

**CHAPTER 14. RECORDS, RULES, LEGAL NOTICES, OATHS****ARTICLE 2. INSPECTION OF PUBLIC RECORDS**

*N.M. Stat. Ann. § 14-2-1 (2010)*

**§ 14-2-1. Right to inspect public records; exceptions**

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

**(1) records pertaining to physical or mental examinations and medical treatment of persons confined to an institution;**

**(2) letters of reference concerning employment, licensing or permits;**

**(3) letters or memorandums that are matters of opinion in personnel files or students' cumulative files;**

**(4) law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime. Law enforcement records include evidence in any form received or compiled in connection with a criminal investigation or prosecution by a law enforcement or prosecuting agency, including inactive matters or closed investigations to the extent that they contain the information listed in this paragraph;**

**(5) as provided by the Confidential Materials Act [14-3A-1 NMSA 1978];**

**(6) trade secrets, attorney-client privileged information and long-range or strategic business plans of public hospitals discussed in a properly closed meeting;**

**(7) public records containing the identity of or identifying information relating to an applicant or nominee for the position of president of a public institution of higher education;**

**(8) 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 the planning or execution of a terrorist attack;**

**(9) discharge papers of a veteran of the armed forces of the United States filed with the county clerk before July 1, 2005 that have not been commingled with other recorded documents. These papers will be available only to the veteran who filed the papers, the veteran's next of kin, the deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney or a person designated in writing by the veteran to receive the records;**

**(10) discharge papers of a veteran of the armed forces of the United States filed with the county clerk before July 1, 2005 that have been commingled with other**

recorded documents if the veteran has recorded a request for exemption from public disclosure of discharge papers with the county clerk. If such a request has been recorded, the records may be released only to the veteran filing the papers, the veteran's next of kin, the deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney or a person designated in writing by the veteran to receive the records;

(11) discharge papers of a veteran of the armed forces of the United States filed with the county clerk after June 30, 2005. These papers will be available only to the veteran who filed them, the veteran's next of kin, the deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney or a person designated in writing by the veteran to receive the records; and

(12) as otherwise provided by law.

**B. At least twenty-one days before the date of the meeting of the governing board of a public institution of higher education at which final action is taken on selection of the person for the position of president of the institution, the governing board shall give public notice of the names of the finalists being considered for the position. The board shall consider in the final selection process at least five finalists. The required notice shall be given by publication in a newspaper of statewide circulation and in a newspaper of county-wide circulation in the county in which the institution is located. Publication shall be made once and shall occur at least twenty-one days and not more than thirty days before the described meeting.**

**C. Postponement of a meeting described in Subsection B of this section for which notice has been given does not relieve the governing body from the requirement of giving notice of a rescheduled meeting in accordance with the provisions of Subsection B of this section.**

**D. Action taken by a governing body without compliance with the notice requirements of Subsections B and C of this section is void.**

**E. Nothing in Subsections B through D of this section prohibits a governing body from identifying or otherwise disclosing the information described in this section.**

**HISTORY:** 1941 Comp., § 13-501, enacted by Laws 1947, ch. 130, § 1; 1953 Comp., § 71-5-1; Laws 1973, ch. 271, § 1; 1981, ch. 47, § 3; 1993, ch. 260, § 1; 1998 (1st S.S.), ch. 3, § 1; 1999, ch. 158, § 1; 2003, ch. 288, § 1; 2005, ch. 126, § 1.

CROSS REFERENCES. --Proprietary information, *9-15-18 NMSA* 1978.  
 Definitions, *14-2-6 NMSA* 1978.  
 Donation of confidential material, *14-3A-2 NMSA* 1978.  
 Access to confidential records, *14-3-7.1 NMSA* 1978.  
 Biennial review; investigations; recommendations of the director; procedures, *17-2-40 NMSA* 1978.  
 Health information system; confidentiality, *24-14A-8 NMSA* 1978.  
 Average manufacturer price; filing; reporting, *27-2E-1 NMSA* 1978.  
 Reports filed with the department of public safety; criminal penalties, *30-51-3 NMSA* 1978.  
 Confidential information, *74-2-11 NMSA* 1978.  
 Proprietary information, *76-22-21 NMSA* 1978.

THE 2005 AMENDMENT, effective July 1, 2005, in Paragraph A(4), substituted "listed in this paragraph" for "listed above"; and added Paragraphs A(9)-(11) and redesignated former Paragraph A(9) as Paragraph A(12).

#### GENERALLY

Trial court properly held that New Mexico's Inspection of Public Records Act (IPRA), *14-2-1 NMSA* 1978 et seq., required a county agency to disclose information about a settled lawsuit even though related civil and criminal cases were still pending; the naked assertion that the agency's fair trial rights in related proceedings would be prejudiced was insufficient as a matter of law to establish prejudice to the public interest sufficient to delay disclosure, and the agency's argument about the competing public interests in protecting the related judicial proceedings from prejudice and in the immediate release of the requested information ignored the core purpose of the IPRA, which was to promote accountability through disclosure. *Bd. of Comm'rs v. Las Cruces Sun-News*, 2003-NMCA-102, 134 N.M. 283, 76 P.3d 36.

Where taxpayers claimed that the tax assessor wrongfully denied them publicly available information on other lots in their subdivision and prevented them from demonstrating discrepancies in property valuations, the county valuation protests board was not required to sanction the tax assessor where it found that the information was not relevant to the taxpayers' valuation protests; further, as the information was not relevant, it was not discoverable under agency regulations, and the taxpayers' remedy for any wrongful withholding of access to public records was to file suit under the Inspection of Public Records Act, *14-2-1 et seq. NMSA* 1978, and to enforce the denied requests for the information under *14-2-8* and *14-2-12 NMSA* 1978. *Hannahs v. Anderson*, 1998-NMCA-152, 126 N.M. 1, 966 P.2d 168, cert. denied, 972 P.2d 351 (1998).

Inspection of Public Records Act, *14-2-1 NMSA* 1978, provides that every person has a right to inspect any public records of the state except as otherwise provided by law; public records include all materials that are used, created, received, maintained, or held by or on behalf of any public body and relate to public business. *Meridian Oil v. New Mexico Taxation & Revenue Dep't*, 1996-NMCA-079, 122 N.M. 131, 921 P.2d 327.

New Mexico supreme court affirmed lower court's decision finding that documents relating to a representation election were protected from public disclosure pursuant to *14-2-1F NMSA* 1978 because a Public Employee Labor Relations Board regulation, which was incorporated into the Act, required the confidentiality of the requested documents. *City of Las Cruces v. Public Empl. Labor Rels. Bd.*, 1996-NMSC-024, 121 N.M. 688, 917 P.2d 451.

Trial court's refusal to conduct an in camera examination of applications for a city planner position was proper because the city failed to present any testimony regarding a justification of why the applications were not to be disclosed. *State ex rel. Blanchard v. City Comm'rs*, 106 N.M. 769, 750 P.2d 469 (Ct. App. 1988).

While a citizen has a fundamental right to have access to public records, there may be circumstances under which the information contained in the record can be justifiably withheld, and the custodian of records has

the initial duty to make this determination as to each record requested. Pursuant to former 71-5-1, 1953 Comp. (now *14-2-1 NMSA* 1978), the custodian must determine that the person requesting access is a citizen, that he is requesting the information for a lawful purpose, and the custodian may make reasonable restrictions and conditions on access to the records, pursuant to former 71-5-2, 1953 Comp. *State Ex Rel. Newsome v. Alarid*, 90 N.M. 790, 568 P.2d 1236 (1977).

In a student reporter's case in which he sought to gain access to the personnel records of the non-academic staff of a university, except that which was exempt from disclosure under the terms of former 71-5-1, 1953 Comp. (now *14-2-1 NMSA* 1978), the record custodian's claim that the request for inspection posed an extreme burden on his office was not a legitimate reason, by itself, for failure to make records available for inspection or for copying. Pursuant to former 71-5-2, 1953 Comp., the custodian could make reasonable restrictions and conditions on access to the records. *State Ex Rel. Newsome v. Alarid*, 90 N.M. 790, 568 P.2d 1236 (1977).

#### APPLICABILITY

Citizen complaints about law enforcement officers requested by the resident were available to the public for inspection under *14-2-6E NMSA* 1978 of the New Mexico Inspection of Public Records Act (IPRA), as they were not letters of reference nor matters of opinion in personnel files under Subsection A(2) and (3); it would be against IPRA's stated public policy to shield from public scrutiny as matters of opinion in personnel files the complaints of citizens who interacted with police officers. *Cox v. N.M. Dep't of Pub. Safety*, 2010-NMCA-096, N.M. , 242 P.3d 501.

Company was properly denied complete electronic copies of the New Mexico department of taxation and revenue's severance tax database, which it intended to use to create a commercial information database product for purchase and use by the oil and gas industry, as well as any updates or corrections to that database, because the company's request was governed by 14-3-15.1C(1) to (5) NMSA 1978 of the New Mexico Public Records Act, and not the New Mexico Inspection of Public Records Act (IPRA), *14-2-1 NMSA* 1978. Although the records requested were public records, the format in which the records were requested and the frequency with which they were requested to be supplied separated them from the broader application of the IPRA, and the company had not provided any authority forbidding the legislature from granting a state protection for its electronic databases or forbidding the state as a condition to supplying a copy of a database from charging a reasonable fee or royalty for its use. *Crutchfield v. N.M. Dep't of Taxation & Revenue*, 2005-NMCA-022, 137 N.M. 26, 106 P.3d 1273.

#### ATTORNEY-CLIENT PRIVILEGE

Absent evidence that any documents redacted pursuant to the Subsection A(6) attorney-client privilege exemption had been disclosed, the attorney-client privilege was not waived under Rule 11-511 NMRA. *Republican Party of N.M. v. N.M. Taxation & Revenue Dep't*, 2010-NMCA-080, N.M. , 242 P.3d 444.

#### CONSTRUCTION

Reading and interpreting 14-3-15.1C NMSA 1978 and the New Mexico Inspection of Public Records Act (IPRA) in para materia, there is no inconsistency or incompatibility in determining that the legislature, in enacting 14-3-15.1C NMSA 1978, intended to permit state agencies to specifically limit public use of a certain type of record, thereby creating an exception to the general public policy underlying the IPRA. *Crutchfield v. N.M. Dep't of Taxation & Revenue*, 2005-NMCA-022, 137 N.M. 26, 106 P.3d 1273.

Under *14-2-1A NMSA* 1978, a citizen's right to know is the rule and secrecy is the exception. *Gordon v. Sandoval County Assessor*, 2001-NMCA-044, 130 N.M. 573, 28 P.3d 1114.

Former 71-6-2C, 1953 Comp. (now 14-3-2 NMSA 1978), which defined public records, was not applicable in a student reporter's case in which he sought to gain access to the personnel records of the non-academic staff of a state university because the definition of public records in former 71-6-2C, 1953 Comp. (now 14-3-2 NMSA 1978) was so broad as to materials subject to preservation by the records division that it covered the trash in a waste basket. No reasonable interpretation of former 71-5-1, 1953 Comp. (now 14-2-1 NMSA 1978) could possibly include all of the records that would be subject to inspection by the public under that definition. *State Ex Rel. Newsome v. Alarid*, 90 N.M. 790, 568 P.2d 1236 (1977).

## CONTRACTS

Completed contracts for state school faculty members would be public records under former 71-6-2C, 1953 Comp. (now 14-3-2 NMSA 1978) and available for inspection under the provisions of former 71-5-1 and 71-5-2, 1953 Comp. (now 14-2-1 and 14-2-2 NMSA 1978). *Sanchez v. Board of Regents*, 82 N.M. 672, 486 P.2d 608 (1971).

Under the provisions of former 71-5-1, 1953 Comp. (now 14-2-1 NMSA 1978), a list of proposed salaries to be offered to university teachers was approved by a board of regents, but was not a public document under the state freedom of information act; final contracts were public records after the negotiations concluded. *Sanchez v. Bd. of Regents*, 82 N.M. 672, 486 P.2d 608 (1971).

## DISCLOSURE OF NAMES

Spreadsheets disclosed pursuant to the Inspection of Public Records Act were properly redacted to remove drivers' names, license numbers, addresses, and tax identification numbers because that information was personal information as defined in 18 USCS § 2725(3) and 66-1-4.14F NMSA 1978; moreover, the research exception in 18 USCS § 2721(b)(5) and 66-2-7.1A(4) NMSA 1978 did not apply because the records were sought to investigate voter fraud. *Republican Party of N.M. v. N.M. Taxation & Revenue Dep't*, 2010-NMCA-080, N.M. , 242 P.3d 444.

Where a reporter, a newspaper, and a press association published a story on the terminations of correctional facility employees for drug use and requested their names, and the names could not have been disclosed without connecting them to the circumstances of the employees' discharges, preservation of the privilege of personnel proceedings outweighed the right to public access under the Inspection of Public Records Act, 14-2-1 *et seq.* NMSA 1978, and a writ of mandamus ordering the secretary of corrections to disclose the names of terminated employees was reversed. *State ex rel. Barber v. McCotter*, 106 N.M. 1, 738 P.2d 119 (1987).

## EMPLOYEES

Where a newspaper sought the names of correctional facility employees fired for drug use, trial court erred in ordering the correctional facility to release the names because the release of the names was tantamount to also divulging their infraction and such information was protected from disclosure under 14-2-1 NMSA 1978. *State ex rel. Barber v. McCotter*, 106 N.M. 1, 738 P.2d 119 (1987).

Student reporter was not entitled to have access to the personnel records of the non-academic staff of a state university pertaining to any case where an employee had been solicited to give information, which information was vital to the university's employment procedure, and it was furnished after a promise to keep the information confidential, and where the release of that information would not be in the public interest. Such information was immune to disclosure under former 71-5-1, 1953 Comp. (now 14-2-1 NMSA 1978). *State Ex Rel. Newsome v. Alarid*, 90 N.M. 790, 568 P.2d 1236 (1977).

Personnel records of a state university's non-academic employees that pertain to illness, injury, disability, inability to perform a job task, and sick leave shall be considered confidential under former 71-5-1, 1953 Comp. (now 14-2-1 NMSA 1978) and not subject to release to the public, except by the consent or waiver of the particular employee. *State Ex Rel. Newsome v. Alarid*, 90 N.M. 790, 568 P.2d 1236 (1977).

In a reporter's action to gain access to the information contained in all non-academic staff personnel records, the personnel records that pertained to illness, injury, disability, inability to perform a job task, and sick leave were considered confidential and not subject to release to the public; letters of reference, documents concerning infractions and disciplinary action, personnel evaluations, opinions as to whether the person would be re-hired or as to why an applicant was not hired, and other matters of opinion, were also exempt from disclosure. *State ex rel. Newsome v. Alarid*, 90 N.M. 790, 568 P.2d 1236 (1977).

#### EXECUTIVE PRIVILEGE

Although executive privilege under N.M. Const. art. III, § 1 is not among the listed exemptions to the Inspection of Public Records Act, as set forth in Subsection A(1)-(12) of this section, executive privilege can be asserted as a non-statutory exemption, and its application in redacting e-mails between state officials was proper because the e-mails contained policy discussions. *Republican Party of N.M. v. N.M. Taxation & Revenue Dep't*, 2010-NMCA-080, N.M. , 242 P.3d 444.

#### IN CAMERA EXAMINATION

It was not error for a trial court to refuse to conduct an in camera examination of the applications for the city planner position because the city failed to prove that the planner applications should not be disclosed due to their alleged confidential nature or because their disclosure would allegedly constitute an invasion of privacy. 14-2-1 NMSA 1978. *State Ex Rel. Blanchard v. City Comm'rs*, 106 N.M. 769, 750 P.2d 469 (Ct. App. 1988).

#### MANDAMUS

On a complainant's petition for a writ of mandamus to obtain certain documents regarding student complaints from the University of New Mexico part-time student employment office under the Inspection of Public Records Act, 14-2-1 NMSA 1978, summary judgment in favor of the University was appropriate because the university employment office was neither a creature of statute nor created by university policy and, therefore, there was no mandatory obligation or duty to make or keep a record of student complaints received by the office; the evidence failed to establish that the student complaints were a record made or kept by a public official. *Spadaro v. Univ. of N.M. Bd. of Regents*, 107 N.M. 402, 759 P.2d 189 (1988).

#### ONGOING CRIMINAL INVESTIGATION

While there is no specific executive or public interest privilege that would protect records of an ongoing criminal investigation from discovery in a related civil lawsuit, this does not mean that they are completely unprotected from disclosure. It is incumbent on the trial court to balance the competing interests between legitimate discovery requests and law enforcement's need to protect on-going criminal investigations. *Estate of Romero v. City of Santa Fe Police Dep't*, 2006-NMSC-028, 139 N.M. 671, 137 P.3d 611.

#### PUBLIC BODIES

Section 15-7-9A(2) NMSA 1978 did not encompass all public bodies, rather than only those insured by New Mexico's Risk Management Division, and, thus, did not protect from disclosure through 14-2-1A(8) NMSA 1978. *Bd. of Comm'rs v. Las Cruces Sun-News*, 2003-NMCA-102, 134 N.M. 283, 76 P.3d 36.

## PUBLIC RECORDS

List of proposed faculty salaries presented to a university board for consideration was not a public record under former 71-6-2C, 1953 Comp. (now *14-3-2 NMSA* 1978) available for inspection under the provisions of former 71-5-1 and 71-5-2, 1953 Comp. (now *14-2-1* and *14-2-2 NMSA* 1978). Only documents which present ultimate actions should be accessible to the public. *Sanchez v. Board of Regents*, 82 N.M. 672, 486 P.2d 608 (1971).

## PUBLIC RECORDS ACT

Where documents concerned drug use by correctional facility employees and disciplinary actions against them, the documents were exempt from disclosure under the Inspection of Public Records Act, *14-2-1 et seq. NMSA* 1978. *State ex rel. Barber v. McCotter*, 106 N.M. 1, 738 P.2d 119 (1987).

## REVIEW

Under former 21-1-1(54)(c), 1953 Comp. (now Rule 1-052 NMRA), a trial court should have granted a student reporter the relief to which he was entitled in his action seeking access to the personnel records of the non-academic staff of a state university, except that which was exempt from disclosure under the terms of former 71-5-1, 1953 Comp. (now *14-2-1 NMSA* 1978), by issuing a writ in conformity with certain exemptions. The student was entitled to a ruling that he be granted the right to inspect those portions of the personnel records that were not specifically exempted by statute and that were not considered to be confidential as defined by the state supreme court. *State Ex Rel. Newsome v. Alarid*, 90 N.M. 790, 568 P.2d 1236 (1977).

Even though a student reporter's attorney did not properly challenge specific findings or properly refer either to the place where the trial court's finding against the reporter's request for university personnel records, except that which was exempt from disclosure under the terms of former 71-5-1, 1953 Comp. (now *14-2-1 NMSA* 1978), was found in the transcript or to the point in his argument where the finding was challenged as required, the state supreme court decided that it would review the findings because the right to inspect public documents was an important public issue, which was before the court for the first time. *State Ex Rel. Newsome v. Alarid*, 90 N.M. 790, 568 P.2d 1236 (1977).

## SETTLEMENT AGREEMENT

Settlement agreements between a county agency and prison inmates were public record, so *10-15-1H NMSA* 1978 of New Mexico's Open Records Act did not, through this section, protect the agreements from disclosure. *Bd. of Comm'rs v. Las Cruces Sun-News*, 2003-NMCA-102, 134 N.M. 283, 76 P.3d 36.

## STANDING TO SUE

Where a law firm made an inspection request on behalf of an undisclosed principal under the New Mexico Inspection of Public Records Act (IPRA) for all records relating to a news documentary program, the law firm was dissatisfied with the responses and filed a lawsuit under the IPRA on behalf of plaintiffs, the undisclosed principal, an interest group and an individual. The district court properly dismissed the suit; plaintiffs lacked standing to sue under *14-2-12A NMSA* 1978, because they did not make a written inspection request under *14-2-8A NMSA* 1978. *San Juan Agric. Water Users Ass'n v. KNME-TV*, 2010-NMCA-012, 147 N.M. 643, 227 P.3d 612.

## OPINIONS OF ATTORNEY GENERAL

### APPLICABILITY

To the extent arrest information contained in district attorney files and covered by Arrest Records Information Act, *29-10-1 NMSA 1978 et seq.*, involves matters that resulted in a negative disposition, it is not subject to public disclosure unless it falls within an exception to the confidentiality provisions of this act, the most applicable appearing to be (1) court records of judicial proceedings which are not themselves confidential, (2) published court or administrative opinions or public judicial, administrative or legislative proceedings, and (3) records of traffic offenses and accident reports. 1986 Attorney General Advisory Letter No. 86-20, *1986 N.M. AG LEXIS 24*.

A voucher simply indicating amount due for attorney services would be subject to disclosure under the Inspection of Public Records Act. Certainly, the amount of public money expended for legal representation of state public bodies or officers should be a matter of public information. 1985 Attorney General Advisory Letter No. 85-25, *1985 N.M. AG LEXIS 34*.

The New Mexico supreme court and the court of appeals must, pursuant to the Inspection of Public Records Act, *14-2-1 NMSA 1978 et seq.*, make their current and past opinions available to the public, and they may charge for the cost of retrieving these opinions. 1979 Op. Atty. Gen. No. 79-14, *1979 N.M. AG LEXIS 27*.

### AUTHORITY OF SCHOOL BOARDS.

Local school boards do not have the authority to prohibit citizens of this state from inspecting instructional material used in a public school within the district. 1988 Op. Atty. Gen. No. 88-37, *1988 N.M. AG LEXIS 36*.

### AUTHORITY TO PROTECT IDENTITY

Neither the Arrest Record Information Act, *29-10-1 NMSA 1978 et seq.*, nor the Inspection of Public Records Act, *14-2-1 NMSA 1978 et. seq.*, authorizes a law enforcement agency to protect the identity of persons who have been arrested or charged with a crime. *Section 29-10-4 NMSA 1978* protects the confidentiality of identity information only if that information has been collected in connection with an investigation of, or otherwise relates to, another person who has been charged with committing a crime. However, information in other records which identifies a person accused but not charged with or arrested for a crime may be protected from public disclosure under the Inspection of Public Records Act. Finally, even if it would otherwise be protected under either statute, information about a person accused but not charged with a crime is open to public inspection if it is contained in a document listed in *29-10-7 NMSA 1978*, including a police blotter or other original record of entry maintained by a law enforcement agency. 1994 Op. Att'y Gen. No. 94-02, *1994 N.M. AG LEXIS 3*.

### AUTHORITY TO RELEASE WORKER'S COMPENSATION CASE INFORMATION

As to what information may be released to the public from worker's compensation division files on particular worker's compensation cases. 1988 Op. Atty. Gen. No. 88-16, *1988 N.M. AG LEXIS 17*.

### CONFIDENTIAL INFORMATION

The attorney general's office has interpreted *14-2-1 NMSA 1978* to mean that records of a state agency may be exempted from public inspection by provisions of federal law, but it is not in a position to determine what parts of division of vocational rehabilitation clients' records are subject to federal confidentiality requirements such as those found in *34 CFR § 361.49*. It can state that any information of which federal

statute or regulation limits disclosure would also be exempted from disclosure under *14-2-1E NMSA 1978*. 1985 Attorney General Advisory Letter No. 85-22, *1985 N.M. AG LEXIS 31*.

#### CONSTRUCTION

A narrow interpretation of the exception in *15-7-9 NMSA 1978* to disclosure would make any vouchers and supporting documents for the payment of damages or other relief, such as attorney's fees to opposing counsel, confidential and not available for public inspection for 180 days following the latest of the dates enumerated in the statute. 1985 Attorney General Advisory Letter No. 85-25, *1985 N.M. AG LEXIS 34*.

#### REQUIREMENTS

In general, *14-2-1 NMSA 1978* only requires agencies to allow public inspection of records in existence and does not require an agency to compile information or abstract records for members of the public. On the other hand, if a file contains both confidential and non-confidential materials, the agency must remove confidential material and provide the non-confidential material to the requestor. 1985 Attorney General Advisory Letter No. 85-22, *1985 N.M. AG LEXIS 31*.

Because much information contained in personnel files is not subject to public disclosure, state personnel board Rule 19.5 prohibits public inspection of personnel files, but information in the file other than the material listed in Rule 19.5 or material not subject to disclosure under other laws must be disclosed to members of the public, if requested consistent with 14-2-1 and former *14-2-2 NMSA 1978*. The identity of an employee as well as academic credentials, such as degrees received, professional licensure or certifications are not exempted from public disclosure and, therefore, may be disclosed. If the files contain both confidential and non-confidential material, the agency does have the obligation to disclose the non-confidential material. 1985 Attorney General Advisory Letter No. 85-22, *1985 N.M. AG LEXIS 31*.

#### RESEARCH REFERENCES

##### NEW MEXICO LAW REVIEW

Civil Procedure--The Adoption Of The Collateral Order Doctrine In New Mexico: Carrillo v. Rostro, Virginia R. Dugan, *24 N.M.L. Rev. 389 (1994)*.

**CHAPTER 14. RECORDS, RULES, LEGAL NOTICES, OATHS**

**ARTICLE 2. INSPECTION OF PUBLIC RECORDS**

*N.M. Stat. Ann. § 14-2-4 (2010)*

**§ 14-2-4. Short title**

**Chapter 14, Article 2 NMSA 1978 may be cited as the "Inspection of Public Records Act".**

**HISTORY:** Laws 1993, ch. 258, § 1.

## CHAPTER 14. RECORDS, RULES, LEGAL NOTICES, OATHS

### ARTICLE 2. INSPECTION OF PUBLIC RECORDS

*N.M. Stat. Ann. § 14-2-5 (2010)*

#### § 14-2-5. Purpose of act; declaration of public policy

**Recognizing that a representative government is dependent upon an informed electorate, the intent of the legislature in enacting the Inspection of Public Records Act [14-2-4 NMSA 1978] is to ensure, and it is declared to be the public policy of this 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. It is the further intent of the legislature, and it is declared to be the public policy of this state, that 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.**

**HISTORY:** Laws 1993, ch. 258, § 2.

#### CONSTRUCTION WITH OTHER LAW

In a taxpayer's action under the Inspection of Public Records Act, *14-2-1 to -12 NMSA 1978*, the trial court properly required the county assessor to make its property record cards for nine properties on the north side of a certain street available to the taxpayer with any confidential material, as specifically listed in *7-38-19E NMSA 1978*, redacted. *Gordon v. Sandoval County Assessor, 2001-NMCA-044, 130 N.M. 573, 28 P.3d 1114.*

#### LEGISLATIVE INTENT

Purpose of the N.M. Inspection of Public Records Act is to ensure that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees; providing such information is an essential function of a representative government. *Derringer v. State, 2003-NMCA-073, 133 N.M. 721, 68 P.3d 961, cert. denied, 133 N.M. 727, 69 P.3d 237 (2003).*

New Mexico's overall statutory scheme regarding disclosure of government records evinces a legislative intent to have the general policy favoring openness in government control, at least as concerns any information on valuation records that is not the specific information listed in *7-38-19E NMSA 1978*. *Gordon v. Sandoval County Assessor, 2001-NMCA-044, 130 N.M. 573, 28 P.3d 1114.*

## PURPOSE

Citizen complaints about law enforcement officers requested by the resident were available to the public for inspection under *14-2-6E NMSA* 1978 of the New Mexico Inspection of Public Records Act (IPRA), as they were not letters of reference nor matters of opinion in personnel files; it would be against IPRA's stated public policy to shield from public scrutiny as matters of opinion in personnel files the complaints of citizens who interacted with police officers. *Cox v. N.M. Dep't of Pub. Safety*, 2010-NMCA-096, *N.M.*, 242 P.3d 501.

Purpose of the Inspection of Public Records Act, *14-2-1 to -12 NMSA* 1978, is to provide the greatest possible information to the public about the acts of their officers. *Gordon v. Sandoval County Assessor*, 2001-NMCA-044, 130 *N.M.* 573, 28 P.3d 1114.

## CHAPTER 14. RECORDS, RULES, LEGAL NOTICES, OATHS

### ARTICLE 2. INSPECTION OF PUBLIC RECORDS

*N.M. Stat. Ann. § 14-2-6 (2010)*

#### § 14-2-6. Definitions

As used in the Inspection of Public Records Act [*14-2-4 NMSA 1978*]:

A. "custodian" means any person responsible for the maintenance, care or keeping of a public body's public records, regardless of whether the records are in that person's actual physical custody and control;

B. "inspect" means to review all public records that are not excluded in *Section 14-2-1 NMSA 1978*;

C. "person" means any individual, corporation, partnership, firm, association or entity;

D. "public body" means the 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, including political subdivisions, special taxing districts, school districts and institutions of higher education; and

E. "public records" means 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.

**HISTORY:** Laws 1993, ch. 258, § 3.

#### JUDICIAL DECISIONS

#### AVAILABLE FOR INSPECTION

Citizen complaints about law enforcement officers requested by the resident were available to the public for inspection under Subsection E of this section, as they were not letters of reference nor matters of opinion in personnel files, 14-2-1A(2) and (3) NMSA 1978; it would be against IPRA's stated public policy to shield from public scrutiny as matters of opinion in personnel files the complaints of citizens who interacted with police officers. *Cox v. N.M. Dep't of Pub. Safety, 2010-NMCA-096, N.M. , 242 P.3d 501.*

**CHAPTER 14. RECORDS, RULES, LEGAL NOTICES, OATHS**

**ARTICLE 2. INSPECTION OF PUBLIC RECORDS**

*N.M. Stat. Ann. § 14-2-7 (2010)*

**§ 14-2-7. Designation of custodian; duties**

**Each public body shall designate at least one custodian of public records who shall:**

- A. receive and respond to requests to inspect public records;**
- B. provide proper and reasonable opportunities to inspect public records;**
- C. provide reasonable facilities to make or furnish copies of the public records during usual business hours; and**
- D. post in a conspicuous location at the administrative office of each public body a notice describing:**
  - (1) the right of a person to inspect a public body's records;**
  - (2) procedures for requesting inspection of public records;**
  - (3) procedures for requesting copies of public records;**
  - (4) reasonable fees for copying public records; and**
  - (5) the responsibility of a public body to make available public records for inspection.**

**HISTORY:** Laws 1993, ch. 258, § 4; 2001, ch. 204, § 1.

**CHAPTER 14. RECORDS, RULES, LEGAL NOTICES, OATHS****ARTICLE 2. INSPECTION OF PUBLIC RECORDS**

*N.M. Stat. Ann. § 14-2-8 (2010)*

**§ 14-2-8. Procedure for requesting records**

**A. Any person wishing to inspect public records may submit an oral or written request to the custodian. However, the procedures set forth in this section shall be in response to a written request. The failure to respond to an oral request shall not subject the custodian to any penalty.**

**B. Nothing in the Inspection of Public Records Act [14-2-4 NMSA 1978] shall be construed to require a public body to create a public record.**

**C. A written request shall provide the name, address and telephone number of the person seeking access to the records and shall identify the records sought with reasonable particularity. No person requesting records shall be required to state the reason for inspecting the records.**

**D. A custodian receiving a written request shall permit the inspection immediately or as soon as is practicable under the circumstances, but not later than fifteen days after receiving a written request. If the inspection is not permitted within three business days, the custodian shall explain in writing when the records will be available for inspection or when the public body will respond to the request. The three-day period shall not begin until the written request is delivered to the office of the custodian.**

**E. In the event that a written request is not made to the custodian having possession of or responsibility for the public records requested, the person receiving the request shall promptly forward the request to the custodian of the requested public records, if known, and notify the requester. The notification to the requester shall state the reason for the absence of the records from that person's custody or control, the records' location and the name and address of the custodian.**

**F. For the purposes of this section, "written request" includes an electronic communication, including email or facsimile; provided that the request complies with the requirements of Subsection C of this section.**

**HISTORY:** Laws 1993, ch. 258, § 5; 2009, ch. 75, § 1.

## JUDICIAL DECISIONS

### GENERALLY

Where taxpayers claimed that the tax assessor wrongfully denied them publicly available information on other lots in their subdivision and prevented them from demonstrating discrepancies in property valuations, the county valuation protests board was not required to sanction the tax assessor where it found that the information was not relevant to the taxpayers' valuation protests; further, as the information was not relevant, it was not discoverable under agency regulations, and the taxpayers' remedy for any wrongful withholding of access to public records was to file suit under the Inspection of Public Records Act, *14-2-1 et seq. NMSA 1978*, and to enforce the denied requests for the information under *14-2-8* and *14-2-12 NMSA 1978*. *Hannahs v. Anderson, 1998-NMCA-152, 126 N.M. 1, 966 P.2d 168, cert. denied, 972 P.2d 351 (1998)*.

### STANDING TO SUE

Where a law firm made an inspection request on behalf of an undisclosed principal under the New Mexico Inspection of Public Records Act (IPRA) for all records relating to a news documentary program, the law firm was dissatisfied with the responses and filed a lawsuit under the IPRA on behalf of plaintiffs, the undisclosed principal, an interest group and an individual. The district court properly dismissed the suit; plaintiffs lacked standing to sue under *14-2-12A NMSA 1978*, because they did not make a written inspection request under Subsection A of this section. *San Juan Agric. Water Users Ass'n v. KNME-TV, 2010-NMCA-012, 147 N.M. 643, 227 P.3d 612*.

**CHAPTER 14. RECORDS, RULES, LEGAL NOTICES, OATHS****ARTICLE 2. INSPECTION OF PUBLIC RECORDS**

*N.M. Stat. Ann. § 14-2-9 (2010)*

**§ 14-2-9. 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. If necessary to preserve the integrity of computer data or the confidentiality of exempt information contained in a database, a partial printout of data containing public records or information may be furnished in lieu of an entire database.**

**B. A custodian:**

**(1) may charge reasonable fees for copying the public records, unless a different fee is otherwise prescribed by law;**

**(2) shall not charge fees in excess of one dollar (\$ 1.00) per page for documents eleven inches by seventeen inches in size or smaller;**

**(3) may require advance payment of the fees before making copies of public records;**

**(4) shall not charge a fee for the cost of determining whether any public record is subject to disclosure; and**

**(5) shall provide a receipt, upon request.**

**HISTORY:** Laws 1993, ch. 258, § 6.

## JUDICIAL DECISIONS

## PERSONAL INFORMATION

New Mexico Department of Public Safety (DPS) had to bear in mind that the release of the citizen complaints against law enforcement officers might lead to substantial harm to the citizen complainant; because the personal information of the complainant was not necessary to the public's inspection of the substance of the complaints, DPS should consider redacting such personal information prior to permitting public inspection of the documents *Cox v. N.M. Dep't of Pub. Safety, 2010-NMCA-096, N.M. , 242 P.3d 501.*

## CHAPTER 14. RECORDS, RULES, LEGAL NOTICES, OATHS

### ARTICLE 2. INSPECTION OF PUBLIC RECORDS

*N.M. Stat. Ann. § 14-2-10 (2010)*

#### § 14-2-10. Procedure for excessively burdensome or broad requests

**If a custodian determines that a written request is excessively burdensome or broad, an additional reasonable period of time shall be allowed to comply with the request. The custodian shall provide written notification to the requester within fifteen days of receipt of the request that additional time will be needed to respond to the written request. The requester may deem the request denied and may pursue the remedies available pursuant to the Inspection of Public Records Act [14-2-4 NMSA 1978] if the custodian does not permit the records to be inspected in a reasonable period of time.**

**HISTORY:** Laws 1993, ch. 258, § 7.

#### JUDICIAL DECISIONS

#### STANDING TO SUE

Where a law firm made an inspection request on behalf of an undisclosed principal under the New Mexico Inspection of Public Records Act (IPRA) for all records relating to a news documentary program, the law firm was dissatisfied with the responses and filed a lawsuit under the IPRA on behalf of plaintiffs, the undisclosed principal, an interest group and an individual; the district court properly dismissed the suit. Because plaintiffs did not make a written inspection request under *14-2-8A NMSA 1978*, plaintiffs did not have the right to pursue relief under this section. *San Juan Agric. Water Users Ass'n v. KNME-TV, 2010-NMCA-012, 147 N.M. 643, 227 P.3d 612.*

## CHAPTER 14. RECORDS, RULES, LEGAL NOTICES, OATHS

### ARTICLE 2. INSPECTION OF PUBLIC RECORDS

*N.M. Stat. Ann. § 14-2-12 (2010)*

#### § 14-2-12. Enforcement

**A. An action to enforce the Inspection of Public Records Act [14-2-4 NMSA 1978] may be brought by:**

- (1) the attorney general or the district attorney in the county of jurisdiction; or**
- (2) a person whose written request has been denied.**

**B. A district court may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of the Inspection of Public Records Act.**

**C. The exhaustion of administrative remedies shall not be required prior to bringing any action to enforce the procedures of the Inspection of Public Records Act [14-2-4 NMSA 1978].**

**D. The court shall award damages, costs and reasonable attorneys' fees to any person whose written request has been denied and is successful in a court action to enforce the provisions of the Inspection of Public Records Act [14-2-4 NMSA 1978].**

**HISTORY:** Laws 1993, ch. 258, § 9.

#### JUDICIAL DECISIONS

#### GENERALLY

Where taxpayers claimed that the tax assessor wrongfully denied them publicly available information on other lots in their subdivision and prevented them from demonstrating discrepancies in property valuations, the county valuation protests board was not required to sanction the tax assessor where it found that the information was not relevant to the taxpayers' valuation protests; further, as the information was not relevant, it was not discoverable under agency regulations, and the taxpayers' remedy for any wrongful withholding of access to public records was to file suit under the Inspection of Public Records Act, 14-2-1 *et seq.* NMSA 1978, and to enforce the denied requests for the information under 14-2-8 and 14-2-12 NMSA 1978. *Hannahs v. Anderson*, 1998-NMCA-152, 126 N.M. 1, 966 P.2d 168, cert. denied, 972 P.2d 351 (1998).

#### APPLICABILITY

Requesting an investigation by the Attorney General is not an action, brought in court, to compel compliance, as envisioned by the N.M. Inspection of Public Records Act in its provision for damages.

*Derringer v. State, 2003-NMCA-073, 133 N.M. 721, 68 P.3d 961, cert. denied, 133 N.M. 727, 69 P.3d 237 (2003).*

#### CONSTRUCTION

Because the term "action" is not defined in the N.M. Inspection of Public Records Act, it is given its usual, ordinary meaning, which in a legal sense means a lawsuit brought in court. *Derringer v. State, 2003-NMCA-073, 133 N.M. 721, 68 P.3d 961, cert. denied, 133 N.M. 727, 69 P.3d 237 (2003).*

#### DAMAGES

By its plain language, the N.M. Inspection of Public Records Act does not provide for damages pursuant to an action brought after a public body has complied with the Act. *Derringer v. State, 2003-NMCA-073, 133 N.M. 721, 68 P.3d 961, cert. denied, 133 N.M. 727, 69 P.3d 237 (2003).*

#### DELAY AS DENIAL

The district court properly awarded a newspaper attorneys' fees under the IPRA's "enforcement" provision of this section; the "enforcement" provision did not distinguish between a "delay" and a "denial" of disclosure, the county agency's "delay" was a "denial" of disclosure, and under the plain language of this section, the attorneys' fees award was mandatory. *Bd. of Comm'rs v. Las Cruces Sun-News, 2003-NMCA-102, 134 N.M. 283, 76 P.3d 36.*

#### GOVERNMENTAL IMMUNITY

Property owner did not have a cause of action for damages under the New Mexico Inspection of Public Records Act against a state livestock board where the board had produced to the property owner everything in its possession that the owner requested because by its plain language, the Act did not provide for damages pursuant to an action brought after a public body had complied with the Act; moreover, the board did not engage in activities outside its mandated duties and was immune from the owner's tort claim under the New Mexico Tort Claims Act. *Derringer v. State, 2003-NMCA-073, 133 N.M. 721, 68 P.3d 961, cert. denied, 133 N.M. 727, 69 P.3d 237 (2003).*

#### STANDING

Where a law firm made an inspection request on behalf of an undisclosed principal under the New Mexico Inspection of Public Records Act (IPRA) for all records relating to a news documentary program, the law firm was dissatisfied with the responses and filed a lawsuit under the IPRA on behalf of plaintiffs, the undisclosed principal, an interest group and an individual. The district court properly dismissed the suit; plaintiffs lacked standing to sue under Subsection A, because they did not make a written inspection request. *San Juan Agric. Water Users Ass'n v. KNME-TV, 2010-NMCA-012, 147 N.M. 643, 227 P.3d 612.*

**CHAPTER 14. RECORDS, RULES, LEGAL NOTICES, OATHS****ARTICLE 3. PUBLIC RECORDS***N.M. Stat. Ann. § 14-3-15.1 (2010)***§ 14-3-15.1. Records of state agencies; public records; copy fees; computer databases; criminal penalty**

**A. Except as otherwise provided by federal or state law, information contained in information systems databases shall be a public record and shall be subject to disclosure in printed or typed format by the state agency that has inserted that information into the database, in accordance with the Public Records Act [14-3-1 NMSA 1978], upon the payment of a reasonable fee for the service.**

**B. The administrator shall recommend to the commission the procedures, schedules and technical standards for the retention of computer databases.**

**C. The state agency that has inserted data in a database may authorize a copy to be made of a computer tape or other medium containing a computerized database of a public record for any person if the person agrees:**

**(1) not to make unauthorized copies of the database;**

**(2) not to use the database for any political or commercial purpose unless the purpose and use is approved in writing by the state agency that created the database;**

**(3) not to use the database for solicitation or advertisement when the database contains the name, address or telephone number of any person unless such use is otherwise specifically authorized by law;**

**(4) not to allow access to the database by any other person unless the use is approved in writing by the state agency that created the database; and**

**(5) to pay a royalty or other consideration to the state as may be agreed upon by the state agency that created the database.**

**D. If more than one state agency is responsible for the information inserted in the database, the agencies shall enter into an agreement designating a lead agency. If the agencies cannot agree as to the designation of a lead state agency, the commission shall designate one of the state agencies as the lead agency to carry out the responsibilities set forth in this section.**

**E. Subject to any confidentiality provisions of law, any state agency may permit another state agency access to all or any portion of a computerized database created by a state agency.**

**F. If information contained in a database is searched, manipulated or retrieved or a copy of the database is made for any private or nonpublic use, a fee shall be charged by the state agency permitting access or use of the database.**

**G. Except as authorized by law or rule of the commission, any person who reveals to any unauthorized person information contained in a computer database or who uses or permits the unauthorized use or access of any computer database is guilty of a misdemeanor, and upon conviction the court shall sentence that person to jail for a definite term not to exceed one year or to payment of a fine not to exceed five thousand dollars (\$ 5,000) or both. That person shall not be employed by the state for a period of five years after the date of conviction.**

**HISTORY:** Laws 1986, ch. 81, § 9; 1993, ch. 197, § 11; 1978 Comp., § 15-1-9, amended and recompiled as 1978 Comp., § 14-3-15.1 by Laws 1995, ch. 110, § 8.

CROSS REFERENCES. --Royalties; commercial users of motor vehicle-related databases; distribution to motor vehicle suspense fund, *66-2-7.2 NMSA 1978*.

Disposition of fees, *66-6-23 NMSA 1978*.

#### CONSTRUCTION

Reading and interpreting 14-3-15.1C NMSA 1978 and the New Mexico Inspection of Public Records Act (IPRA) in para materia, there is no inconsistency or incompatibility in determining that the legislature, in enacting 14-3-15.1C NMSA 1978, intended to permit state agencies to specifically limit public use of a certain type of record, thereby creating an exception to the general public policy underlying the IPRA. *Crutchfield v. N.M. Dep't of Taxation & Revenue, 2005-NMCA-022, 137 N.M. 26, 106 P.3d 1273.*

#### REQUEST FOR RECORDS

Company was properly denied complete electronic copies of the New Mexico department of taxation and revenue's severance tax database, which it intended to use to create a commercial information database product for purchase and use by the oil and gas industry, as well as any updates or corrections to that database, because the company's request was governed by 14-3-15.1C(1) to (5) NMSA 1978 of the New Mexico Public Records Act, and not the New Mexico Inspection of Public Records Act (IPRA), *14-2-1 NMSA 1978*. Although the records requested were public records, the format in which the records were requested and the frequency with which they were requested to be supplied separated them from the broader application of the IPRA, and the company had not provided any authority forbidding the legislature from granting a state protection for its electronic databases or forbidding the state as a condition to supplying a copy of a database from charging a reasonable fee or royalty for its use. *Crutchfield v. N.M. Dep't of Taxation & Revenue, 2005-NMCA-022, 137 N.M. 26, 106 P.3d 1273.*

Fact that the New Mexico department of taxation and revenue has decided to provide, free of charge, portions of its database piecemeal on the website while at the same time placing restrictions on or even denying use to persons requesting the entire database for commercial use is not a circumstance that permits, much less requires, a determination that the department has waived its 14-3-15.1C NMSA 1978 rights. *Crutchfield v. N.M. Dep't of Taxation & Revenue, 2005-NMCA-022, 137 N.M. 26, 106 P.3d 1273.*

**CHAPTER 15. ADMINISTRATION OF GOVERNMENT****ARTICLE 7. RISK MANAGEMENT DIVISION**

*N.M. Stat. Ann. § 15-7-9 (2010)*

**§ 15-7-9. Confidentiality of records; penalty**

**A. The following records created or maintained by the risk management division are confidential and shall not be subject to any right of inspection by any person not a state officer, member of the legislature or state employee within the scope of his official duties:**

**(1) records pertaining to insurance coverage; provided any record of a particular coverage shall be available to any public officer, public employee or governmental entity insured under such coverage; and**

**(2) records pertaining to claims for damages or other relief against any governmental entity or public officer or employee; provided such records shall be subject to public inspection by New Mexico citizens one hundred eighty days after the latest of the following dates:**

**(a) the date all statutes of limitation applicable to the claim have run;**

**(b) the date all litigation involving the claim and the occurrence giving rise thereto has been brought to final judgment and all appeals and rights to appeal have been exhausted;**

**(c) the date the claim is fully and finally settled; or**

**(d) the date the claim has been placed on closed status.**

**B. Records protected pursuant to Subsection A of this section shall be made available as necessary for purposes of audit or defense. Any person performing such audit or providing such defense shall keep such records confidential, except as required otherwise by law.**

**C. Any person who reveals records protected pursuant to Subsection A of this section to another person in violation of this section is guilty of a misdemeanor and shall, upon conviction, be fined not more than one thousand dollars (\$ 1,000). The state shall not employ any person so convicted for a period of five years after the date of conviction.**

**HISTORY:** 1978 Comp., § 15-7-9, enacted by Laws 1981, ch. 280, § 1.

## PUBLIC BODIES

Paragraph A(2) of this section did not encompass all public bodies, rather than only those insured by New Mexico's Risk Management Division, and, thus, did not protect from disclosure through *14-2-1A(8) NMSA 1978*, an exception to required disclosure under New Mexico's Inspection of Public Records Act (IPRA), *14-2-1 NMSA 1978 et seq.*, information about lawsuits settled by a county agency. *Bd. of Comm'rs v. Las Cruces Sun-News, 2003-NMCA-102, 134 N.M. 283, 76 P.3d 36.*

## OPINIONS OF ATTORNEY GENERAL

### APPLICABILITY

A voucher simply indicating amount due for attorney services would be subject to disclosure under the Inspection of Public Records Act. Certainly, the amount of public money expended for legal representation of state public bodies or officers should be a matter of public information. 1985 Attorney General Advisory Letter No. 85-25, *1985 N.M. AG LEXIS 34.*

## CONSTRUCTION

A narrow interpretation of the exception in *15-7-9 NMSA 1978* to disclosure would make any vouchers and supporting documents for the payment of damages or other relief, such as attorney's fees to opposing counsel, confidential and not available for public inspection for 180 days following the latest of the dates enumerated in the statute. 1985 Attorney General Advisory Letter No. 85-25, *1985 N.M. AG LEXIS 34.*