

ARTICLE 2

Inspection of Public Records

NMSA-1978

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

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

A. records pertaining to physical or mental examinations and medical treatment of persons confined to an institution;

B. letters of reference concerning employment, licensing or permits;

C. letters or memoranda that are matters of opinion in personnel files or students' cumulative files;

D. portions of law enforcement records that reveal:

(1) confidential sources, methods or information; or

(2) before charges are filed, names of individuals who are:

(a) accused but not charged with a crime; or

(b) victims of or non-law-enforcement witnesses to an alleged crime of: 1) assault with intent to commit a violent felony pursuant to Section 30-3-3 NMSA 1978 when the violent felony is criminal sexual penetration; 2) assault against a household member with intent to commit a violent felony pursuant to Section 30-3-14 NMSA 1978 when the violent felony is criminal sexual penetration; 3) stalking pursuant to Section 30-3A-3 NMSA 1978; 4) aggravated stalking pursuant to Section 30-3A-3.1 NMSA 1978; 5) criminal sexual penetration pursuant to Section 30-9-11 NMSA 1978; or 6) criminal sexual contact pursuant to Section 30-9-12 NMSA 1978.

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 subsection; provided that the presence of such information on a law enforcement record does not exempt the record from inspection;

E. as provided by the Confidential Materials Act [14-3A-1 and 14-3A-2 NMSA 1978];

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

G. 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; and

H. as otherwise provided by law.

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; 2011, ch. 134, § 2; 2019, ch. 27, § 1.

14-2-6. Definitions.

As used in the Inspection of Public Records Act:

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. "file format" means the internal structure of an electronic file that defines the way it is stored and used;

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

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

E. "protected personal identifier information" means:

- (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;

F. "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;

G. "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; and

H. "trade secret" means trade secret as defined in Subsection D of Section 57-3A-2 NMSA 1978.

History: Laws 1993, ch. 258, § 3; 2011, ch. 134, § 3; 2011, ch. 181, § 1; 2011, ch. 182, § 1; 2013, ch. 117, § 1; 2013, ch. 214, § 2; 2018, ch. 61, § 1.

4-2-7. Designation of custodian; duties.

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

A. receive requests, including electronic mail or facsimile, to inspect public records;

B. respond to requests in the same medium, electronic or paper, in which the request was made in addition to any other medium that the custodian deems appropriate;

C. provide proper and reasonable opportunities to inspect public records;

D. provide reasonable facilities to make or furnish copies of the public records during usual business hours; and

E. post in a conspicuous location at the administrative office and on the publicly accessible web site, if any, 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, including the contact information for the custodian 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](#); 2011, [ch. 182, § 2](#).

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 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](#).

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. Exempt information in an electronic document shall be removed along with the corresponding metadata prior to disclosure by utilizing methods or redaction tools that prevent the recovery of exempt information from a redacted electronic document.

B. A custodian shall provide a copy of a public record in electronic format if the public record is available in electronic format and an electronic copy is specifically requested. However, a custodian is only required to provide the electronic record in the file format in which it exists at the time of the request.

C. 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 printed page for documents eleven inches by seventeen inches in size or smaller;

(3) may charge the actual costs associated with downloading copies of public records to a computer disk or storage device, including the actual cost of the computer disk or storage device;

(4) may charge the actual costs associated with transmitting copies of public records by mail, electronic mail or facsimile;

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

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

(7) shall provide a receipt, upon request.

D. Nothing in this section regarding the provision of public data in electronic format shall limit the ability of the custodian to engage in the sale of data as authorized by Sections 14-3-15.1 and 14-3-18 NMSA 1978, including imposing reasonable restrictions on the use of the database and the payment of a royalty or other consideration.

History: Laws 1993, ch. 258, § 6; 2011, ch. 181, § 2; 2011, ch. 182, § 3; 2013, ch. 117, § 2.