



Office of New Mexico
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ARMA PRESENTATION

INSPECTION OF PUBLIC RECORDS ACT

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Inspection of **Public Records Act**



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Presentation Overview

- Public Policy Underlying the Inspection of Public Records Act
- Requirements Under the Act
- Exceptions to the Act
- Consequences for Violating the Act
- Enforcement of the Act



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Public Policy Underlying IPRA NMSA 1978, § 14-2-5

- Recognizing that a representative government is dependent upon an informed electorate...”
- It’s the intent of the legislature and public policy of the state:
 - “that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees.”

AND

- “to provide persons with such information is an essential function of a representative government and an integral part of the routine duties of public officers and employees.”
- “A citizen has a fundamental right to have access to public records. The citizen’s right to know is the rule and secrecy is the exception. Where there is no contrary statute ..., the right to inspect public records must be freely allowed.”

- *State ex. Rel. Newsome v. Alarid*, 1977-NMSC-076



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Inspection of Public Records Act NMSA 1978, § 14-2-6

DEFINITIONS

- Public Records – “all documents, papers, letters, books maps, tapes, photographs, recordings and other materials, regardless of physical form or characteristics, that are used, created, received, maintained or held by or on behalf of any public body and relate to public business, whether or not the records are required by law to be created or maintained”
 - Definition covers virtually all documents
 - Includes draft documents
 - Personal emails used for conducting public business are subject
 - Exceptions do apply



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Inspection of Public Records Act NMSA 1978, § 14-2-1

EXCEPTIONS

1. Records pertaining to physical or mental exams and medical treatment of persons confined to any institution
2. Letters of reference concerning employment, licensing or permits
3. Letters or memos that are matters of opinion in personnel files
4. Law enforcement records revealing information or individuals accused but not charged with a crime
5. Records exempted by the Confidential Materials Act
6. Hospital trade secrets and strategic business plans
7. Tactical response plans that could reveal vulnerabilities related to execution of a terrorist attack
8. ***AS OTHERWISE PROVIDED BY LAW***



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Inspection of Public Records Act

PERSONAL IDENTIFIER EXCEPTION

- § 14-2-1(B) also states that “protected personal identifier information” may be redacted prior to inspection.
- *Does not* exempt record from inspection – should redact
- Unredacted records shall not be made available on body’s public website
- Not identical to definition under State Records Act

DEFINITION

- Protected Personal Identifier Information –
 - 1) All but the last four digits of a:
 - a) Taxpayer identification number;
 - b) Financial account number; or
 - c) Driver’s license number
 - 2) All but the year of a person’s date of birth; and
 - 3) A social security number.



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Inspection of Public Records Act NMSA 1978, § 14-2-6 to -7

CUSTODIAN OF PUBLIC RECORDS

- Each public body must designate at least one custodian
- Records Custodian – “person responsible for the maintenance, care or keeping of a public body’s records, regardless of whether the records are in that person’s actual physical custody and control”
- Duties:
 - A. Receive requests to inspect records
 - B. Respond to requests in same medium
 - C. Provide reasonable opportunities to inspect
 - D. Provide reasonable facilities or copies during business hours
 - E. Post public notice describing:
 - 1) Individual’s right to inspect the public body’s records
 - 2) Contact information and procedures for requesting inspection
 - 3) Procedures for requesting copies
 - 4) Fees, if any, for copies
 - 5) Responsibility of the public body to allow for inspection



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Inspection of Public Records Act NMSA 1978, § 14-2-8

PROCEDURES FOR REQUESTING RECORDS

- Oral or written request accepted
- Only written requests are enforceable, and must provide:
 - Name, address, and telephone number
 - Identify the records sought with reasonable particularity
 - (Written requests include electronic communication)
- Custodian must permit inspection immediately or as soon as practical under the circumstances
 - Must respond within 3 days with when records will be available
 - Must provide records within 15 days unless request is deemed *excessively burdensome or broad* pursuant to Section 14-2-10



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Inspection of Public Records Act NMSA 1978, § 14-2-8 to -9

PROCEDURES CONT.

- If requested records are not in custodian's possession, the custodian must forward request to the appropriate custodian and notify the requester
- No obligation to create a public record
- Exempt records shall be separated – redacting is preferred
- Electronic copies if requested and available
- Copies provided only in format(s) maintained by the body
- May charge fees for copies and actual costs of transmitting
 - Max \$1.00 per page up to 11x17
 - May require advance payment
- May NOT CHARGE per page for electronic copies



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Inspection of Public Records Act NMSA 1978, § 14-2-11

PROCEDURES FOR DENIED REQUESTS

- Request may be deemed denied if inspection not permitted within 15 days
 - (unless excessively burdensome or broad)
- Written explanation of denial shall:
 - 1) Describe records sought
 - 2) Names and positions of each person responsible for the denial
 - 3) Delivered or mailed within 15 days after request was received
- Failure to provide written explanation may result in damages
 - Up to \$100 per day
 - Accrue from date of noncompliance until written denial is issued
 - Paid by public body



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Inspection of Public Records Act NMSA 1978, § 14-2-12

ENFORCEMENT

- Action may be brought by:
 - 1) Attorney General or District Attorney
 - 2) Person whose written request has been denied
- District Court may issue writ or order to enforce IPRA
- Exhaustion of administrative remedies not required
- Statute of Limitations apply
 - Generally 3 (municipality) or 4 years
- Court *shall* award damages, costs, and attorneys' fees for successful action to enforce IPRA



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IN REVIEW

- Records subject to inspection unless included in exception
- Records custodian obligations – public notice, procedures, etc.
- Draft documents = public records
- Strict timeline for request and inspection procedures
- Electronic copies may be requested (cannot charge per page)

Legislative intent: “that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees.”



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QUESTIONS?



- Attorney General Inspection of Public Records Act Compliance Guide
 - www.nmag.gov
- Office of the Attorney General (Open Government Division)
 - 505.490-4060
- Public Body's Attorney
- NM Foundation for Open Government
 - www.nmfog.org