

**Subject:** RE: Public Records Request (NM-OTERO-22-0141) (OC File #22PRR018)  
**Date:** Monday, April 4, 2022 at 5:33:42 PM Eastern Daylight Time  
**From:** rnichols@co.otero.nm.us  
**To:** AO Records, 'Sylvia Tillbrook'  
**Attachments:** image001.jpg, image002.jpg, image003.jpg, image004.jpg, image005.jpg, FW: Legal Issues with Proposed Election Audit.eml, FW: County Audit.eml

EXTERNAL SENDER

Taylor,

The attached emails are responsive to the subject IPRA and do not believe were previously included.

v/r,  
RB

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**From:** rnichols@co.otero.nm.us <rnichols@co.otero.nm.us>  
**Sent:** Wednesday, March 30, 2022 3:09 PM  
**To:** 'AO Records' <records@americanoversight.org>; 'Sylvia Tillbrook' <stillbrook@co.otero.nm.us>  
**Subject:** RE: Public Records Request (NM-OTERO-22-0141) (OC File #22PRR018)

Hi Taylor,

The additional search returned the additional two emails that you were not previously provided. Please see attached.

v/r,  
RB

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**From:** AO Records <[records@americanoversight.org](mailto:records@americanoversight.org)>  
**Sent:** Wednesday, March 30, 2022 1:40 PM  
**To:** Sylvia Tillbrook <[stillbrook@co.otero.nm.us](mailto:stillbrook@co.otero.nm.us)>  
**Cc:** [rnichols@co.otero.nm.us](mailto:rnichols@co.otero.nm.us)  
**Subject:** Re: Public Records Request (NM-OTERO-22-0141) (OC File #22PRR018)

Hi Sylvia,

I wanted to check in on this search for records responsive to our request NM-OTERO-22-0141. Has the backend search been completed yet?

Thanks,  
Taylor

**From:** Sylvia Tillbrook <[stillbrook@co.otero.nm.us](mailto:stillbrook@co.otero.nm.us)>  
**Date:** Monday, February 28, 2022 at 12:12 PM  
**To:** AO Records <[records@americanoversight.org](mailto:records@americanoversight.org)>  
**Cc:** [rnichols@co.otero.nm.us](mailto:rnichols@co.otero.nm.us) <[rnichols@co.otero.nm.us](mailto:rnichols@co.otero.nm.us)>  
**Subject:** RE: Public Records Request (NM-OTERO-22-0141) (OC File #22PRR018)

EXTERNAL SENDER

Taylor,  
We will include all information that is available to us.



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**From:** AO Records [<mailto:records@americanoversight.org>]  
**Sent:** Monday, February 28, 2022 12:36 PM  
**To:** Sylvia Tillbrook <[stillbrook@co.otero.nm.us](mailto:stillbrook@co.otero.nm.us)>  
**Cc:** [rnichols@co.otero.nm.us](mailto:rnichols@co.otero.nm.us)  
**Subject:** Re: Public Records Request (NM-OTERO-22-0141) (OC File #22PRR018)

Hi Sylvia,

Thank you. Will the back-end search include messaging platforms—such as Slack, GChat, Google Hangouts, Lync, Skype, etc.—on Commissioner Griffin’s computer, in addition to his email?

Also, can you please confirm whether a search of mobile phone-based messaging platforms—such as text messages, WhatsApp, Signal, Telegram, etc.—has been performed to identify responsive records in those forms?

Sincerely,

Taylor

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**Taylor Stoneman** (she/her)  
*Counsel*  
American Oversight  
[records@americanoversight.org](mailto:records@americanoversight.org)  
(202) 848-1319

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**From:** Sylvia Tillbrook <[stillbrook@co.otero.nm.us](mailto:stillbrook@co.otero.nm.us)>  
**Date:** Friday, February 25, 2022 at 2:27 PM  
**To:** AO Records <[records@americanoversight.org](mailto:records@americanoversight.org)>  
**Cc:** [rnichols@co.otero.nm.us](mailto:rnichols@co.otero.nm.us) <[rnichols@co.otero.nm.us](mailto:rnichols@co.otero.nm.us)>  
**Subject:** RE: Public Records Request (NM-OTERO-22-0141) (OC File #22PRR018)

EXTERNAL SENDER

Good Afternoon Taylor,

The County Manager has approved the back-end search through IT. We will need additional time to respond to your request, until March 25, 2022.

Should you have any questions, please do not hesitate to contact me.

<p><b>Sylvia C Tillbrook</b> Otero County Administration Executive Assistant</p> <p>(575) 437-7427 Work <a href="mailto:stillbrook@co.otero.nm.us">stillbrook@co.otero.nm.us</a></p> <p>1101 New York Ave Alamogordo, NM 88310</p>	
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**From:** Sylvia Tillbrook [<mailto:stillbrook@co.otero.nm.us>]

**Sent:** Thursday, February 24, 2022 1:32 PM  
**To:** 'AO Records' <[records@americanoversight.org](mailto:records@americanoversight.org)>  
**Cc:** 'rnickols@co.otero.nm.us' <[rnickols@co.otero.nm.us](mailto:rnickols@co.otero.nm.us)>  
**Subject:** RE: Public Records Request (NM-OTERO-22-0141) (OC File #22PRR018)

Dear Taylor,

It has been Otero County's practice to request items directly from the custodian of the documents. It is possible to request that IT conduct a backend search but will require County Manager approval. Taking IT's current workload, this could take several months.

[Redacted signature area]

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**From:** AO Records [<mailto:records@americanoversight.org>]  
**Sent:** Wednesday, February 23, 2022 4:47 PM  
**To:** Sylvia Tillbrook <[stillbrook@co.otero.nm.us](mailto:stillbrook@co.otero.nm.us)>  
**Cc:** [rnickols@co.otero.nm.us](mailto:rnickols@co.otero.nm.us)  
**Subject:** Re: Public Records Request (NM-OTERO-22-0141) (OC File #22PRR018)

Hi Sylvia,

Thank you for this production. Our team has reviewed the records, and we have just a couple follow-up questions.

Can you please describe the search that was done to identify records responsive to our request? Were Commissioner Griffin's sent emails searched in addition to his inbox?

The 10-page production contains 3 emails received by Commissioner Griffin, apparently forwarded to you

from his account. The production contains no emails sent by Commissioner Griffin, though such emails would also be responsive to American Oversight's request. Typically, we see government entities run searches for us by asking their IT department to run a back-end search of custodians' emails, rather than the custodian himself performing his own search(es). Would that be possible here?

Thanks,  
Taylor

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**Taylor Stoneman** (she/her)  
*Counsel*  
American Oversight  
[records@americanoversight.org](mailto:records@americanoversight.org)  
(202) 848-1319

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**From:** Sylvia Tillbrook <[stillbrook@co.otero.nm.us](mailto:stillbrook@co.otero.nm.us)>  
**Date:** Monday, February 21, 2022 at 12:57 PM  
**To:** AO Records <[records@americanoversight.org](mailto:records@americanoversight.org)>  
**Cc:** [rnichols@co.otero.nm.us](mailto:rnichols@co.otero.nm.us) <[rnichols@co.otero.nm.us](mailto:rnichols@co.otero.nm.us)>  
**Subject:** RE: Public Records Request (NM-OTERO-22-0141) (OC File #22PRR018)

EXTERNAL SENDER

Good Afternoon Taylor,

Attached you will find the public information you had requested.  
If I can be of further assistance, please do not hesitate to contact me.

<p><b>Sylvia C Tillbrook</b> Otero County Administration Executive Assistant</p> <p>(575) 437-7427 Work <a href="mailto:stillbrook@co.otero.nm.us">stillbrook@co.otero.nm.us</a></p> <p>1101 New York Ave Alamogordo, NM 88310</p>	
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**From:** Sylvia Tillbrook [<mailto:stillbrook@co.otero.nm.us>]  
**Sent:** Friday, February 4, 2022 11:42 AM  
**To:** 'AO Records' <[records@americanoversight.org](mailto:records@americanoversight.org)>  
**Cc:** 'rnickols@co.otero.nm.us' <[rnickols@co.otero.nm.us](mailto:rnickols@co.otero.nm.us)>  
**Subject:** RE: Public Records Request (NM-OTERO-22-0141) (OC File #22PRR018)

Good Morning,

We will need additional time to respond to your request, until February 19, 2022.  
Should you have any questions, please do not hesitate to contact me.



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**From:** AO Records [<mailto:records@americanoversight.org>]  
**Sent:** Friday, February 4, 2022 10:06 AM  
**To:** [stillbrook@co.otero.nm.us](mailto:stillbrook@co.otero.nm.us)  
**Subject:** Public Records Request (NM-OTERO-22-0141)

Dear Public Information Officer:

Please find attached a request for records under New Mexico's public records laws.

Sincerely,

--

Marwah Adhoob

Pronouns: she/her  
Paralegal  
American Oversight  
[records@americanoversight.org](mailto:records@americanoversight.org)  
[www.americanoversight.org](http://www.americanoversight.org) | @weareoversight

PRR: NM-OTERO-22-0141

**Subject:** FW: Legal Issues with Proposed Election Audit  
**Date:** Monday, January 10, 2022 at 5:57:22 PM Eastern Standard Time  
**From:** cgriffin@co.otero.nm.us  
**To:** erin\_hughs@yahoo.com  
**Attachments:** 2022.01.07 Nichols.Election Code Inquiry.pdf, SoS Elections Letter.pdf, image001.png

Hello Erin,

Here is a letter that our County Attorney just sent out. Praying there is a way around this. I am ready to fight Erin and demand this audit. It is just my other commissioners that I worry about.

Thank you,  
Couy

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**From:** rnichols@co.otero.nm.us <rnichols@co.otero.nm.us>  
**Sent:** Friday, January 7, 2022 2:42 PM  
**To:** rnichols@co.otero.nm.us  
**Subject:** Legal Issues with Proposed Election Audit

Commissioners,

This email and the attached documents relate to Meeting Agenda Item 17: Request approval of 2020 Election Audit contract and professional services agreement with EchoMail Inc., in the amount of \$49,750.00.

This information is provided for your awareness and knowledge, as you consider whether to approve the proposed audit. On December 9<sup>th</sup> the County Clerk received a letter from the Secretary of State's (SoS) Office stating that the function of election audits rests solely with the SoS and alternative methods are not permitted by the election code. I was incorrect when I stated in the November meeting that a local audit was permissible since nothing in the Election Code explicitly prohibited it. The state legislature position is policies and procedures related to the conduct of elections are prescribed expressly by the Election Code and courts have upheld this.

I've spent the past month researching and searching for options for the County to move forward with the desired audit. This included consulting with attorneys at Mynatt, Martinez, and Springer (MMS). A way forward was identified using IPRA (public records) but it is not without its own legal concerns and hurdles. These concerns are discussed by MMS in the attached letter. Preserving and maintaining the "secrecy of the ballot" is the primary issue of concern with any records released to EchoMail. A failure to protect the secrecy of the ballot would open the county to lawsuit from voters under the new civil rights act with a potential claim of \$2 million per voter.

Currently the County Clerk's office is awaiting further guidance from the SoS regarding what information can be released and how it can be released. In the contract with EchoMail I ensured there is a clause that the County will not be billed for audit process where we are unable to provide the necessary information needed to perform that function of the audit. MMS recommends getting an opinion from the AG on the matter or at a minimum getting guidance from the SoS office.

Once guidance is received from the SoS office I can provide direction on the options available for proceeding with the audit.

The following is information related to the proposed audit company, EchoMail. Maricopa County, AZ released a report this week, that contained criticism of EchoMail's processes and procedures stating "EchoMail made many false, inaccurate, and misleading claims about Maricopa County's early ballots due to a flawed understanding of the County's signature verification process. Addressed in this report are 10 claims made by EchoMail. All were found to be based in a misunderstanding of Arizona laws and County early ballot processes." (Pg 75) <https://recorder.maricopa.gov/justthefacts/pdf/Correcting%20The%20Record%20-%20January%202022%20Report.pdf>

V/R,  
RB

**R. B. Nichols**

*Otero County Attorney*  
Otero County Administration Building  
1101 New York Avenue  
Alamogordo, New Mexico 88310  
575-437-7427 (telephone)  
866-986-8376 (toll-free)  
575-443-2928 (facsimile)  
[michols@co.otero.nm.us](mailto:michols@co.otero.nm.us)





Blaine T. Mynatt  
Damian L. Martinez  
Bradley A. Springer†  
Benjamin J. Young  
Sara E. Woods†  
Alan J. Dahl  
Haley R. Grant  
Thomas R. Limon

*Of Counsel*  
David McNeill, Jr.  
†Also licensed in Texas

January 7, 2022

**ATTORNEY-CLIENT PRIVILEGED COMMUNICATION**  
**Via Email Only**

R.B. Nichols  
Otero County Attorney  
1101 New York Avenue  
Alamogordo, NM 88310

**Re: Election Code Inquiry**

Dear Mr. Nichols:

I write regarding our ongoing research and analysis of the New Mexico Election Code as it relates to the ability to access and use voter ballots and voter data. Pursuant to our communications, I have reviewed the correspondence between the Secretary of State and Lea County as well as researched the New Mexico Election Code and related Administrative Code. It is my understanding the purpose of this inquiry is to provide these records to Echomail, an entity the Commission wishes to engage to conduct an audit of the 2020 election results within Otero County.

Initially, this question was presented to us as whether the County could audit the 2020 election results. Based on our review of the Election Code, as it pertains to the election audits, the responsibility for this task rests solely with the Secretary of State rather than with local bodies. On December 9, 2021, the Secretary of State corresponded with the County Clerk and advised that alternative election audit methods are not permitted by the Code.

This position, however, raised a second line of inquiry related to NMSA 1978, § 1-12-69(G) governing the disposition of paper ballots. That paragraph, which was added to the Election Code in 2015, provides that paper ballots become subject to the New Mexico Inspection of Public Records Act (“IPRA”) 45 days after adjournment of canvassing or an election contest. The final clause of this amendment, however, provides that “[a]ny inspection of the paper ballots marked by voters, their digitized equivalents, or records related to voting shall be conducted in such a manner as to secure the secrecy of the ballot.”

Based on this provision, it is my understanding the County wishes to provide access to Echomail for the purpose of conducting an audit of public records, independent of the statutory audit procedures. On its face, the request seems reasonable based on a simple application of IPRA. However, it is my understanding that Counties throughout New Mexico have had differing responses to these inquiries. It is my understanding some have refused or provided restricted access; while others, like Lea County, have begun turning records over. Additionally, certain

Secretary of State employees have provided written correspondence authorizing the disclosure of exported ballot images that have had secret information redacted.

Since the 2015 amendment to Section 1-12-69, there have been no published cases interpreting the application of IPRA to this statute. There is, however, one unpublished opinion from 2019: *Northern New Mexicans v. Pojoaque Valley Irrigation District*, 2019 N.M. App. Unpub. LEXIS 61. Enclosed is a copy of that opinion.

In the *Pojoaque* case, the Court of Appeals relies on N.M. Const. art. VII, § 1; NMSA 1978, § 1-1-1.1; Rule 11-507 NMRA; and *Kishne v. Atwood*, 1979-NMSC-098, to affirm the District Court's order granting judgment in favor of the entity that denied access to the election ballots. The overwhelming consensus from the authority cited by the Court of Appeals is that the secrecy and sanctity of the New Mexico voter's ballot is one of New Mexico's most closely guarded rights. The Court determined that the ballots would lead to the discovery of the voter's identity and, therefore, the Irrigation District's records custodian properly withheld the ballots.

Of course, the County's situation is distinct from *Pojoaque* as it is not dealing with a local, special election with one position on a ballot. Rather, the records the County is considering turning over relate to all the registered voters in Otero County who voted in the 2020 regular election. The lack of statutory authority and administrative guidance from the Secretary of State on how to present these records for inspection is concerning. Simply, any mistake in producing Otero County voter records without lawful authority or in a fashion that may infringe on the right to a secret ballot could create significant liability for the County, especially under the newly adopted Civil Rights Act.

The first area where additional guidance would assist the County is the identification of the proper records custodian. As we discussed, the Election Code appears to imply the Secretary of State's Office as the records custodian for election records, at least for those records involving candidates for federal office which was the case in 2020. While the County certainly holds the records and the County Clerk has access to them for various statutory purposes, those all appear to be a function of the authority delegated by the Secretary of State to the Clerk. Unfortunately, Section 1-12-69(G) does not flesh this out and neither does the correspondence between the Secretary of State employee and the Lea County Clerk. Identifying the proper records custodian is critical, as that individual is tasked with determining what on the ballot is secret and must be redacted.

Second, Section 1-12-69(G) does not provide a definition of secret content on the ballots. In the event county clerks are considered records custodians of "paper ballots marked by voters, their digitized equivalents, or records related to voting," there must be direction concerning what precisely the Clerk must redact from the records Echomail intends to use in order to preserve the secrecy of the ballot.

Finally, the method of compliance with Section 1-12-69(G) is also unclear as it emphasizes inspection over the provision of copies. This is another area of disagreement among counties as some only permit inspection while others may provide physical or digital copies.

January 7, 2022

Page 3 of 3

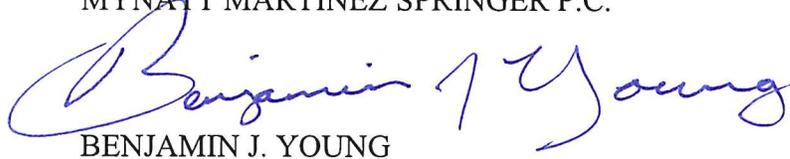
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Ultimately, our concern is that production of the data Echomail lists in its correspondence and Schedule A of the agreement could breach the secrecy of a voter's ballot thereby undermining his or her Constitutional right to a secret ballot. At the end of the day, New Mexico's Constitution, statutes, regulations, and corresponding case law clearly enshrine the secrecy of a voter's ballot as one of New Mexico's most important rights. To at least limit liability exposure to the County, we recommend requesting further guidance from the Secretary of State or, if possible, an opinion from the Attorney General's office asking for clarification on these issues. As we discussed, the Attorney General is authorized to issue legal opinions and advice letters to certain elected officials on matters of public concerns and statutory interpretation. If his office is unwilling to address these issues, obtaining specific clarification, in writing, from the Secretary of State's Office will undoubtedly assist the County in this process.

If you have any questions or concerns, please do not hesitate to contact me. I can be reached at 575-524-8812 or via cell at 575-636-5398.

Sincerely,

MYNATT MARTÍNEZ SPRINGER P.C.



BENJAMIN J. YOUNG

BJY/cwb/2007-001

*Northern New Mexicans Protecting Land v. Pojoaque Valley Irrigation Dist.*

Court of Appeals of New Mexico

February 12, 2019, Decided

NO. A-1-CA-37391

**Reporter**

2019 N.M. App. Unpub. LEXIS 61 \*

NORTHERN NEW MEXICANS PROTECTING  
LAND, WATER AND RIGHTS, Plaintiff-  
Appellant, v. POJOAQUE VALLEY  
IRRIGATION DISTRICT, Defendant-Appellee.

**MEMORANDUM OPINION**

**VANZI, Judge.**

**Notice:** PLEASE CONSULT THE NEW MEXICO  
RULES OF APPELLATE PROCEDURE FOR  
CITATION OF UNPUBLISHED OPINIONS.

**Prior History:** [\*1] APPEAL FROM THE  
DISTRICT COURT OF SANTA FE COUNTY.  
David K. Thomson, District Judge.

**Core Terms**

ballot, Election, secrecy, summary disposition,  
disclosure, memorandum, notice, voter, general  
election law, district court, compliance, invitation,  
privileges, unredacted, pleadings, sanctity, reasons,  
exempt

**Counsel:** Western Agriculture, Resource and  
Business Advocates, LLP, A. Blair Dunn,  
Albuquerque, NM for Appellant.

Egolf Ferlic & Harwood, LLC, Katherine M.  
Ferlic, Santa Fe, NM for Appellee.

**Judges:** LINDA M. VANZI, Judge. WE  
CONCUR: M. MONICA ZAMORA, Chief Judge,  
KRISTINA BOGARDUS, Judge:

**Opinion by:** LINDA M. VANZI

**Opinion**

P1 Plaintiff has appealed from an order granting Defendant's motion for judgment on the pleadings, together with a related order denying Plaintiff's motion for summary judgment and for declaratory judgment. We previously issued a notice of proposed summary disposition in which we proposed to affirm. Plaintiff has filed a memorandum in opposition. After due consideration, we remain unpersuaded. We therefore affirm.

P2 To very briefly summarize, this is fundamentally an IPRA case, in which Defendant declined to produce unredacted ballots. [DS 3] The district court concluded that these materials were exempt from IPRA disclosure requirements, based on concerns about maintaining the secrecy of those ballots. [RP 451-53]

P3 In our notice of proposed summary disposition we observed that the district [\*2] court's determination is well supported. The IPRA "catch-all" provision, *NMSA 1978, § 14-2-1(A)(8)* (2011), exempts materials that are subject to statutory and regulatory bars to disclosure, as well as materials subject to constitutionally mandated privileges and privileges established by our rules of evidence. *Republican Party of N.M. v. N.M. Taxation & Revenue Dep't, 2012-NMSC-026, ¶ 13, 283 P.3d 853*. As the district court observed at greater length in its order granting Defendant's motion for

judgment on the pleadings, [RP 434-38] the materials in question could not have been produced without violating the right to the secrecy of the ballot, as enshrined by constitution, statute, and rule. See, e.g., N.M. Const. art. VII, § 1(B) (recognizing the importance of "the secrecy of the ballot"); NMSA 1978, § 1-1-1.1 (1979) ("It is the purpose of the Election Code . . . to secure the secrecy of the ballot[.]"); Rule 11-507 NMRA (recognizing the privilege of a legal voter to refuse to disclose his or her vote). The sanctity of this right is well established. See Kiehne v. Atwood, 1979-NMSC-098, ¶ 7, 93 N.M. 657, 604 P.2d 123 ("The sanctity of a New Mexican's ballot is undoubtedly one of his most cherished and jealously-guarded rights. It is one of the fundamental civil liberties that form the bulwark against the erosion of a democratic government. Compromising the secrecy of the ballot is not to be tolerated except in cases of [\*3] paramount public importance."). In light of these principles and authorities, the IPRA request was properly denied.

P4 In its memorandum in opposition, Plaintiff takes the position that the ballots in question should not be regarded as subject to secrecy because the Legislature has specified that the ballots must contain information that effectively renders the identity of each voter apparent. [MIO 4-5] However, the suggested conclusion does not follow from the premise. To the contrary, the fact that the ballots contain such identifying information underscores the propriety of the district court's determination that the unredacted ballots were subject not subject to disclosure. See NMSA 1978, § 1-12-69(G) (2015) (providing that inspection of ballots may be conducted only in such a manner as to secure the secrecy of the ballot). To the extent that Plaintiff invites us to imply legislative intent to abrogate voters' constitutionally and statutorily protected right to secrecy of the ballot in this specific context, the invitation must be declined. See generally El Castillo Ret. Residences v. Martinez, 2017-NMSC-026, ¶ 25, 401 P.3d 751 ("A statute must be interpreted and applied in harmony with constitutionally imposed limitations."); Phelps

Dodge Tyrone, Inc. v. N.M. Water Quality Control Comm'n, 2006-NMCA-115, ¶ 15, 140 N.M. 464, 143 P.3d 502 ("We attempt to harmonize statutes in a way that [\*4] facilitates their operation and the achievement of their goals." (internal quotation marks and citation omitted)).

P5 Plaintiff further argues that the result reached in this case reflects "a lack of discernment," "avoid[s] doing substantial justice," and is ultimately "absurd" insofar as it "deprive[s] citizens of the necessary information to verify the results" of elections. [MIO 3-4, 7] Of course, this is inaccurate. Election results, including the election at issue here, are subject to challenge and verification as provided in the Election Code. See Gunaji v. Macias, 2001-NMSC-028, ¶ 36, 130 N.M. 734, 31 P.3d 1008 (holding that "the Election Code sets out the exclusive procedure for contesting the results of an election"); see also NMSA 1978, § 73-9-5 (1973) (providing that the general election laws of the state govern special irrigation district elections); Glaser v. LeBus, 2012-NMSC-012, ¶ 9, 276 P.3d 959 (indicating that where a statutory provision calls for compliance with the general election laws of this state, compliance with the procedures set forth in the Election Code is required). We will not comment upon Plaintiff's failure to properly pursue this avenue, apart from observing that IPRA is not a surrogate. See Gunaji, 2001-NMSC-028, ¶ 36.

P6 Accordingly, for the foregoing reasons, as well as the reasons set forth in the notice [\*5] of proposed summary disposition, we affirm.

**P7 IT IS SO ORDERED.**

**LINDA M. VANZI, Judge**

**WE CONCUR:**

**M. MONICA ZAMORA, Chief Judge**

**KRISTINA BOGARDUS, Judge**

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End of Document



STATE OF NEW MEXICO  
**MAGGIE TOULOUSE OLIVER**  
SECRETARY OF STATE

December 9, 2021

*SENT VIA ELECTRONIC MAIL ONLY*

Robyn Holmes  
Otero County Clerk  
1104 N White Sands Blvd  
Alamogordo, NM 88310  
rholmes@co.otero.nm.us

**RE: Election Code Audit Requirements**

Dear County Clerk Holmes:

New Mexico has a rigorous election audit system in place. The Legislature has required certain audits to take place before and after general elections. These processes are contained in Article 13 and 14 of the Election Code. To sum this process up, following a statewide election, the results are canvassed or audited so that accuracy is ensured. Canvassing first happens at the county level utilizing a trained group of election officials lead by the county clerk and a bi-partisan county canvassing board. Then an additional state level audit is completed by the Bureau of Elections Division of the New Mexico Secretary of State's Office. Any discrepancies between the results are thoroughly investigated. Once the canvass process is completed by trained election administrators, an independent audit is completed, and the election results forwarded to the New Mexico State Canvassing Board to be made official. If a candidate contest ends within a certain margin of victory, then automatic recounts are ordered by the State Canvassing Board to further ensure the election results are proper.

Finally, New Mexico conducts a risk-limiting audit following every general election. This process involves randomly selecting races and precincts throughout the state and hand counting the results in these precincts. The hand counted results are then compared to the normal machine counted results. In addition to the canvassing of the election results statute requires that an auditor test that our tabulators accurately count actual paper ballots with a known outcome. Furthermore, we confirm that they properly handle over-vote and under-vote conditions. The voting machine system check is conducted on the accuracy of precinct electronic vote tabulators, alternate voting location electronic vote tabulators and absent voter precinct electronic vote tabulators. The voting system check is conducted for all federal offices, for governor and for the statewide elective office, other offices. The auditor then reports the results of the voting system check to the secretary of state and release the results to the public.

These extensive election audit provisions are required to be conducted by our election administrators and any other methods of auditing the election results are not provided for in law.

Respectfully,



Mandy Vigil  
State Election Director

**Subject:** FW: County Audit  
**Date:** Thursday, December 16, 2021 at 2:48:38 PM Eastern Standard Time  
**From:** cgriffin@co.otero.nm.us  
**To:** erin\_hughs@yahoo.com  
**Attachments:** image001.png

Hello Erin,

Looks like we are ready to go on our end. Attached is a response from Pamela Heltner our county manager. Please respond back to Pamela as soon as your schedule allows with the needed information.

Thank you Erin,  
Couy

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**From:** Pamela Heltner <pheltner@co.otero.nm.us>  
**Sent:** Wednesday, December 15, 2021 1:11 PM  
**To:** cgriffin@co.otero.nm.us  
**Subject:** RE: County Audit

Hi Couy,

Yes we have some movement. I spoke to Ginger and can do a one time professional services agreement if it stays under \$50,000. I left Erin a message that I need the quote she got and contact info so that RB can draft an agreement. That's all I'm waiting on.

Pamela



Pamela Heltner, CPO, CPS  
County Manager  
1101 New York Ave. Room 106  
Alamogordo, NM 88310  
Tel: 575-437-7427  
Fax: 575-443-2928  
[pheltner@co.otero.nm.us](mailto:pheltner@co.otero.nm.us)

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**Sent:** Wednesday, December 15, 2021 12:28 PM  
**To:** 'Pamela Heltner' <[pheltner@co.otero.nm.us](mailto:pheltner@co.otero.nm.us)>

**Subject:** County Audit

Pamela,

Hope all is going well. I was gonna run down and poke my head in but I know you're busy and just kind of had a direct question. Have we gotten the right bid responses to go forward with the contract on the forensic side of the audit? Do we have something in place for our next commission meeting so we can move forward?

I believe this is rather time-sensitive Pamela. As soon as we have the right legal process in place lets keep it before the commission and keep it moving forward. I believe we have full support of our County Clerk in this and I believe it is our only option in order to ensure our electorate is safe and there are no areas for compromise.

Thanks Pamela and when you have time holler back,  
Couy