as the previous version and our analysis remains the same under the both versions of IPRA. *Compare* § 14-2-1(H) (2019), *with* § 14-2-1(L). Accordingly, this opinion refers to the current version of the statute.

1 to its use of force. In response, NMCD agreed that its use of force policy and internal
2 grievance reports were responsive but denied the request. NMCD asserted the
3 documents were exempt based on the “as otherwise provided by law” exemption
4 because the documents had been internally characterized as confidential. The ACLU
5 then filed a complaint against NMCD and the records custodian for NMCD based
6 on NMCD’s failure to produce the documents.

7 {3} The ACLU filed a partial motion for summary judgment, and NMCD filed a
8 cross-motion for summary judgment. The ACLU argued that NMCD improperly
9 relied on its enabling statutes—NMSA 1978, § 33-1-6 (1981) and NMSA 1978, § 9-
10 3-5(E) (2004)—to refuse to produce the documents under the catch-all exception to
11 disclosure. The ACLU also argued that NMCD violated IPRA by issuing a blanket
12 denial to its request. NMCD argued that the Corrections Act’s enabling statute
13 permitted it to protect inmates by designating documents as confidential. NMCD
14 argued that its designations were sufficient to exempt the requested documents from
15 production. After full briefing on both motions and after holding a hearing, the
16 district court denied NMCD’s motion and took the ACLU’s motion under
17 advisement. The district court ordered NMCD to produce all documents responsive
18 to the ACLU’s request for an in camera review before ruling on its partial motion
19 for summary judgment.

1 {4} After the in camera review, the district court partially granted the ACLU’s
2 motion. In its order, the district court noted that—with the benefit of the in camera
3 review—its analysis of the ability of the NMCD’s enabling statutes to serve as the
4 basis for application of the “catch-all” exemption had changed since the hearing on
5 the motion. The district court determined that “for a rule or regulation promulgated
6 pursuant to [Section] 33-1-6 to create an exception to IPRA inspection, it must be
7 clearly shown to be necessary for administration of the Corrections Act. Upon that
8 showing of clear necessity, the enabling statute is sufficient to fall under the
9 [‘]otherwise provided by law[’] IPRA exception.” The district court thus concluded
10 that limited portions of the disputed records could properly be withheld, but that the
11 remaining portions of the use of force policy and grievance reports were to be
12 disclosed. Both parties appealed.

13 **DISCUSSION**

14 {5} There being no genuine issue of material fact, we review the grant of summary
15 judgment in this case de novo. *See Self v. United Parcel Serv., Inc.*, 1998-NMSC-
16 046, ¶ 6, 126 N.M. 396, 970 P.2d 582. To resolve this dispute we must engage in
17 statutory interpretation, which we also review de novo. *See Wood v. N.M. Educ. Ret.*
18 *Bd.*, 2011-NMCA-020, ¶ 12, 149 N.M. 455, 250 P.3d 881. Generally, “[i]n
19 construing the language of a statute, our goal and guiding principle is to give effect
20 to the intent of the Legislature.” *Lujan Grisham v. Romero*, 2021-NMSC-009, ¶ 23,

1 483 P.3d 545. “In determining legislative intent, [appellate courts] look to the plain
2 language of the statute and the context in which it was enacted, taking into account
3 its history and background.” *Pirtle v. Legis. Council Comm. of N.M. Legislature*,
4 2021-NMSC-026, ¶ 14, 492 P.3d 586. Moreover, “[w]e consider all parts of the
5 statute together, reading the statute in its entirety and construing each part in
6 connection with every other part to produce a harmonious whole.” *Dep’t of Game &*
7 *Fish v. Rawlings*, 2019-NMCA-018, ¶ 6, 436 P.3d 741 (alterations, internal
8 quotation marks, and citation omitted).

9 {6} The purpose of IPRA “is to ensure, and it is declared to be the public policy
10 of this state, that all persons are entitled to the greatest possible information
11 regarding the affairs of government and the official acts of public officers and
12 employees.” Section 14-2-5. IPRA affirmatively sets forth that “[e]very person has
13 a right to inspect public records of this state.” Section 14-2-1. “This right is limited
14 only by the Legislature’s enumeration of certain categories of records that are
15 excepted from inspection.” *Republican Party of N.M. v. N.M. Tax’n & Revenue*
16 *Dep’t*, 2012-NMSC-026, ¶ 13, 283 P.3d 853.

17 {7} At issue in this case—the so-called catch-all exception—is “as otherwise
18 provided by law.” Section 14-2-1(L). The “as otherwise provided by law” exception
19 includes statutory and regulatory bars to disclosure as well as constitutionally
20 mandated privileges. *Republican Party of N.M.*, 2012-NMSC-026, ¶ 13 (internal

1 quotation marks and citation omitted); *see id.* ¶ 16 (stating that courts analyzing an
2 IPRA claim must “restrict their analysis to whether disclosure under IPRA may be
3 withheld because of a specific exception contained within IPRA, or statutory or
4 regulatory exceptions”).

5 {8} The Corrections Department Act allows the Secretary of Corrections (the
6 Secretary) to “make and adopt such reasonable and procedural rules and regulations
7 as may be necessary to carry out the duties of the department and its divisions.”
8 Section 9-3-5(E). The Corrections Act requires that the Secretary “adopt rules and
9 regulations necessary for administration of the Corrections Act, and enforce and
10 administer those so adopted.” Section 33-1-6(B).

11 {9} NMCD contends that these provisions—by themselves—render the records
12 the ACLU requested exempt from production under IPRA under its “as otherwise
13 provided by law” exception. Specifically, NMCD claims that the enabling statutes
14 allow it to lawfully declare certain public records confidential “where the challenged
15 regulation is linked to the safe and constitutional operation of the NMCD.” NMCD
16 argues that under these enabling provisions, NMCD’s decisions to maintain the
17 confidentiality of public records have the force of law because “they are premised
18 on a sound and compelling penological basis and necessary for the administration of
19 New Mexico’s penal system.” NMCD goes so far as to argue that once it determines
20 that public records are necessary for the administration of the penal system, they are

1 exempt from IPRA disclosure unless the person or entity requesting the documents
2 can “satisfy an extremely high burden by showing that the Secretary’s
3 confidentiality rules did not serve a legitimate penological interest or were not
4 necessary for the administration of Corrections.”

5 {10} NMCD bases its “penological necessity” argument largely on *Turner v.*
6 *Safley*, 482 U.S. 78 (1987), which it argues “created a four-factor test to analyze the
7 lawfulness of prison regulations.” We disagree that *Turner* applies to our analysis
8 here. In *Turner*, the United States Supreme Court evaluated the constitutionality of
9 two prison rules—one limiting correspondence between nonfamily member inmates
10 at different institutions if deemed in the best interest of the parties and another that
11 permitted an inmate to marry only with approval of the superintendent of the prison
12 when there were compelling reasons to do so. *Id.* at 81-82. Inmates challenged the
13 constitutionality of these two regulations. *Id.* The Supreme Court’s task was “to
14 formulate a standard of review for prisoners’ constitutional claims.” *Id.* at 85. It
15 determined that “when a prison regulation impinges on inmates’ constitutional
16 rights, the regulation is valid if it is reasonably related to legitimate penological
17 interests.” *Id.* at 89.

18 {11} *Turner* dealt with an inmate’s ability to challenge the constitutionality of
19 prison regulations. *Id.* NMCD recognizes that *Turner* did not evaluate prison
20 regulations in the context of public records disclosure laws. *Turner* does not address

1 the issue at hand—whether our Legislature’s strong policy of free and open access
2 to public records permits NMCD to declare public records confidential and exempt
3 from disclosure under IPRA. *Turner*’s discussion of “legitimate penological
4 interests” and deference to prison authorities is irrelevant to NMCD’s obligations
5 under IPRA. *See id.* To import *Turner*’s analysis here would be to mix rutabagas and
6 watermelons; the inquiries are that different.

7 {12} Moreover, to evaluate the *Turner*-esque policy reasons relied on by NMCD
8 for declaring the public records confidential would harken back to the “rule of
9 reason,” approach that our Supreme Court renounced in *Republican Party of New*
10 *Mexico*, 2012-NMSC-026, ¶ 16. *See id.* (stating “courts now should restrict their
11 analysis to whether disclosure under IPRA may be withheld because of a specific
12 exception contained within IPRA, or statutory or regulatory exceptions, or privileges
13 adopted by this Court or grounded in the constitution”).

14 {13} Rather, our task is to determine if there is a specific provision of law that
15 exempts the requested records from disclosure. Thus, we turn back to the statutes
16 that NMCD argues permits it to withhold the public records at issue in this case.
17 Both are general enabling statutes. *See* § 9-3-5(E) (allowing the Secretary to “make
18 and adopt such reasonable and procedural rules and regulations as may be necessary
19 to carry out the duties of the department and its divisions”); § 33-1-6(B) (requiring
20 that the Secretary “adopt rules and regulations necessary for administration of the

1 Corrections Act, and enforce and administer those so adopted”). By their plain
2 language, neither addresses IPRA, the confidentiality of records or information, or
3 the Secretary’s ability to declare records or information as confidential. *See High*
4 *Ridge Hinkle Joint Venture v. City of Albuquerque*, 1998-NMSC-050, ¶ 5, 126 N.M.
5 413, 970 P.2d 599 (“[T]he plain language of a statute is the primary indicator of
6 legislative intent.” (internal quotation marks and citation omitted)).

7 {14} Our Supreme Court has held that a general enabling statute alone is
8 insufficient to qualify for the catch-all exception. In *City of Las Cruces v. Public*
9 *Employee Labor Relations Board*, 1996-NMSC-024, ¶¶ 2-3, 5, 121 N.M. 688, 917
10 P.2d 451, our Supreme Court addressed whether the Public Employee Labor
11 Relations Board (PELRB) could withhold a petition containing the signatures of
12 members of a collective bargaining unit pursuant to the “as otherwise provided by
13 law” exemption of IPRA. Our Supreme Court concluded the petition was exempt
14 under IPRA’s catch-all exception, relying in part² on a regulation providing that
15 evidence of a showing of interest in a representation election “shall be kept
16 confidential.” *Pub. Emp. Rels. Bd.*, 1996-NMSC-024, ¶ 3 (emphasis, internal
17 quotation marks, and citation omitted). The regulation was based on multiple
18 statutes: the general enabling statute, *id.* ¶ 6 (citing NMSA 1978, Section 10-7D-

²Our Supreme Court also relied on the “rule of reason,” *id.* ¶¶ 8-11, which, as we noted above, was disavowed in *Republican Party of N.M.*, 2012-NMSC-026, ¶ 16.

1 9(A) (repealed 1992)); a statute which stated employers shall not “interfere in the
2 formation” of any labor organization, “discourage membership in a labor
3 organization,” or discharge or otherwise discriminate against a public employee
4 because they were forming, joining, or choosing to be represented, *id.* (emphasis and
5 internal quotation marks omitted) (citing NMSA 1978, Section 10-7D-19 (repealed
6 1992)); a statute that guaranteed the right of public employees to participate in
7 forming, joining, or assisting any labor organization without interference, restraint
8 or coercion, *id.* (citing NMSA 1978, Section 10-7D-5 (repealed 1992)); and a statute
9 that guaranteed the right of public employees to conduct representation elections in
10 secret, *id.* (citing NMSA 1978, Section 10-7D-14 (repealed 1992)).

11 {15} While our Supreme Court stated that “the PELRB or the local board may carry
12 out the duties and responsibilities necessary to implement the [Public Employee
13 Bargaining Act],” *id.* ¶ 7, which mirrored the enabling statute, the conclusion that
14 the information was exempt from disclosure was based on more specific statutes that
15 related to the effects of disclosure and the confidentiality of the information. *See*
16 *Edenburn v. N.M. Dep’t. of Health*, 2013-NMCA-045, ¶ 26, 299 P.3d 424
17 (describing the basis of the exemption of disclosure in *Public Employee Labor*
18 *Relations Board* as “the authorizing statute specifically prohibited discouraging,
19 interfering with, restraining, or otherwise impeding employees’ rights to organize”).
20 *Public Employee Labor Relations Board* demonstrates that a general enabling statute

1 on its own is not sufficient to grant authority to declare public records exempt from
2 disclosure of IPRA requirements.

3 {16} NMCD also argues that New Mexico Corrections Department policy, CD-
4 040100(C)(1)(g)(1)-(9), *Institutional Records* (2018), designates grievance reports
5 and other internal incident reports as confidential. The purpose of IPRA “is to ensure
6 . . . that all persons are entitled to the greatest possible information regarding the
7 affairs of government and the official acts of public officers and employees.” Section
8 14-2-5. Internal policies or regulations simply cannot be used on their own to exempt
9 public records from IPRA. There must be specific authorizing statutes that relate to
10 the effects of disclosure and the confidentiality of the information. This holding
11 represents another aspect of the general rule that “an administrative agency has no
12 power to create a rule or regulation that is not in harmony with its statutory
13 authority.” *See Princeton Place v. N.M. Hum. Servs. Dep’t*, 2022-NMSC-005, ¶¶ 28,
14 29, 503 P.3d 319 (internal quotation marks and citation omitted); *see also Edenburn*,
15 2013-NMCA-045, ¶ 26 (“A regulation making certain records private may be proper
16 if the regulation is authorized by a statute and is necessary to carry out the statute’s
17 purposes.” (internal quotation marks and citation omitted)). To allow internal
18 policies or regulations to impede the release of public records would permit the
19 catch-all exception for disclosure of IPRA to swallow the rule of disclosure based
20 on the whim of NMCD or other government agencies. *See Bishop v. Evangelical*

1 *Good Samaritan Soc’y*, 2009-NMSC-036, ¶ 11, 146 N.M. 473, 212 P.3d 361 (noting
2 we do not interpret statutes to be “absurd, unreasonable, or otherwise inappropriate
3 in application”).

4 {17} We note with approval the observation in *New Mexico Foundation for Open*
5 *Government’s* amicus brief that most enabling statutes for cabinet level departments
6 and other state and local entities use the same general verbiage NMCD relies on to
7 describe their powers and responsibilities. Accepting NMCD’s argument would
8 allow a myriad of other entities to assert the same authority to declare documents
9 beyond the reach of IPRA. Such a possibility would be directly contrary to the
10 legislative policy of transparent governance.³

11 {18} We next briefly turn to the ACLU’s cross-appeal. The district court
12 determined that “for a rule or regulation promulgated pursuant to [Section] 33-1-
13 6(B) to create an exception to IPRA inspection, it must be clearly shown to be
14 necessary for administration of the Corrections Act.” NMCD and the ACLU agree
15 that the district court’s “clear necessity” standard is improper, though for different
16 reasons. NMCD argues that the standard “impermissibly and arbitrarily restricts
17 agency rulemaking.” The ACLU argues that the standard is unworkable because it
18 is too broad and too discretionary; it is in effect, standardless. The district court’s

³NMCD is welcome to turn to the Legislature to craft a reasonable and acceptable exemption under IPRA.

1 ruling unmistakably evokes the “rule of reason.” We have determined neither
2 Section 33-1-6(B) nor Section 9-3-5(E) provide the statutory authority required by
3 *Republican Party of New Mexico* to exempt documents from disclosure. *See* 2012-
4 NMSC-026, ¶ 16. To the extent the district court determined certain parts of the use
5 of force policy and internal grievance reports could be withheld because they were
6 “clearly shown to be necessary for the administration of the Corrections Act,” we
7 reverse.

8 **CONCLUSION**

9 {19} We affirm in part, reverse in part, and remand for proceedings in accordance
10 with this opinion.

11 {20} **IT IS SO ORDERED.**

12
13 MICHAEL D. BUSTAMANTE, Judge,
14 **retired, Sitting by designation.**

15 **WE CONCUR:**

16
17 JANE B. YOHALEM, Judge

18
19 GERALD E. BACA, Judge