



U.S. Department of Justice

*United States Attorney
District of New Mexico*

*Post Office Box 607
Albuquerque, New Mexico 87103*

505/346-7274

FAX 505/346-7205

August 12, 2005

Via Fax 602-667-3490 and Regular Mail

Lana E. Marcussen
4518 N. 35th Place
Phoenix, Arizona 85018

Re: Marcussen v. Thompson, Secretary of Health & Human Services, Gale Norton,
Secretary of the Department of Interior, & John Docs 1-20
USDC New Mexico Civil Action No. CIV 04-1429 JB/DJS

Dear Ms. Marcussen:

Pursuant to the Joint Motion (Doc. 26, filed 6/23/05) and the Court's Order (Doc.27, filed 6/28/05), on July 14th we sent you without charge the documents referenced in the Motion at paragraph 3: "Since that hearing, HHS has located the available documents for AFDC state plans for New Mexico from 1992 to 1996 (an outline of the original plan and subsequent amendments) at the regional office in Dallas (there is no office in New Mexico)."

HHS has been looking for the documents described in paragraph 4 of the Motion: "Plaintiff stated that in addition to these documents, she was still seeking two more categories of documents that she states she had mentioned during the hearing: Navajo Nation AFDC plans for 1992 to 1996, and Navajo Nation AFDC agreements to coordinate the New Mexico plan and the Navajo Nation plan." To date, HHS has not found any Navajo Nation AFDC plans for 1992 to 1996 or Navajo Nation AFDC agreements as identified in paragraph 4.

HHS has been trying to locate the specific documents listed in paragraph 6 of the Motion: "As a result of the June 20th conference call, and with the assistance of the BIA social worker for the Navajo Region (who is not an HHS employee and cannot speak for HHS), Plaintiff now seeks three categories of items from HHS related to the Navajo Nation." These three categories are listed below, from paragraph 6 of the Motion, with comments below from HHS' search for the documents.

1) All agreements or contracts between the State of New Mexico and the Navajo Nation for Title IV-D and Title IV-E for 1992 to 1996. (The State of New Mexico and the Navajo Nation should also have these documents.)

HHS Response: You are seeking from HHS the agreements between New Mexico and the Navajo Nation regarding Title IV-D and IV-E for 1992 to 1996. HHS has checked, and it does not have any responsive documents. Prior to 2001, HHS had no authority to approve these contracts. Beginning in 2001, the Navajo Nation began to receive direct federal funding for child

support enforcement activities (Title IV-D). As a part of their documentation under this new funding scheme, they are now required to submit signed copies of any contracts in order to document their expenses. However, regarding your request from 1992 to 1996, HHS does not have any responsive documents. While HHS may have received courtesy copies of such agreements, it did not keep these courtesy copies. With the exception of Title IV-D since 2001, New Mexico, like other states, handles its own agreements directly with the appropriate tribal authorities, so HHS is not the best source for this request. The only agreement that HHS has been able to locate is a draft from 1998-1999, so it is not responsive since it is not from 1992-1996 as requested. HHS is willing to provide this document even though it is from 1998-1999, and even though it is a draft, and thus exceeds the scope of the request. If you would like a copy of this document, please let us know.

2) ISDA 638 or other contracts between HHS and the Navajo Nation for Title IV-D and IV-E for 1992 to 1996.

HHS Response: HHS has searched and has no responsive documents. There are no 638 contracts for TANF, because TANF was for everyone and not just Native Americans. HHS cannot find any "other contracts" between it and the Navajo Nation for IV-D and IV-E for 1992-1996.

3) Transitional documents for Title IV-E and IV-D transitioning from AFDC to TANF.

HHS Response: First, HHS notes that Title IV-E does not relate to AFDC or TANF; therefore, there are no transitional documents for Title IV-E relating to the transitioning from AFDC to TANF. Additionally, HHS has looked and does not have any responsive documents for the Navajo Nation transitioning from AFDC to TANF. HHS does not have or keep these documents. A better source would be the State of New Mexico and not HHS. HHS does not enter into agreements directly with the Navajo Nation. This transition focused more on the financial aspect, which did not affect much of a change from AFDC to TANF in how to handle support enforcement and to enforce payments of child support.

We want you to know that these three requests were exhaustively researched by HHS in its regional offices in Dallas and in San Francisco, and in its central office in Washington, D.C. As was noted in paragraph 6 of the Joint Motion (Doc. 26), "the BIA social worker for the Navajo Region ... is not an HHS employee and cannot speak for HHS."

HHS has, at this point, exhausted its efforts to search for the documents you have requested either as part of your July 19, 2004, FOIA request that is the basis for this action (attached as Exhibit A1 to Doc. 5 on the Court's docket), or as part of your subsequent requests that were made part of the motion (Doc. 26). HHS believes that the documents that you seek may be in the possession of the State of New Mexico. If you would like us to provide contact names and numbers for persons in the State government who may have such documents, please

let us know.

In the Order (Doc. 27), Judge Browning required the parties to submit a report or letter to the Court by August 24, 2005, giving the status of the matter. Attached is a draft letter for Judge Browning for your review, and a Stipulation of Dismissal. If you want edits to the letter, please mark it up and fax it back (fax 505-346-7205), together with the signed Stipulation of Dismissal. Once it is in final form we will submit the letter to the Court together with the Stipulation of Dismissal.

Thanks for your cooperation.

Sincerely,

DAVID C. IGLESIAS
United States Attorney



CYNTHIA L. WEISMAN
Assistant U. S. Attorney

CLW/cw
Enclosure
cc w/ encl:

Kathrine Brown, HHS
Greg Mehojah, DOI