

**STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

In re:

**BERNALILLO COUNTY
COURT DEPUTIES ASSOCIATION,**

Complainant,

v.

PELRB 121-20

BERNALILLO COUNTY,

Respondent.

ORDER

THIS MATTER comes before the Public Employee Labor Relations Board (“Board”) on the issuance of a Stipulated Protective Order by the Hearing Officer upon a joint motion by the parties. After review of the Order and the parties’ Motion, the Board being otherwise sufficiently advised, the Board voted 3-0 as follows to adopt the Stipulated Protective Order as its own.

IT IS ORDERED: The Stipulated Protective Order issued by the Hearing Officer in the above-captioned case is hereby adopted by the Board.

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Marianne Bowers

MARIANNE BOWERS, BOARD CHAIR

6/1/2021

DATE

**STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

Bernalillo County Court Deputies Association,

Complainant,

v.

PELRB No.: 121-20

**Bernalillo County Sheriff's Office, and
Bernalillo County,**

Respondents.

**STIPULATED PROTECTIVE ORDER GOVERNING USE OF CONFIDENTIAL
REPORT BY NATIONAL CENTER FOR STATE COURTS ON BERNALILLO
COURTHOUSE SECURITY ASSESSMENT**

This Stipulated Protective Order is entered by the Hearing Officer for the PELRB pursuant to a request by the Parties Bernalillo County Sheriff's Office (the "BCSO"), Bernalillo County (the "County"), and the Bernalillo County Court Deputies Association (the "BCCDA"), through their respective counsel.

The Hearing Officer, having reviewed the pleadings and being otherwise fully advised, finds and orders as follows:

1. The PELRB has jurisdiction over the Parties and over the subject matter herein.
2. The Parties BCSO, the County and the BCCDA are collectively referred to herein as the "Signatories," i.e., the signatories to this Stipulated Protective Order.
3. On January 25, 2021, the Parties submitted a Stipulated Pre-Hearing Order that included, inter alia, a list of exhibits that the Parties would proffer as evidence at the merits hearing in this matter, which was to be held on February 5, 2021.

4. At that time, Respondents BCSO and the County proffered a copy of a document labeled “Courthouse Security Assessment Final Report: Second Judicial District Court, Albuquerque, New Mexico, January 2020” as their proposed hearing Exhibit 5.

5. The cover page of the document was stamped “CONFIDENTIAL”, and stated it was not for distribution.

6. The second page of the document stated it was copyrighted by the National Center for State Courts (the “NCSC”) in 2020.

7. This document will be referred to herein as the “NCSC Report”.

8. A merits hearing in this case was held on February 5, 2021, and was recorded pursuant to N.M.A.C. § 11.21.1.15. *See* N.M.A.C. § 11.21.1.15, which provides that, inter alia, all prohibited practice hearings before the board or a hearing examiner of the board shall be audio-recorded, and that the director shall keep the audio recordings of the prohibited practices hearings for a period of at least one year following the close of the proceeding in which the hearing is held, or one year following the close of the last judicial or board proceeding (including any appeal or request for review) related to the case in which the hearing is held, whichever is later, or such longer period as may be required by law).

9. Although two of Respondents’ witnesses testified on their knowledge of the NCSC Report findings with respect to staffing levels of security posts at the District Courthouse, the NCSC Report was not itself proffered or admitted into evidence as an Exhibit during the merits hearing.

10. Nevertheless, the PELRB is a public body, and as such, all records received in its proceedings are considered “public records” that would be subject to inspection unless otherwise exempt under New Mexico’s Inspection of Public Records Act (“IPRA”), NMSA 1978, §§ 14-2-

1 *et seq.* See NMSA 1978, § 14-2-6(D) (defining a “Public body” as “executive, legislative and judicial branches of state and local governments and all advisory boards, commissions, committees, agencies or entities created by the constitution or any branch of government that receives any public funding. . .”); NMSA 1978, § 10-7E-8(A) (creating the PELRB) and at § 10-7E-9(A)-(B) (providing that the PELRB shall promulgate rules necessary to perform its functions and duties under the Public Employees Bargaining Act, and hold hearings necessary to carry out its functions); NMSA 1978, § 14-2-6(E) (defining “Public records” under IPRA as records of a “public body.”).

11. Respondents BCSO and the County advise that the NCSC Report was paid for with public funds by a political subdivision of the state and represents a public record.

12. Respondents assert the NCSC Report contains information on staffing levels of security posts at the District Courthouse and the JJC that is relevant and material to their defense in this matter, and was appended to the Parties’ Stipulated Pre-Hearing Order as a proposed hearing exhibit for that reason.

13. However, the Parties agree the NCSC Report also contains other information about security features, equipment, staff training, and policies or procedures at the Second Judicial District Court for Bernalillo County (the “District Courthouse” or the “Facility”) and the Juvenile Justice Center (“JJC”) that could reveal specific vulnerabilities or risk assessments of these Facilities.

14. Because such information could facilitate the planning or executing a terrorist attack, the NCSC Report has been stamped “CONFIDENTIAL”.

15. In view of this fact, the Parties assert certain portions of the NCSC Report would be exempt from disclosure under IPRA, which provides, in pertinent part, that:

Every person has a right to inspect public records of this state except:...

(7) tactical response plans or procedures prepared for or by the state or a political subdivision of the state, the publication of which could reveal specific vulnerabilities, risk assessments or tactical emergency security procedures that could be used to facilitate or execute the planning of a terrorist attack

NMSA 1978, § 14-2-1(A)(7).

16. Sections III-IV of the NCSC Report are replete with detailed discussions of District Courthouse and JJC layout, security features and equipment, including location and limitations of such equipment, prisoner transport routes, vulnerable access or egress points, staff training and practice drills and security procedures and policies.

17. Additionally, pages 13 and 16-18 of the NCSC Report also contain specific examples of risk assessment findings or observations with respect to implementation of security policies or staff training and practice drills mixed in with information that is not confidential.

18. In order to ensure that confidential information in the NCSC Report on specific security vulnerabilities, risk assessment analysis and emergency security procedures is not disclosed to the public if an IPRA request for records relating to this case is received by the PELRB, the Signatories hereby agree to the following terms of this protective order governing the handling, disclosure and retention of confidential information in the NCSC Report that was appended to the Parties' Stipulated Pre-Hearing Order as Respondents' Exhibit 5.

19. All portions of the NCSC Report that have been filed in this proceeding, whether offered as exhibits or not, shall be conspicuously marked "Confidential." Those records shall not be disclosed to anyone other than the Parties and the PELRB, and their respective employees assigned to work on this specific matter, and shall be maintained in the Parties' files and the files of the PELRB in a manner to protect the confidentiality of those records;

of the NCSC assessment of the District Courthouse and JJC and any findings, observations or recommendations appearing on pages 13, 16-18 and in Sections III-IV of the NCSC Report should be considered exempt from disclosure.

21. Pursuant to IPRA, NMSA 1978, Section § 14-2, if the PELRB receives a public records request for documents filed in this action, all such discussion appearing on pages 13, 16-18 and Sections III-IV of the NCSC Report in their entirety should be redacted prior to disclosure of other Sections of the NCSC Report. *See* NMSA 1978, 14-2-9 (A) (“Procedure for Inspection. A. Requested public records containing information that is exempt and nonexempt from disclosure shall be separated by the custodian prior to inspection, and the nonexempt information shall be made available for inspection.”).

22. Anyone who receives documents or other information governed by this Order shall be prohibited from re-disclosure of those documents or information outside of this PELRB case, except information of which the party has independent knowledge.

IT IS SO ORDERED.

PUBLIC EMPLOYEES LABOR RELATIONS BOARD


Thomas J. Griego
Executive Director

Date: March 8, 2021

Respectfully submitted by:

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Approved by email on March 5, 2021

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