

ARTICLE 2

Inspection of Public Records

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, address, contact information, or protected personal identifier information as defined in this Act 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](#), [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](#).

ANNOTATIONS

Cross references. — For use of police reports for commercial solicitation, see [14-2A-1](#) NMSA 1978.

For provisions of Arrest Record Information Act, see Chapter [29](#), Article [10](#) NMSA 1978.

The 2019 amendment, effective June 14, 2019, provided an exception to the right to inspect public records for portions of law enforcement records that contain identifying information of certain victims of and witnesses to certain crimes; deleted subsection designation "A", deleted Subsection B, and redesignated former Paragraphs A(1) through A(8) as Subsections A through H, respectively; in Subsection D, added "portions of", added paragraph designations "(1)" and "(2)", in Paragraph D(1), after "methods", added "or", in Paragraph D(2), added "before charges are filed, names, address, contact information, or protected personal identifier information as defined in this Act of", after "individuals", added "who are", added new subparagraph designation "(a)", and Subparagraph D(2)(b); and after Paragraph D(2)(b), after "listed in this", deleted "paragraph" and added the remainder of the paragraph.

The 2011 amendment, effective July 1, 2011, permitted the inspection of records containing identity or identifying information about an applicant or nominee for president of a public institution of higher learning and the inspection of discharge papers of veterans, and authorized a public body to redact protected personal identifier information before inspection.

The 2005 amendment, effective July 1, 2005, added Subsection A(9) through (11) to provide exceptions to the right to inspect public records for certain discharge papers of military veterans.

The 2003 amendment, effective July 1, 2003, inserted Paragraph A(8) and redesignated former Paragraph A(8) as Paragraph A(9).

The 1999 amendment, effective April 5, 1999, in Subsection A added Paragraph (6) and redesignated the remaining paragraphs accordingly.

The 1998 amendment, effective May 11, 1998, designated the former introductory paragraph as Subsection A, redesignated the existing paragraphs thereunder as Paragraphs A(1)-(5) and (7), and added Paragraph A(6), making minor stylistic changes; and added Subsection B.

The 1993 amendment, effective June 18, 1993, substituted "person" for "citizen of this state" in the introductory language, substituted "institution" for "institutions" in

Subsection A, added Subsection D, and redesignated former Subsections D and E as Subsections E and F.

I. GENERAL CONSIDERATION.

Retroactive application of the Supreme Court decision in *Republication Party v. Taxation & Revenue*. — Where, in 2007, plaintiff requested copies of a draft letter and emails relating to a federal program managed by defendant and defendant denied plaintiff's request on the grounds that the documents were protected by the deliberative process privilege and the rule of reason, the principles of *Republication Party of N.M. v. N.M. Taxation & Revenue Dep't*, [2012-NMSC-026](#), [283 P.3d 853](#) applied retroactively to plaintiff's request because the supreme court did not announce a new rule regarding the deliberative process privilege, and although the supreme court overruled cases in which the rule of reason was endorsed, defendant did not rely on the precedent overruled by the supreme court when it denied plaintiff's request, retroactive application of the decision would further the purposes of the Inspection of Public Records Act, and retroactive application of the decision would not result in any inequity. *Edenburn v. N.M. Dep't of Health*, [2013-NMCA-045](#), [299 P.3d 424](#), cert. denied, 2013-NMCERT-002.

Rule of reason. — The rule of reason is a non-statutory exception to disclosure which provides a mechanism for addressing claims of confidentiality that have not been specifically addressed by the legislature. The rule of reason applies only to public records that do not fall into one of the statutory exceptions to disclosure and requires the custodian of public records to justify why the records sought to be inspected should not be furnished and the district court to balance the fundamental right of all citizens to have reasonable access to public records against countervailing public policy considerations which favor confidentiality and nondisclosure. *City of Farmington v. The Daily Times*, [2009-NMCA-057](#), [146 N.M. 349](#), [210 P.3d 246](#).

Inspection of Public Records Act is statutory scheme of general application. *Crutchfield v. Taxation & Revenue Dep't*, [2005-NMCA-022](#), [137 N.M. 26](#), [106 P.3d 1273](#).

Citizen complaints concerning law enforcement officer. — Citizen complaints concerning the on-duty conduct of a law enforcement officer are public records available to the public for inspection. *Cox v. N.M. Dep't of Pub. Safety*, [2010-NMCA-096](#), [148 N.M. 934](#), [242 P.3d 501](#), cert. granted, 2010-NMCERT-010, 149 N.M. 64, 243 P.3d 1146, cert. quashed, 2011-NMCERT-006, 150 N.M. 763, 266 P.3d 632.

Right of citizen to inspect. — 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 or countervailing public policy, the right to inspect public records must be freely allowed. *State ex rel. Newsome v. Alarid*, [1977-NMSC-076](#), [90 N.M. 790](#), [568 P.2d 1236](#).

Nondisclosure of names of terminated employees. — Where the reason for termination of public employees is a matter of public knowledge before the individuals are terminated, the privacy of the disciplinary proceeding can only be protected by upholding the administrative decision not to disclose the names of the individuals affected. *State ex rel. Barber v. McCotter*, [1987-NMSC-046](#), [106 N.M. 1](#), [738 P.2d 119](#).

Defendant failed to meet burden of establishing privilege in request for public records action. — In an underlying enforcement action under the New Mexico Inspection of Public Records Act, 14-2-1 to -12 NMSA 1978, where plaintiffs made a

combined seven written requests of the Albuquerque public schools (APS) to inspect documents referencing complaints or allegations of misconduct regarding the former superintendent of APS, the district court did not err in ordering the non-party appellant to answer plaintiffs' deposition questions, because appellant failed to identify any privilege, either adopted by the New Mexico supreme court or recognized under the New Mexico constitution, on which to base her argument that communications regarding "limited personnel matters" that occur during a closed public meeting are immune from discovery, and failed to meet her burden of establishing the essential elements necessary to prove the applicability of the attorney-client privilege, based on a claimed common interest, to her communications with APS attorneys. *Albuquerque Journal v. Board of Educ.*, [2019-NMCA-012](#), cert. granted.

A state agency is a "person", for purposes of IPRA, and may request public records from other state agencies. — Where the state ethics commission (commission) sent a public records request, pursuant to the Inspection of Public Records Act (IPRA), NMSA 1978, §§ [14-2-1](#) to -12, to the New Mexico human services department (department), asking the department to provide copies of certain emails from several named employees, and where the department denied the request claiming that the commission, itself a "public body" for the purposes of IPRA, is not a "person" entitled to make public records requests, the department erred in denying the commission's public records request, because a public body is an "entity," within the definition of "person," § 14-2-6(D), and therefore the plain language of IPRA demonstrates that public bodies can submit public records requests to other public bodies. This reading of the statute is also consistent with IPRA's declared purpose, that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees. *Public Records Requests Made by the State Ethics Comm'n* (10/27/21), [Att'y Gen. Adv. Ltr. 2021-12](#).

The Electronic Communications Privacy Act is not an exception to disclosure of public records. — Where the state ethics commission (commission) sent a public records request to the New Mexico human services department (department), asking the department to provide copies of certain emails from several named employees, and where the department denied the request claiming that the Electronic Communications Privacy Act (ECPA), NMSA 1978, § [10-16F-1](#) to -6, operates as an exception to disclosure through the Inspection of Public Records Act (IPRA), NMSA 1978, §§ [14-2-1](#) to -12, because the commission may obtain the requested records through a subpoena, the department erred in denying the commission's public records request, because the commission's ability to obtain public records through a subpoena does not mean that it is unable to seek the same records through IPRA, and nothing in the ECPA's text suggests that the legislature intended the statute to operate as an exception to disclosure through IPRA. *Public Records Requests Made by the State Ethics Comm'n* (10/27/21), [Att'y Gen. Adv. Ltr. 2021-12](#).

II. RECORDS SUBJECT TO INSPECTION.

Property valuation records. — The valuation records statute, § 7-38-19, expressly recognizes that valuation records are public records except to the extent that they contain information regarding income, certain expenses, profits and losses relating to the property or owner, or diagrams of the interior arrangements of buildings or alarm, electrical, or plumbing systems; the presence of any of the above information on a

property card does not render the entire card excepted from being a public record, since such a literal reading of the statute is unreasonable and would effect a nullification of the statutes providing that valuation records are, in general, public. *Gordon v. Sandoval Cnty. Assessor*, [2001-NMCA-044](#), [130 N.M. 573](#), [28 P.3d 1114](#).

Voter registration records. — A county chairman of a political party is entitled to have the working master record of the voter registration records of the county copied, or duplicated at his expense under the county clerk's supervision, as these records are public records. *Ortiz v. Jaramillo*, [1971-NMSC-041](#), [82 N.M. 445](#), [483 P.2d 500](#).

Military and arrest records of state employees. — Supreme court declined to hold that all information in employment records of state university regarding military discharges or arrest records should be exempted from disclosure. *State ex rel. Newsome v. Alarid*, [1977-NMSC-076](#), [90 N.M. 790](#), [568 P.2d 1236](#).

III. EXCEPTIONS.

A. IN GENERAL.

Rule of reason has no application to the inspection of public records. — The rule of reason, whereby courts determine whether records not specifically exempted by the Inspection of Public Records Act, Section [14-2-1](#) NMSA 1978 et seq., nevertheless should be withheld from the requestor on the grounds that disclosure would not be in the public interest, has no application to the inspection of public records under the act. Courts should restrict their analysis to whether disclosure under the act may be withheld because of a specific exception contained within the act, or statutory or regulatory exceptions, or privileges adopted by the supreme court or grounded in the constitution. *Republican Party of N.M. v. N.M. Taxation & Revenue Dep't*, [2012-NMSC-026](#), [283 P.3d 853](#), overruling *City of Farmington v. The Daily Times*, [2009-NMCA-057](#), [146 N.M. 349](#), [210 P.3d 246](#) and *Board of Comm'rs of Dona Ana Cnty. v. Las Cruces Sun-News*, [2003-NMCA-102](#), [134 N.M. 283](#), [76 P.3d 36](#).

The deliberative process privilege does not exist under New Mexico law. — The common law deliberative process privilege, which applies to decision making of executive officials generally and which only covers material that is predecisional and deliberative, does not exist under New Mexico law. *Republican Party of N.M. v. N.M. Taxation & Revenue Dep't*, [2012-NMSC-026](#), [283 P.3d 853](#), rev'g [2010-NMCA-080](#), [148 N.M. 877](#), [242 P.3d 444](#) and disavowing *State ex rel. Att'y Gen. v. First Judicial Dist. Court*, [1981-NMSC-053](#), [96 N.M. 254](#), [629 P.2d 330](#).

Executive privilege. — The executive privilege in New Mexico, which derives from the constitution and which is reserved to and can be invoked only by the governor, extends only to documents that are communicative in nature, that are made to and from individuals in very close organizational and functional proximity to the governor, and that relate to decisions made by the governor in the performance of the governor's constitutionally-mandated duties. *Republican Party of N.M. v. N.M. Taxation & Revenue Dep't*, [2012-NMSC-026](#), [283 P.3d 853](#).

Application of the executive privilege to the inspection of public records. — Courts considering the application of the executive privilege to a request for the inspection of public records under the Inspection of Public Records Act, Section [14-2-1](#) NMSA 1978 et seq., must independently determine whether the documents at issue are in fact covered by the privilege and whether the privilege has been invoked by the governor, to whom the privilege is reserved. Courts are not required to balance the

competing needs of the executive and the party seeking disclosure. Where appropriate, courts should conduct an in camera view of the documents at issue as part of their evaluation of the privilege. *Republican Party of N.M. v. N.M. Taxation & Revenue Dep't*, [2012-NMSC-026](#), [283 P.3d 853](#).

Executive privilege did not apply to drivers' license records. — Where petitioners requested public documents from the motor vehicle division relating to the issuance of drivers' licenses to foreign nationals and to an audit of the license program ordered by the governor; the motor vehicle division redacted information pursuant to executive privilege; the redacted documents included communications regarding New Mexico's negotiations with the Mexican government regarding access to identity documents and discussions related to implementing the audit of the driver's license program; the documents at issue were principally internal emails between staff of the motor vehicle division, not communications with the governor or the governor's immediate staff; and the motor vehicle division, not the governor, asserted the executive privilege; the documents at issue did not qualify for the executive privilege. *Republican Party of N.M. v. N.M. Taxation & Revenue Dep't*, [2012-NMSC-026](#), [283 P.3d 853](#), *rev'g* [2010-NMCA-080](#), [148 N.M. 877](#), [242 P.3d 444](#).

Driver's license records. — Where plaintiffs, who wanted to research whether undocumented aliens were voting in elections in New Mexico, requested information about driver's licenses issued to persons who were not citizens or legal residents of the United States, defendants properly redacted individual tax identification numbers and the names, driver's license numbers, and addresses of drivers who obtained their license with proof of identification other than a social security number, because the redacted information was personal information which defendants were prohibited from disclosing by 18 U.S.C. § 2721(a)(1) and by Section [66-2-7.1](#) NMSA 1978. *Republican Party of N.M. v. N.M. Taxation & Revenue Dep't*, [2010-NMCA-080](#), [148 N.M. 877](#), [242 P.3d 444](#), cert. granted, 2010-NMCERT-008, 148 N.M. 942, 242 P.3d 1288.

Executive privilege is a non-statutory exception to disclosure which requires the court to balance the fundamental right of all citizens to have reasonable access to public records against countervailing public policy considerations which favor confidentiality and nondisclosure. *Republican Party of N.M. v. N.M. Taxation & Revenue Dep't*, [2010-NMCA-080](#), [148 N.M. 877](#), [242 P.3d 444](#), cert. granted, 2010-NMCERT-008, 148 N.M. 942, 242 P.3d 1288.

Executive privilege. — Where plaintiffs, who wanted to research whether undocumented aliens were voting in elections in New Mexico, requested information about driver's licenses issued to persons who were not citizens or legal residents of the United States, defendants were authorized by the executive privilege exception to redact communications between the governor's office and the defendants regarding New Mexico's negotiations with the Mexican government regarding driver's identification confirmation, discussions about drivers who applied for licenses using documents whose authenticity the motor vehicle division had not been able to confirm, and discussions related to an audit to determine whether licenses had been issued to individuals who submitted documents of questionable authenticity. *Republican Party of N.M. v. N.M. Taxation & Revenue Dep't*, [2010-NMCA-080](#), [148 N.M. 877](#), [242 P.3d 444](#), cert. granted, 2010-NMCERT-008, 148 N.M. 942, 242 P.3d 1288.

Attorney-client privilege. — Where plaintiffs, who wanted to research whether undocumented aliens were voting in elections in New Mexico, requested information about driver’s licenses issued to persons who were not citizens or legal residents of the United States, defendants were authorized by the attorney-client privilege exception to redact communications between the general counsel for the governor’s office and executive branch personnel about communications with the Mexican government regarding the issuance of driver’s licenses in New Mexico, an audit of drivers who obtained licenses with individual tax identification numbers, communications with drivers whose documentation could not be verified, and legal analysis of the process for obtaining a driver’s license. *Republican Party of N.M. v. N.M. Taxation & Revenue Dep’t*, [2010-NMCA-080](#), [148 N.M. 877](#), [242 P.3d 444](#), cert. granted, 2010-NMCERT-008, 148 N.M. 942, 242 P.3d 1288.

Section [6-5A-1\(D\)](#) NMSA 1978 does not serve as a statutory exemption to the Inspection of Public Records Act. — In consolidated appeals arising from two lawsuits brought by plaintiff against defendants, the university of New Mexico foundation, the university of New Mexico lobo club, and the board of regents of the university of New Mexico, under the Inspection of Public Records Act (IPRA), §§ 14-2-1 through [14-2-12](#) NMSA 1978, seeking donor lists and records and communications related to a naming agreement between the university of New Mexico and a restaurant chain that obtained naming rights to a major sporting facility operated by the university, and where defendants argued that these records were exempt from disclosure under Section [6-5A-1](#) NMSA 1978 and that the records were not public records under IPRA, the district court did not err in ruling that § 6-5A-1(D) did not function as an exemption to IPRA, because a plain reading of § 6-5A-1 establishes that the legislature expressly designated organizations’ annual audits as public records, but also made clear that it was not doing the same for other records. Thus, while an organization’s records might be public records subject to inspection, § 6-5A-1 does not specifically exempt any records from disclosure. *Libit v. UNM Lobo Club*, [2022-NMCA-043](#), cert. granted.

B. PARTICULAR RECORDS EXCEPTED.

Draft documents are public documents that are subject to public inspection. *Edenburn v. N.M. Dep’t of Health*, [2013-NMCA-045](#), [299 P.3d 424](#), cert. denied, 2013-NMCERT-002.

Draft letter and emails. — Where plaintiff requested a copy of a draft letter and a string of emails that related to a federal program managed by defendant; defendant denied plaintiff the right to inspect the emails on the ground that the emails were protected by the deliberative process privilege because they were deliberative communications between defendant’s employees before any final determinations were made; and defendant denied plaintiff the right to inspect the draft letter on the grounds that the draft letter, as a draft document, was not subject to public records status and was exempt from disclosure by the rule of reason and the same principles upon which the deliberative process privilege is grounded, the draft letter and the emails were subject to disclosure because neither the deliberative process privilege nor the rule of reason are recognized in New Mexico and there was no specific statutory, regulatory, court adopted privilege, or constitutional provision that exempts draft documents from

inspection. *Edenburn v. N.M. Dep't of Health*, [2013-NMCA-045](#), [299 P.3d 424](#), cert. denied, 2013-NMCERT-002.

The contents of an officeholder's personal election campaign Facebook page are not public records of a public body. — In a superintending control proceeding arising from an Inspection of Public Records Act (IPRA) action filed in the fifth judicial district court (district court), where the real party in interest, a party to a civil case in the first judicial district court, sought to inspect the contents of a personal election Facebook page maintained by a first judicial district court judge (judge), the district court did not err in determining that the contents of the judge's personal election campaign Facebook page were not public records of a public body subject to IPRA disclosure requirements, because IPRA is aimed at the affairs of government and the official acts of public officers and employees, and there was no evidence that the judge's personal election campaign or its Facebook site were acting on behalf of the first judicial district court or any other public body, that any government funding was involved in maintenance of the Facebook site or any of its activities, or that the judge conducted public business through the site. *Pacheco v. Hudson*, [2018-NMSC-022](#).

Judicial deliberation privilege. — There exists a judicial deliberation privilege protecting the confidentiality of draft judicial orders and other internal judicial-making processes between judges and between judges and the court's staff made in the course of the performance of their judicial duties and related to official court business. *Pacheco v. Hudson*, [2018-NMSC-022](#).

In a superintending control proceeding arising from an Inspection of Public Records Act (IPRA) action filed in the fifth judicial district court (district court), where the real party in interest, a party to a civil case in the first judicial district court, sought to inspect email communications related to a draft copy of a preliminary injunction order that a judge in the first judicial district court had been preparing for issuance in the underlying civil case, email exchanges between the judge and court staff, as well as an email exchange between the judge and the supreme court law librarian, were protected by the judicial deliberation privilege, because the email exchanges reflected the judge's internal judicial decision-making processes. *Pacheco v. Hudson*, [2018-NMSC-022](#).

Child abuse and neglect proceedings. — Section [32A-4-33](#) NMSA 1978 of the Children's Code exempts the child's records in a civil abuse and neglect proceeding from the public's right to inspect public records authorized by Section [14-2-1\(F\)](#) NMSA 1978 (1993) (now [14-2-1\(A\)\(12\)](#) NMSA 1978). *State ex rel. Children, Youth & Families Dep't v. George F.*, [1998-NMCA-119](#), [125 N.M. 597](#), [964 P.2d 158](#).

Criminal investigation records. — The legislature has expressed its intent to protect from disclosure police investigatory materials in an on-going criminal investigation through the Inspection of Public Records Act (Section [14-2-1\(A\)\(4\)](#) NMSA 1978). *Estate of Romero v. City of Santa Fe*, [2006-NMSC-028](#), [139 N.M. 671](#), [137 P.3d 611](#).

There is not a blanket exception from inspection for law enforcement records relating to an ongoing criminal investigation. — Where plaintiff sent a written request to the department of public safety (DPS) pursuant to IPRA for various records relating to the shooting death of his brother, and where DPS produced a primary incident report, the personnel records of one of the officers involved, and one subpoena, but denied production of all other pertinent records in its possession, claiming that the release of the requested information posed a demonstrable and serious threat to an

ongoing criminal investigation and that the FBI asked DPS to withhold the records in order to maintain the integrity of its investigation, the district court erred in denying plaintiff's motion for summary judgment and in granting DPS's motion for summary judgment, because this section does not create a blanket exception from inspection of law enforcement records relating to an ongoing criminal investigation, and DPS did not present evidence that any specific records that it refused to produce revealed confidential sources, methods, information or individuals accused but not charged with a crime, nor did DPS present any evidence that it reviewed the requested records to separate the exempt from nonexempt information, or that it provided any nonexempt information existing within records containing exempt information. *Jones v. N.M. Dep't of Public Safety*, [2020-NMSC-013](#), rev'g No. A-1-CA-35120, mem. op. (May 10, 2018) (non-precedential).

Property valuation records. — The valuation records statute, Section [7-38-19](#) NMSA 1978, expressly recognizes that valuation records are public records except to the extent that they contain information regarding income, certain expenses, profits and losses relating to the property or owner, or diagrams of the interior arrangements of buildings or alarm, electrical, or plumbing systems; the presence of any of the above information on a property card does not render the entire card excepted from being a public record, since such a literal reading of the statute is unreasonable and would effect a nullification of the statutes providing that valuation records are, in general, public. *Gordon v. Sandoval Cnty. Assessor*, [2001-NMCA-044](#), [130 N.M. 573](#), [28 P.3d 1114](#).

Driver's license records. — Where plaintiffs, who wanted to research whether undocumented aliens were voting in elections in New Mexico, requested information about drivers' licenses issued to persons who were not citizens or legal residents of the United States, defendants properly redacted individual tax identification numbers and the names, drivers' license numbers, and addresses of drivers who obtained their license with proof of identification other than a social security number, because the redacted information was personal information which defendants were prohibited from disclosing by 18 U.S.C. § 2721(a)(1) and by Section [66-2-7.1](#) NMSA 1978. *Republican Party of N.M. v. N.M. Taxation & Revenue Dep't*, [2010-NMCA-080](#), [148 N.M. 877](#), [242 P.3d 444](#), cert. granted, 2010-NMCERT-008, 148 N.M. 942, 242 P.3d 1288.

Computerized database of public record. — There is no intent on the part of the legislature with respect to Section [14-3-15.1](#) C NMSA 1978 that that statute and the policy underlying it, and not the Inspection of Public Records Act and the policies underlying it, apply to a copy of a medium containing a computerized database of a public record. *Crutchfield v. Taxation & Revenue Dep't*, [2005-NMCA-022](#), [137 N.M. 26](#), [106 P.3d 1273](#).

Letters of reference. — A letter of reference, as that term is used in Paragraph (2) of Subsection A of Section [14-2-1](#) NMSA 1978, is generally considered to be a statement of support for an applicant that assists a future employer or licensor in evaluation of an applicant for a job, license, or permit; is typically solicited either by a prospective applicant or the prospective employer; and addresses the prospective applicant's general qualifications for employment or licensing. *Cox v. N.M. Dep't of Pub. Safety*, [2010-NMCA-096](#), [148 N.M. 934](#), [242 P.3d 501](#), cert. granted, 2010-NMCERT-

010, 149 N.M. 64, 243 P.3d 1146, cert. quashed, 2011-NMCERT-006, 150 N.M. 763, 266 P.3d 632.

Citizen complaints concerning law enforcement officer. — Citizen complaints concerning the on-duty conduct of a law enforcement officer are not letters of reference as that term is used in Paragraph (2) of Subsection A of Section [14-2-1](#) NMSA 1978. *Cox v. N.M. Dep't of Pub. Safety*, [2010-NMCA-096](#), [148 N.M. 934](#), [242 P.3d 501](#), cert. granted, 2010-NMCERT-010, 149 N.M. 64, 243 P.3d 1146, cert. quashed, 2011-NMCERT-006, 150 N.M. 763, 266 P.3d 632.

Records in personnel files. — The location of a record in a personnel file is not dispositive of whether the exception in Paragraph (3) of Subsection A of Section [14-2-1](#) NMSA 1978 applies. The critical factor is the nature of the document itself. *Cox v. N.M. Dep't of Pub. Safety*, [2010-NMCA-096](#), [148 N.M. 934](#), [242 P.3d 501](#), cert. granted, 2010-NMCERT-010, 149 N.M. 64, 243 P.3d 1146, cert. quashed, 2011-NMCERT-006, 150 N.M. 763, 266 P.3d 632.

Matters of opinion in personnel files. — Matters of opinion in personnel files, as that term is used in Paragraph (3) of Subsection A of Section [14-2-1](#) NMSA 1978, constitute personnel information regarding the employer/employee relationship, such as internal evaluations; disciplinary reports or documentation; promotion, demotion or termination information; or performance evaluations. *Cox v. N.M. Dep't of Pub. Safety*, [2010-NMCA-096](#), [148 N.M. 934](#), [242 P.3d 501](#), cert. granted, 2010-NMCERT-010, 149 N.M. 64, 243 P.3d 1146, cert. quashed, 2011-NMCERT-006, 150 N.M. 763, 266 P.3d 632.

Citizen complaints concerning law enforcement officer. — Citizen complaints regarding a law enforcement officer's conduct while performing the officer's duties as a public official are not the type of opinion material this is excluded from public inspection by Paragraph (3) of Subsection A of Section [14-2-1](#) NMSA 1978. *Cox v. N.M. Dep't of Pub. Safety*, [2010-NMCA-096](#), [148 N.M. 934](#), [242 P.3d 501](#), cert. granted, 2010-NMCERT-010, 149 N.M. 64, 243 P.3d 1146, cert. quashed, 2011-NMCERT-006, 150 N.M. 763, 266 P.3d 632.

Records of non-mandated university employment office. — Student complaints against man who utilized the services of university employment office to obtain domestic help by means of job postings were not "public records," since there was no legal mandate for the operation of the employment office, nor was there an obligation of the office to make or keep records of the complaints. *Spadaro v. Univ. of N.M. Bd. of Regents*, [1988-NMSC-064](#), [107 N.M. 402](#), [759 P.2d 189](#).

Personnel records of state university employees pertaining to illness may be confidential. — Personnel records of employees of state university which pertain to illness, injury, disability, inability to perform a job task and sick leave are considered confidential under this section and not subject to release to the public, except by the consent or waiver of the particular employee. *State ex rel. Newsome v. Alarid*, [1977-NMSC-076](#), [90 N.M. 790](#), [568 P.2d 1236](#).

Faculty salary matters are not public records until the culmination of the contract between the board and the individual thought processes, or the offer of a contract, are not such a public record as would require public inspection, so that the right to inspect records of the board of regents of a state university on the subject of salary contract negotiations before the task was completed should be denied. *Sanchez v. Board of Regents*, [1971-NMSC-065](#), [82 N.M. 672](#), [486 P.2d 608](#).

Meaning of "as otherwise provided by law". — The exception in Subsection F of this section incorporates an administrative regulation that effectuates the legislature's intent in enacting the Public Employee Bargaining Act [now repealed]; any benefit to the public from inspecting the representation petition filed under that act would be significantly outweighed by a public employee's privacy interest. *City of Las Cruces v. Public Employee Labor Relations Bd.*, [1996-NMSC-024](#), [121 N.M. 688](#), [917 P.2d 451](#).

Exception to public policy.— The legislature, in enacting 14-3-15.1 C 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 Inspection of Public Records Act. *Crutchfield v. Taxation & Revenue Dep't*, [2005-NMCA-022](#), [137 N.M. 26](#), [106 P.3d 1273](#).

Jury lists. — A jury list is a public record and the media are entitled to inspect and publish it. *State ex rel. N.M. Press Ass'n v. Kaufman*, [1982-NMSC-060](#), [98 N.M. 261](#), [648 P.2d 300](#).

Common-law concept. — The right of the public to inspect records which are in custody of a public officer is a common-law concept and exists even without statute. 1954 Op. Att'y Gen. No. [54-5933](#).

Public's right to inspection is not absolute. 1969 Op. Att'y Gen. No. [69-89](#).

Dissemination of information not necessarily included. — The right to inspect public records does not necessarily include the right to disseminate the information contained in those records. 1969 Op. Att'y Gen. No. [69-89](#).

Limited privacy of accused. — Section [29-10-4](#) NMSA 1978 protects the confidentiality of information concerning the identity of a person who has been accused, but not charged, with a crime 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 this section. 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. 1994 Op. Att'y Gen. No. [94-02](#).

Identity of individuals arrested or charged with crime not protected. — Neither the Arrest Record Information Act [[27-10-1](#) NMSA 1978] nor the Inspection of Public Records Act [[14-2-4](#) NMSA 1978] authorizes a law enforcement agency to protect the identity of persons who have been arrested or charged with a crime. 1994 Op. Att'y Gen. No. [94-02](#).

No defense to invasion of privacy action. — The right of inspection is no defense to an action for invasion of privacy based upon publication of matters which an individual has the right to keep private. 1969 Op. Att'y Gen. No. [69-89](#).

Criterion for determining what information is public record is whether the information is required by law to be kept or is necessarily kept in the discharge of a duty imposed by law. 1969 Op. Att'y Gen. No. [69-89](#).

Provisions of section contemplate some exception to the Public Records Act, [14-3-1](#) NMSA 1978 et seq. 1964 Op. Att'y Gen. No. [64-19](#).

Court opinions subject to inspection or copying. — The supreme court and the court of appeals are required to make available their current and past opinions to the public for inspection or for copying. 1979 Op. Att'y Gen. No. [79-14](#).

All records which do not deal with physical or mental examinations or medical treatment of patients are public records. This type of record would include payrolls, receipts and disbursements, etc. Any record which might fairly be called a record of examination of a patient or a record of medical treatment of a patient of any institution is not a public record and need not be submitted to public scrutiny. 1960 Op. Att'y Gen. No. [60-155](#).

Data compiled from case histories. — Case histories furnished by attending physicians on individual patients from which mortality data is to be taken are confidential records, but the data compiled from such case histories where the individual identity is lost are not confidential. 1959 Op. Att'y Gen. No. [59-158](#).

Workers' compensation claim files. — The workers' compensation division maintains workers' compensation claim files in the course of its statutory function of adjudicating claims filed by workers, which makes them public records within the meaning of state freedom of information laws. 1988 Op. Att'y Gen. [88-16](#).

Medical records introduced into evidence. — To the extent any medical records that otherwise are exempt from disclosure are introduced into evidence during the course of a formal workers' compensation hearing which is open to the public, such records lose their exempt status and may be inspected by the public. 1988 Op. Att'y Gen. No. [88-16](#).

Records of state penitentiary are public records and should be made available for public inspection in accordance with the provisions of this section. 1951 Op. Att'y Gen. No. [51-5342](#).

Public school records. — Business records, expenditures, daily attendance records and permanent records of an individual student's grades kept by the public schools are public records. 1961 Op. Att'y Gen. No. [61-137](#).

Public school records. — Any citizen of this state has a right to examine the public records of a school district when such records have been made a part of central records of such school district. This right to inspection is spelled out by statute, and the legislature has specified that the denial of such right of access is punishable as a misdemeanor. 1961 Op. Att'y Gen. No. [61-137](#).

Instructional material used in public school. — Local school boards have no authority to prohibit citizens of the state from inspecting instructional material used in a public school within the district. 1988 Op. Att'y Gen. No. [88-37](#).

Immunization records of school children are available to the public. 1959 Op. Att'y Gen. No. [59-158](#).

Names and addresses of teachers employed in New Mexico school systems which are contained in lists compiled by the department of education are public records. 1969 Op. Att'y Gen. No. [69-89](#).

Employee's file held by state personnel office. — Personnel actions, supervisor's ratings, arrest records, letters of commendation or condemnation from the employing agency, present employment history, the job application itself and educational history in an employee's file held by the state personnel office is a matter of public record. 1968 Op. Att'y Gen. No. [68-110](#).

Salary information pertaining to state employee which is possessed by the state personnel office is a matter of public record, since the state personnel director is required by law to establish and maintain a roster for all state employees showing the employee's pay rate, [10-9-12](#) NMSA 1978. 1968 Op. Att'y Gen. No. [68-110](#).

Job applicant's test score and position on eligibility list under [10-9-13](#) NMSA 1978, possessed by the state personnel office, is a public record. 1968 Op. Att'y Gen. No. [68-110](#).

Minutes of board of bar examiners meet the requirements of the definition of public records, and, as such, are required under the common law adopted by this state and also by this section, as amended, to be public records and, as such, are subject to the inspection of the public. 1954 Op. Att'y Gen. No. [54-5933](#).

Interstate stream commission. — Under the provisions of this section, any public records reflecting the work or action of the interstate stream commission are subject to public inspection. 1962 Op. Att'y Gen. No. [62-80](#).

County fair board. — Since the legislature has specifically granted counties the authority to conduct county fairs, a county fair board is an arm of the county and its records are county records which are subject to inspection as provided in this section and former [14-2-2](#) NMSA 1978. 1964 Op. Att'y Gen. No. 64-109.

Data of personal nature used in educating pupils not subject. — Such records or memoranda as may be kept by a teacher, or other school official, for informational purposes on individual students, and which may contain data of a personal nature for use in assisting teachers or school personnel in educating pupils, do not fall within the classification of public records entitled to be scrutinized by the public. 1961 Op. Att'y Gen. No. [61-137](#).

Temporary or partial grades or records kept by individual teachers are not public records. 1961 Op. Att'y Gen. No. [61-137](#).

Portions of applicant's file may be classified as confidential by state personnel board. — Not all records kept by a public officer are public records. The state personnel board has, within statutory limits, a limited and restricted right to classify certain portions of an applicant's file as confidential. Any portion which would be made available to the state only on a confidential and restricted basis may be treated by the state personnel board as confidential. This right, however, should be narrowly and restrictively applied. 1968 Op. Att'y Gen. No. [68-110](#).

Personnel file. — Under the rule-making authority of [10-9-10](#) and [10-9-13](#) NMSA 1978, the state personnel board has a limited and restricted right to classify as confidential certain portions of an individual's personnel file which would not otherwise be made available to the state unless on a confidential or restricted basis. 1964 Op. Att'y Gen. No. [64-19](#).

Medical history and employment history solicited from applicant's previous employer for [10-9-13](#) NMSA 1978 are not public records. 1968 Op. Att'y Gen. No. [68-110](#).

Criminal complaints. — Complaints filed in J. P. (now magistrate) court by district attorney and sheriff's office do not constitute public records when the person complained against has not been arrested and is not subject to public inspection. 1947 Op. Att'y Gen. No. [47-5074](#).

Information obtained under Mental Health and Developmental Disabilities

Code. — A district court clerk may not release the information identified in 43-1-19A NMSA 1978, governing disclosure under the Mental Health and Developmental Disabilities Code, without obtaining the consent of the person to whom that information pertains. 1988 Op. Att'y Gen. No. [88-75](#).

Human services department records. — Since other statutory provisions are made for inspection of records of the welfare department (now human services department), they are open for inspection only in accordance with 27-2-35. 1947 Op. Att'y Gen. No. [47-5032](#).

Law reviews. — For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

For survey of 1988-89 Administrative Law, see 21 N.M.L. Rev. 481 (1991).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 37A Am. Jur. 2d Freedom of Information Acts § 1 et seq. 52 Am. Jur. 2d Mandamus § 204; 66 Am. Jur. 2d Records and Recording Laws §§ 12 to 31.

Enforceability by mandamus of right to inspect public records, 60 A.L.R. 1356, 169 A.L.R. 653.

Right to inspect motor vehicle records, 84 A.L.R.2d 1261.

Confidentiality of records as to recipients of public welfare, 54 A.L.R.3d 768.

Payroll records of individual government employees as subject to disclosure to public, 100 A.L.R.3d 699.

Validity, construction, and effect of state laws requiring public officials to protect confidentiality of income tax returns or information, 1 A.L.R.4th 959.

What constitutes preliminary drafts or notes provided by or for state or local governmental agency, or intra-agency memorandums, exempt from disclosure or inspection under state freedom of information act, 26 A.L.R.4th 639.

Patient's right to disclosure of his or her own medical records under state freedom of information act, 26 A.L.R.4th 701.

What are "records" of agency which must be made available under state freedom of information act, 27 A.L.R.4th 680.

What constitutes an agency subject to application of state freedom of information act, 27 A.L.R.4th 742.

What constitutes "trade secrets" exempt from disclosure under state freedom of information act, 27 A.L.R.4th 773.

What constitutes legitimate research justifying inspection of state or local public records not open to inspection by general public, 40 A.L.R.4th 333.

State freedom of information act requests: right to receive information in particular medium or format, 86 A.L.R.4th 786.

Use of Freedom of Information Act (5 USCS § 552) as substitute for, or as means of, supplementing discovery procedures available to litigants in federal civil, criminal, or administrative proceedings, 57 A.L.R. Fed. 903.

What constitutes "confidential source" within Freedom of Information Act exemption permitting nondisclosure of identity of confidential source and, in specified instances, of confidential information furnished only by confidential source (5 USCS § 552(b)(7)(D)), 59 A.L.R. Fed. 550.

Waiver by federal government agency as affecting agency's right to claim exemption from disclosure requirements under the Freedom of Information Act (5 USCS § 552(b)), 67 A.L.R. Fed. 595.

When are government records "similar files" exempt from disclosure under Freedom of Information Act provision (5 USCS § 552(b)(6)) exempting certain personnel, medical, and "similar" files, 106 A.L.R. Fed. 94.

What constitutes "final opinion" or "order" of federal administrative agency required to be made available for public inspection and copying within meaning of 5 USCS § 552(a)(2)(A), 114 A.L.R. Fed. 287.

What constitutes "trade secrets and commercial or financial information obtained from person and privileged or confidential," exempt from disclosure under Freedom of Information Act (5 USCS § 552 (b)(4)) (FOIA), 139 A.L.R. Fed. 225.

What are "records" of agency which must be made available under Freedom of Information Act (5 USCA § 552(a)(3)), 153 A.L.R. Fed. 571.

Actions brought under Freedom of Information Act, 5 U.S.C.A. § 522 et seq. - supreme court cases, 167 A.L.R. Fed. 545.

What are interagency or intra-agency memorandums or letters exempt from disclosure under the Freedom of Information Act (5 U.S.C.A. § 552(b)), 168 A.L.R. Fed. 143.

What constitutes "confidential source" within Freedom of Information Act exemption permitting nondisclosure of confidential source and, in some instances, of information furnished by confidential source (5 U.S.C.A. § 552(b)), 171 A.L.R. Fed. 193.

76 C.J.S. Records § 48 et seq.

14-2-1.1. Personal identifier information.

Protected personal identifier information contained in public records may be redacted by a public body before inspection or copying of a record. The presence of protected personal identifier information on a record does not exempt the record from inspection. Unredacted records that contain protected personal identifier information shall not be made available on publicly accessible websites operated by or managed on behalf of a public body.

History: 1978 Comp., § 14-2-1.1, enacted by [Laws 2019, ch. 27, § 2](#).

ANNOTATIONS

Effective dates. — Laws 2019, ch. 27 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 14, 2019, 90 days after the adjournment of the legislature.

14-2-2. Repealed.

ANNOTATIONS

Repeals. — [Laws 1993, ch. 258, § 10](#) repealed [14-2-2 NMSA 1978](#), as enacted by Laws 1947, ch. 130, § 2, requiring officers having custody of certain records to provide opportunity and facilities for inspection, effective June 18, 1993. For provisions of former section, see the 1992 NMSA 1978 on [NMOneSource.com](#).

14-2-2.1. Copies of public records furnished.

When a copy of any public record is required by the veterans' administration to be used in determining the eligibility of any person to participate in benefits made available by the veterans' administration, the official custodian of such public record shall, without charge, provide the applicant for such benefits, or any person acting on his behalf, or the authorized representative of the veterans' administration, with a certified copy of such record.

History: Laws 1979, ch. 23, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 37A Am. Jur. 2d Freedom of Information Acts § 1 et seq. 66 Am. Jur. 2d Records and Recording Laws §§ 10, 12 to 15, 19.

Enforceability by mandamus of right to inspect public records, 60 A.L.R. 1356, 169 A.L.R. 653.

76 C.J.S. Records § 48 et seq.

14-2-3. Repealed.

ANNOTATIONS

Repeals. — [Laws 1993, ch. 258, § 10](#) repealed [14-2-3](#) NMSA 1978, as enacted by Laws 1947, ch. 130, § 3, providing a remedy for citizens who have been refused the right to inspect any public record, effective June 18, 1993. For provisions of former section, see the 1992 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, see [14-2-11](#) NMSA 1978.

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](#).

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 [Chapter [14](#), Article [2](#) 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.](#)

ANNOTATIONS

Purpose and intent. — The legislature has clearly and unequivocally indicated that public records are to be made public with the exception of certain confidential information and except as otherwise provided by law. 1958 Op. Att'y Gen. No. [58-197](#).

A state agency is a "person", for purposes of IPRA, and may request public records from other state agencies. — Where the state ethics commission (commission) sent a public records request, pursuant to the Inspection of Public Records Act (IPRA), NMSA 1978, §§ [14-2-1](#) to -12, to the New Mexico human services department (department), asking the department to provide copies of certain emails from several named employees, and where the department denied the request claiming that the commission, itself a "public body" for the purposes of IPRA, is not a "person" entitled to make public records requests, the department erred in denying the commission's public records request, because a public body is an "entity," within the definition of "person," § 14-2-6(D), and therefore the plain language of IPRA demonstrates that public bodies can submit public records requests to other public bodies. This reading of the statute is also consistent with IPRA's declared purpose, that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees. *Public Records Requests Made by the State Ethics Comm'n* (10/27/21), [Att'y Gen. Adv. Ltr. 2021-12](#).

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](#).

ANNOTATIONS

The 2018 amendment, effective May 16, 2018, added the definition of "trade secret" as used in the Inspection of Public Records Act; and added Subsection H.

The 2013 amendment, effective June 14, 2013, added the definition of "protected personal identifier information", and relettered the succeeding subsections.

The 2011 amendment, effective June 17, 2011, added the definition of "file format" in Subsection B; and relettered the succeeding subsections accordingly.

A private actor that contracts with a governmental entity to perform a public function is subject to the Inspection of Public Records Act. *State ex rel. Toomey v. City of Truth or Consequences*, [2012-NMCA-104, 287 P.3d 364](#).

Factors to determine whether a private entity is subject to the Inspection of Public Records Act. — Courts should consider the following factors in deciding whether private entities are subject to the Inspection of Public Records Act: (1) the level of public funding; (2) commingling of funds; (3) whether the activity was conducted on publicly owned property; (4) whether the services contracted for are an integral part of the agency's chosen decision-making process; (5) whether the private entity is performing a governmental function or a function which the public agency otherwise would perform; (6) the extent of the public agency's involvement with, regulation of, or control over the private entity; (7) whether the private entity was created by the public agency; (8) whether the public agency has a substantial financial interest in the private entity; and (9) for whose benefit the private entity is functioning. *State ex rel. Toomey v. City of Truth or Consequences*, [2012-NMCA-104, 287 P.3d 364](#).

A private entity was subject to the Inspection of Public Records Act. — Where the municipality acquired a public access channel and adopted an ordinance that required the municipality to be responsible for management of the access channel and to adopt rules, regulations and procedures for the use of the access channel; the municipality contracted with a private entity to operate the access channel; the operation agreement required the private entity to operate the access channel in a manner that was consistent with the ordinance; the municipality funded the private entity with an annual grant that was released to the private entity when it gave the municipality an annual activity plan and budget; the private entity was required to account for how the funds were spent; for a nominal rent, the municipality leased the basement of the municipal civic center to the private entity to use as the public access television center; the municipality had the right to terminate the operating agreement without cause; the operating agreement identified the private entity as an independent contractor and stated that no principal or agent relationship existed between the municipality and the private entity; and the municipality denied plaintiff's request for recordings of city commission meetings that the private entity had recorded and played on the access channel, the private entity was acting on behalf of the municipality in its role as the access channel operational organization, and the recordings of city commission meetings made by the private entity were public records subject to inspection. *State ex rel. Toomey v. City of Truth or Consequences*, 2012-NMCA-104, 287 P.3d 364.

Settlement agreement documents were public records. — Where respondent, a private prison medical services provider that provided contracted healthcare services for the New Mexico corrections department (NMCD), negotiated and settled at least fifty-nine civil claims alleging instances of improper care and/or sexual assault of inmates, and where petitioners submitted written requests pursuant to the Inspection of Public Records Act seeking all settlement documents involving respondent in its role as medical services contractor for NMCD, the district court did not err in issuing a writ of mandamus ordering respondent to produce the settlement agreements and pay petitioners' reasonable attorney fees, because the settlement agreements were created as a result of respondent's public function acting on behalf of NMCD. Third-party settlement agreements resulting from medical care provided under a contract with the state are public documents subject to disclosure. *N.M. Found. for Open Gov't v. Corizon Health*, 2020-NMCA-014, cert. denied.

Definition of "public records" in Public Records Act (14-3-1 to 14-3-16 NMSA 1978) does not apply to section, the Inspection of Public Records Act. *State ex rel. Newsome v. Alarid*, 1977-NMSC-076, 90 N.M. 790, 568 P.2d 1236.

"Relate to public business" construed. — Where plaintiff submitted an IPRA request to the New Mexico department of game and fish (NMDGF) seeking the names and email address given by all applicants for hunting licenses in 2015 and 2016, which NMDGF determined amounted to over 300,000 entries, and where NMDGF concluded that plaintiff's request sought personal identifier information that did not constitute a public record subject to disclosure and agreed to produce only the applicants' names, the district court did not err in granting plaintiff's motion for summary judgment because IPRA's definition of "relating to public business" means that the requested records are connected to governmental affairs or official actions by or on behalf of public bodies, and therefore the email addresses NMDGF collected in connection with its licensing

system constitute public records that are subject to disclosure. *Dunn v. N.M. Dep't of Game & Fish*, 2020-NMCA-026.

Faculty salary matters are not public records until the culmination of the contract between the board and the individual; thought processes, or the offer of a contract, are not such a public record as would require public inspection, so that the right to inspect records of the board of regents of a state university on the subject of salary contract negotiations before the task was completed should be denied. *Sanchez v. Board of Regents*, 1971-NMSC-065, 82 N.M. 672, 486 P.2d 608.

Term "public records" is intended to include all papers or memoranda in the possession of public officers which are required by law to be kept by them. 1966 Op. Att'y Gen. No. 66-131.

Public records. — Elements essential to constitute a public record are that it be made by a public officer and that the officer be authorized by law to make it. 1963 Op. Att'y Gen. No. 63-55.

A state agency is a "person", for purposes of IPRA, and may request public records from other state agencies. — Where the state ethics commission (commission) sent a public records request, pursuant to the Inspection of Public Records Act (IPRA), NMSA 1978, §§ 14-2-1 to -12, to the New Mexico human services department (department), asking the department to provide copies of certain emails from several named employees, and where the department denied the request claiming that the commission, itself a "public body" for the purposes of IPRA, is not a "person" entitled to make public records requests, the department erred in denying the commission's public records request, because a public body is an "entity," within the definition of "person," § 14-2-6(D), and therefore the plain language of IPRA demonstrates that public bodies can submit public records requests to other public bodies. This reading of the statute is also consistent with IPRA's declared purpose, that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees. *Public Records Requests Made by the State Ethics Comm'n* (10/27/21), Att'y Gen. Adv. Ltr. 2021-12.

14-2-7. 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](#).

ANNOTATIONS

The 2011 amendment, effective June 17, 2011, in Subsection A, after "receive requests" added "including electronic mail or facsimile"; added Subsection B and relettered succeeding subsections; in Subsection E, after "administrative office", added "and on the publicly accessible web site, if any"; and in Subsection E(2), added "including the contact information for the custodian of public records" at the end of the sentence.

The 2001 amendment, effective June 15, 2001, added Subsection D.

Department of public safety failed to provide inmate a proper and reasonable opportunity to inspect public records. — Where plaintiff, a prisoner at the New Mexico state penitentiary, sought to inspect department of public safety (DPS) records, pursuant to the Inspection of Public Records Act (IPRA), §§ 14-2-1 through [14-2-12](#) NMSA 1978, connected to the investigation and prosecution that led to plaintiff's murder conviction, and where DPS first submitted a \$90.00 invoice which requested payment prior to mailing the records, and, in a second response, informed plaintiff that physical inspection of the records was available at the DPS offices during business hours, and where plaintiff filed a complaint in district court, alleging that DPS unreasonably failed to make responsive documents available to plaintiff and thus violated IPRA, and where the district court granted summary judgment to DPS, finding that DPS's request for payment for copies did not violate IPRA, and that defendants provided reasonable access for physical inspection of public records by allowing physical inspection of the records at the DPS offices, the district court erred in granting summary judgment in favor of DPS, because, although charging a fee for copies was proper and in conformance with IPRA, the DPS's response that inspection was available at the DPS offices was unreasonable under the circumstances when DPS knew that plaintiff was incarcerated. An offer to an incarcerated person of an opportunity to visit a location outside the place of incarceration during business hours is not reasonable under the circumstances and does not align with the legislature's clearly asserted public policy 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. *Franklin v. Dep't of Pub. Safety*, 2022-NMCA-058.

Transferring duty as custodian prohibited. — By reason of this section, the records of the director of the department of public health (now secretary of health) are, in some instances, not open to public inspection, and the duty of the custodian of those records, to wit, the director of public health (now secretary), in the maintenance of the secrecy of those records would prohibit him, the governor or any other person from transferring the duty as custodian of the records to any other person. 1954 Op. Att'y Gen. No. 54-5943.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 37A Am. Jur. 2d Freedom of Information Acts § 1 et seq.

What are "records" of agency which must be made available under Freedom of Information Act (5 USCA § 552(a)(3)), 153 A.L.R. Fed. 571.

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.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, added Subsection F.

Documenting an oral request for public records does not convert an oral request into a written request for purposes of the Inspection of Public Records Act. —

Where news reporter orally requested police lapel videos from the Albuquerque Police Department (APD), and where APD public information officer e-mailed the APD records custodian with the request for public records, the e-mail documenting the records request did not convert the oral request for public records into a written request for public records subjecting the records custodian to penalties pursuant to this section. *Holland v. City of Albuquerque*, 2015-NMCA-014.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 37A Am. Jur. 2d Freedom of Information Acts § 414 et seq.

What are "records" of agency which must be made available under Freedom of Information Act (5 USCA § 552(a)(3)), 153 A.L.R. Fed. 571.

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.

ANNOTATIONS

The 2013 amendment, effective April 2, 2013, expanded the authority to sell data; and in Subsection D, after "Sections 14-3-15.1", added "and 14-3-18".

The 2011 amendment, effective June 17, 2011, added the last sentence in Subsection A; added Subsection B and relettered the succeeding subsection; in Subsection C, added Subparagraphs (3) and (4), and renumbered the succeeding subparagraphs; and added a new Subsection D.

Right subject to reasonable restrictions and conditions. — The right to inspect public records commonly carries with it the right to make copies thereof, subject, however, to reasonable restrictions and conditions imposed as to their use, reasonable regulations as to appropriate times when and places where they may be inspected and copied and such reasonable supervision by the custodian thereof as may be necessary for their safety and as will secure equal opportunity for all to inspect and copy them. *Ortiz v. Jaramillo*, 1971-NMSC-041, 82 N.M. 445, 483 P.2d 500.

Recording Act governs real property records request. — Where plaintiff corporation sought all of Lea county's real property image and index records, the production provisions of the Recording Act, 14-8-1 through 14-8-17 NMSA 1978, rather than those of the Inspection of Public Records Act (IPRA), 14-2-1 through 14-2-12 NMSA 1978, governed the county's obligation in responding to plaintiff's records request, because IPRA creates a records inspection scheme of general application granting, with various exceptions, a right to inspect public records of this state, and the Recording Act more specifically provides a mechanism by which prospective purchasers can examine real property records, and places on county clerks associated duties to make these records available and searchable for the public. *TexasFile LLC v. Board of Cty. Comm'rs of Lea Cty.*, 2019-NMCA-038, cert. denied.

There is not a blanket exception from inspection for law enforcement records relating to an ongoing criminal investigation. — Where plaintiff sent a written

request to the department of public safety (DPS) pursuant to IPRA for various records relating to the shooting death of his brother, and where DPS produced a primary incident report, the personnel records of one of the officers involved, and one subpoena, but denied production of all other pertinent records in its possession, claiming that the release of the requested information posed a demonstrable and serious threat to an ongoing criminal investigation and that the FBI asked DPS to withhold the records in order to maintain the integrity of its investigation, the district court erred in denying plaintiff's motion for summary judgment and in granting DPS's motion for summary judgment, because § 14-2-1 NMSA 1978 does not create a blanket exception from inspection of law enforcement records relating to an ongoing criminal investigation, and DPS did not present evidence that any specific records that it refused to produce revealed confidential sources, methods, information or individuals accused but not charged with a crime, nor did DPS present any evidence that it reviewed the requested records to separate the exempt from nonexempt information, or that it provided any nonexempt information existing within records containing exempt information. *Jones v. N.M. Dep't of Public Safety*, 2020-NMSC-013, rev'g No. A-1-CA-35120, mem. op. (May 10, 2018) (non-precedential).

Right to make copies. — The right to inspect or examine public records commonly includes the right of making copies thereof as the right to inspect would be valueless without this correlative right. 1959 Op. Att'y Gen. No. 59-170.

It is permissible for an individual or a company such as an abstractor to photocopy voter registrations in the offices of the county clerks so long as adequate precautions are taken to ensure the integrity of the records and to preserve their availability for inspection by others. 1959 Op. Att'y Gen. No. 59-170.

Charges not to be imposed. — A charge of \$25.00 per month may not be imposed by counties upon abstract and title companies for such facilities as lights, telephone and janitorial services to reimburse the counties therefor in connection with abstract and title companies inspecting and copying public records, because this practice amounts to a denial of the right to inspect records. 1957 Op. Att'y Gen. No. 57-102.

Public's right to inspection is not absolute. 1969 Op. Att'y Gen. No. 69-89.

Court opinions subject to inspection or copying. — The supreme court and the court of appeals are required to make available their current and past opinions to the public for inspection or for copying. 1979 Op. Att'y Gen. No. 79-14.

Reimbursement or other consideration to courts for copying costs. — The supreme court and the court of appeals should require reasonable reimbursement for the costs incurred by them for copying opinions for the public or for retrieving their opinions for inspection. However, such a charge need not be made in those cases in which the courts receive some other form of consideration in return for supplying their opinions to private individuals or enterprises. 1979 Op. Att'y Gen. No. 79-14.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 37A Am. Jur. 2d Freedom of Information Acts § 434 et seq.

What are "records" of agency which must be made available under Freedom of Information Act (5 USCA § 552(a)(3)), 153 A.L.R. Fed. 571.

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 if the custodian does not permit the records to be inspected in a reasonable period of time.

History: [Laws 1993, ch. 258, § 7.](#)

ANNOTATIONS

Custodian may make reasonable restrictions and conditions on access. — Fact that request for inspection would pose an extreme burden on personnel office of state university was not a legitimate reason, by itself, for failure to make records available for inspection or for copying, but custodian could make reasonable restrictions and conditions on access to the records. Reasonable regulations could be made as to times when and places where they may be inspected or copied, and custodian could insist upon reasonable supervision for the safekeeping of the records. *State ex rel. Newsome v. Alarid*, [1977-NMSC-076](#), [90 N.M. 790](#), [568 P.2d 1236](#).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 37A Am. Jur. 2d Freedom of Information Acts § 425 et seq.

14-2-11. Procedure for denied requests.

A. Unless a written request has been determined to be excessively burdensome or broad, a written request for inspection of public records that has not been permitted within fifteen days of receipt by the office of the custodian may be deemed denied. The person requesting the public records may pursue the remedies provided in the Inspection of Public Records Act.

B. If a written request has been denied, the custodian shall provide the requester with a written explanation of the denial. The written denial shall:

- (1) describe the records sought;
- (2) set forth the names and titles or positions of each person responsible for the denial; and
- (3) be delivered or mailed to the person requesting the records within fifteen days after the request for inspection was received.

C. A custodian who does not deliver or mail a written explanation of denial within fifteen days after receipt of a written request for inspection is subject to an action to enforce the provisions of the Inspection of Public Records Act and the requester may be awarded damages. Damages shall:

- (1) be awarded if the failure to provide a timely explanation of denial is determined to be unreasonable;
- (2) not exceed one hundred dollars (\$100) per day;
- (3) accrue from the day the public body is in noncompliance until a written denial is issued; and
- (4) be payable from the funds of the public body.

History: [Laws 1993, ch. 258, § 8.](#)

ANNOTATIONS

In camera review. — When a public entity seeks to withhold public records, in camera review is most efficient, if not imperative. The public entity must designate the sealed records for review by the court. *Board of Comm'rs v. Las Cruces Sun-News*, [2003-NMCA-102](#), [134 N.M. 283](#), [76 P.3d 36](#).

County not permitted to circumvent established procedure of in camera review. — Where a county sought to circumvent the procedure outlined in *State ex rel. Newsome v. Alarid*, [1977-NMSC-076](#), [90 N.M. 790](#), [568 P.2d 1236](#), for in camera review of disputed documents by filing a motion for a protective order and asserting to the district court that it could only consider the settlement records if the motion for protective order was granted, the county's decision to bypass established procedure effectively obstructed full review by the district court and the court of appeals and the district court did not abuse its discretion in denying the motion for protective order. *Board of Comm'rs v. Las Cruces Sun-News*, [2003-NMCA-102](#), [134 N.M. 283](#), [76 P.3d 36](#).

The threshold requirements for an in camera inspection are that the custodian of the records must first determine whether the person requesting disclosure is a citizen and whether the request is for a lawful purpose; second, the custodian must justify why the records should not be furnished. *State ex rel. Blanchard v. City Comm'rs*, [1988-NMCA-008](#), [106 N.M. 769](#), [750 P.2d 469](#).

Justification for refusing to release records. — Fact that information was obtained under a promise of confidentiality, standing alone, would not suffice to preclude disclosure. The promise would have to coincide with reasonable justification, based on public policy, for refusing to release the records. Furthermore, the justification would have to be articulated by the custodian for the record. *State ex rel. Newsome v. Alarid*, [1977-NMSC-076](#), [90 N.M. 790](#), [568 P.2d 1236](#).

Duty of custodian to determine whether information can be justifiably withheld. — There may be circumstances under which the information contained in the record can be justifiably withheld. The custodian has the initial duty to make this determination as to each record requested. He must first determine that the person requesting access is a citizen and that he is requesting the information for a lawful purpose. The burden is upon the custodian to justify why the records sought to be examined should not be furnished. It shall then be the court's duty to determine whether the explanation of the custodian is reasonable and to weigh the benefits to be derived from nondisclosure

against the harm which may result if the records are not made available. *State ex rel. Newsome v. Alarid*, [1977-NMSC-076](#), [90 N.M. 790](#), [568 P.2d 1236](#).

Denial of request to review applications for position of city manager. — A municipality's denial of a request to inspect applications received by the municipality for the position of city manager on the grounds that disclosure of the applications would deter potential applicants and reduce the quality and scope of the applicant pool was insufficient, under the rule of reason, to outweigh the public's interest in disclosure. *City of Farmington v. The Daily Times*, [2009-NMCA-057](#), [146 N.M. 349](#), [210 P.3d 246](#).

The Inspection of Public Records Act provides for two separate remedies. — This section and [14-2-12](#) NMSA 1978 create separate remedies depending on the stage of the Inspection of Public Records Act (IPRA) request. This section requires a public entity to respond to a records request within fifteen days unless the request has been determined to be excessively burdensome or broad. If the request is denied, the custodian shall provide the requester with a written explanation of the denial. It is when the custodian fails to respond to a request or deliver a written explanation of the denial that the public entity is subject to damages pursuant to this section. The enforcement and damages provisions of [14-2-12](#) NMSA 1978 apply in an action for the post-denial enforcement of the IPRA request. *Faber v. King*, [2015-NMSC-015](#), *rev'g* [2013-NMCA-080](#), [306 P.3d 519](#).

Where the attorney general's office received a request for public records pursuant to the Inspection of Public Records Act (IPRA) and denied the request the next day, damages pursuant to this section were not applicable because the attorney general's office timely answered the request with a denial by following the denial procedures set out in this section. When the district court held that the attorney general's office wrongfully withheld the public records, the enforcement and damages provisions of [14-2-12\(D\)](#) NMSA 1978 applied. *Faber v. King*, [2015-NMSC-015](#), *rev'g* [2013-NMCA-080](#), [306 P.3d 519](#).

Separate remedies distinguished. — Section [14-2-11](#) NMSA 1978 is focused on deterring nonresponsiveness and noncompliance by public bodies in the first instance, while [14-2-12](#) NMSA 1978 is focused on making whole a person who, believing his or her right of inspection has been impermissibly denied, brings a successful enforcement action. *Britton v. Office of the Att'y Gen.*, [2019-NMCA-002](#).

Incomplete or inadequate responses to IPRA requests. — Where plaintiff made a request for documents from the Attorney General's Office (AGO) pursuant to the Inspection of Public Records Act, §§ 14-2-1 to -12 NMSA 1978, and where the AGO incompletely and inadequately responded to the request, the district court erred in concluding that plaintiff's action is exclusively one that proceeds under [14-2-12](#) NMSA 1978 and limiting the damages plaintiff can recover to actual damages under Subsection D of that provision, because a public body that permits only partial inspection, that is inspection of some but not all nonexempt responsive records, has not complied with its obligation to provide the greatest possible information regarding the affairs of government. *Britton v. Office of the Att'y Gen.*, [2019-NMCA-002](#).

Remedy for inadequate response to IPRA request. — Where plaintiff made a request for documents from the Attorney General's Office (AGO) pursuant to the Inspection of Public Records Act, §§ 14-2-1 to -12 NMSA 1978, and where the AGO failed to permit inspection of approximately 350 records that were responsive to

plaintiff's request and for which no claim of exemption was ever asserted or written explanation of denial issued, the district court erred in concluding that plaintiff's action is exclusively one that proceeds under [14-2-12](#) NMSA 1978 and limiting the damages plaintiff can recover to actual damages under Subsection D of that provision, because the AGO's failure to either produce for inspection or deliver or mail a written explanation of denial regarding the 350 documents is the type of wrong that [14-2-11](#) NMSA 1978's statutory penalty seeks to remedy. *Britton v. Office of the Att'y Gen.*, [2019-NMCA-002](#).

The Electronic Communications Privacy Act is not an exception to disclosure of public records. — Where the state ethics commission (commission) sent a public records request to the New Mexico Human services department (department), asking the department to provide copies of certain emails from several named employees, and where the department denied the request claiming that the Electronic Communications Privacy Act (ECPA), NMSA 1978, § [10-16F-1](#) to -6, operates as an exception to disclosure through the Inspection of Public Records Act (IPRA), NMSA 1978, §§ [14-2-1](#) to -12, because the commission may obtain the requested records through a subpoena, the department erred in denying the commission's public records request, because the commission's ability to obtain public records through a subpoena does not mean that it is unable to seek the same records through IPRA, and nothing in the ECPA's text suggests that the legislature intended the statute to operate as an exception to disclosure through IPRA. *Public Records Requests Made by the State Ethics Comm'n* (10/27/21), [Att'y Gen. Adv. Ltr. 2021-12](#).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 37A Am. Jur. 2d Freedom of Information Acts § 443 et seq.

What are "records" of agency which must be made available under Freedom of Information Act (5 USCA § 552(a)(3)), 153 A.L.R. Fed. 571.

14-2-12. Enforcement.

A. An action to enforce the Inspection of Public Records Act 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.

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.

History: [Laws 1993, ch. 258, § 9](#).

ANNOTATIONS

A district court is without constitutional jurisdiction to enforce an IPRA action against another court of equal or superior jurisdiction. — In a superintending control proceeding arising from an Inspection of Public Records Act (IPRA) action filed in the fifth judicial district court (district court), where the real party in interest, a party to a civil case in the first judicial district court, sought to inspect email communications related to a draft copy of a preliminary injunction order that a first judicial district court judge (judge) had been preparing for issuance in the underlying civil case and the contents of a personal election Facebook page maintained by the judge, not only did the enforcement action fail to name the proper defendant, because the designated records custodian is the only official who is assigned IPRA compliance duties, but because the action was a coercive judgment ordering production under IPRA, the fifth judicial district court had no constitutional jurisdiction to litigate any aspect of an IPRA enforcement action against the first judicial district court, because [Article VI, Section 13 of the New Mexico constitution](#) prohibits a district court from issuing writs of mandamus or injunction directed to judges or courts of equal or superior jurisdiction. *Pacheco v. Hudson*, [2018-NMSC-022](#).

An undisclosed principal cannot, as a plaintiff in an enforcement action, enforce a denial of records requested by its agent. *San Juan Agric. Water Users Ass'n v. KNME-TV*, [2010-NMCA-012](#), [147 N.M. 643](#), [227 P.3d 612](#), *aff'd in part, rev'd in part*, [2011-NMSC-011](#), [150 N.M. 64](#), [257 P.3d 884](#).

Undisclosed principal. — A principal, whether disclosed or not, can delegate the function of requesting public records to an agent, such as the principal's attorney, and either the agent or the principal, even if previously unknown to the public records custodian, can enforce the request if it is denied. *San Juan Agric. Water Users Ass'n v. KNME-TV*, [2011-NMSC-011](#), [150 N.M. 64](#), [257 P.3d 884](#), *rev'g* [2010-NMCA-012](#), [147 N.M. 643](#), [227 P.3d 612](#).

Where a law firm made a request to inspect public records on behalf of plaintiff; the request included the law firm's name, address, and telephone number; and the request did not disclose the fact that the request was being made on behalf of plaintiff, plaintiff had standing to enforce the public records request that it made through the law firm. *San Juan Agric. Water Users Ass'n v. KNME-TV*, [2011-NMSC-011](#), [150 N.M. 64](#), [257 P.3d 884](#), *rev'g* [2010-NMCA-012](#), [147 N.M. 643](#), [227 P.3d 612](#).

A person who has not requested public records, either personally or through an agent, does not have standing to seek judicial enforcement of the Inspection of Public Records Act. *San Juan Agric. Water Users Ass'n v. KNME-TV*, [2011-NMSC-011](#), [150 N.M. 64](#), [257 P.3d 884](#), *aff'g* [2010-NMCA-012](#), [147 N.M. 643](#), [227 P.3d 612](#).

Undisclosed principal has no standing. — Where a law firm made an inspection request for records relating to a news documentary program and the request failed to disclose that the law firm was making the request as attorney for or agent of plaintiffs, plaintiffs lacked standing to enforce the Inspection of Public Records Act. *San Juan Agric. Water Users Ass'n v. KNME-TV*, [2010-NMCA-012](#), [147 N.M. 643](#), [227 P.3d 612](#), *aff'd in part, rev'd in part*, [2011-NMSC-011](#), [150 N.M. 64](#), [257 P.3d 884](#).

Individuals who do not request access to documents cannot enforce a denial of a records request by another individual. *San Juan Agric. Water Users Ass'n v. KNME-*

TV, [2010-NMCA-012](#), 147 N.M. 643, 227 P.3d 612, *aff'd in part, rev'd in part*, [2011-NMCA-011](#), 150 N.M. 64, 257 P.3d 884.

Citizen must follow court-ordered arrangement to inspect records. — When a citizen enforces this section through an action to compel production of documents, the citizen must comply with the court-ordered arrangements for inspection. *Newsome v. Farer*, [1985-NMCA-096](#), 103 N.M. 415, 708 P.2d 327.

Protective order precludes disclosure of records. — Where plaintiff was a petitioner in a domestic relations matter in district court that involved his ten-year-old child, and where, on plaintiff's motion, the district court appointed defendant as guardian ad litem to the child, and where plaintiff served defendant with a discovery request seeking all correspondence received or produced with either party or any other person in relation to the domestic relations case, and where the district court issued a protective order stating that defendant was not required to respond to plaintiff's request for production, prompting plaintiff to request from defendant and the designated custodian of records in the district court, pursuant to the Inspection of Public Records Act, 14-2-1 to -12 NMSA 1978, to produce all records of communications sent or received in any form in the domestic relations case, the district court did not err in granting summary judgment in favor of defendant, because the protective order barred disclosure of the requested records to plaintiff, and persons subject to an injunctive order issued by a court with jurisdiction are expected to obey that decree until it is modified or reversed, even if they have proper grounds to object to the order. *Dunn v. Brandt*, [2019-NMCA-061](#).

Successful action to enforce is prerequisite for damages. — It is only in the event that a court action is brought to enforce the Inspection of Public Records Act that a plaintiff may be awarded mandatory costs, fees, and damages, and then only if the plaintiff is successful in that action. *Derringer v. State*, [2003-NMCA-073](#), [133 N.M. 721](#), [68 P.3d 961](#), cert. denied, 133 N.M. 727, 69 P.3d 237.

Successful litigation interpreted. — Where the secretary of state's office did not fully comply with an inspection of public records request, claiming that its late production of records to plaintiff cannot constitute success under the Inspection of Public Records Act (IPRA) because plaintiff already had possession of the records at the time the litigation was filed, and as a result, the secretary of state's office did not withhold or deny plaintiff access to the records, the district court did not abuse its discretion in awarding attorney's fees because IPRA does not include prior possession as a legitimate ground for withholding public documents, and the fact that plaintiff's litigation secured the production of the denied responsive public records, the litigation was "successful" as that word is used in IPRA. *ACLU of New Mexico v. Duran*, [2016-NMCA-063](#).

Reasonable attorney's fees. — Where the secretary of state's office did not fully comply with an inspection of public records request, claiming that its late production of records to plaintiff cannot constitute success under the Inspection of Public Records Act (IPRA) because plaintiff already had possession of the records at the time the litigation was filed, and as a result, did not withhold or deny plaintiff access to the records, the district court's award of attorney's fees was not an abuse of discretion because fees incurred in obtaining documents from a state agency are prima facie reasonable, and when withheld records are subsequently revealed and determined to be responsive, those records may become the basis for an award of attorney's fees in IPRA litigation. *ACLU of New Mexico v. Duran*, [2016-NMCA-063](#).

No action for damages after compliance. — The 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.

Indefinite delay as denial. — Under the Inspection of Public Records Act's enforcement provision, there is no distinction between a denial and an indefinite delay. *Board of Comm'rs v. Las Cruces Sun-News*, [2003-NMCA-102](#), [134 N.M. 283](#), [76 P.3d 36](#).

The Inspection of Public Records Act provides for two separate remedies. — Section [14-2-11](#) NMSA 1978 and this section create separate remedies depending on the stage of the Inspection of Public Records Act (IPRA) request. Section [14-2-11](#) NMSA 1978 requires a public entity to respond to a records request within fifteen days unless the request has been determined to be excessively burdensome or broad. If the request is denied, the custodian shall provide the requester with a written explanation of the denial. It is when the custodian fails to respond to a request or deliver a written explanation of the denial that the public entity is subject to damages pursuant to [14-2-11](#) NMSA 1978. The enforcement and damages provisions of this section apply in an action for the post-denial enforcement of the IPRA request. *Faber v. King*, [2015-NMSC-015](#), rev'g [2013-NMCA-080](#), [306 P.3d 519](#).

Where the attorney general's office received a request for public records pursuant to the Inspection of Public Records Act (IPRA) and denied the request the next day, damages pursuant to [14-2-11](#) NMSA 1978 were not applicable because the attorney general's office timely answered the request with a denial by following the denial procedures set out in [14-2-11](#) NMSA 1978. When the district court held that the attorney general's office wrongfully withheld the public records, the enforcement and damages provisions of this section applied. *Faber v. King*, [2015-NMSC-015](#), rev'g [2013-NMCA-080](#), [306 P.3d 519](#).

Mandamus is an appropriate remedy to enforce IPRA requests. — Where respondent, a private prison medical services provider that provided contracted healthcare services for the New Mexico corrections department (NMCD), negotiated and settled at least fifty-nine civil claims alleging instances of improper care and/or sexual assault of inmates, and where petitioners submitted written requests pursuant to the Inspection of Public Records Act (IPRA) seeking all settlement documents involving respondent in its role as medical services contractor for NMCD, and where the district court issued a writ of mandamus ordering respondent to produce the settlement agreements, mandamus was a proper remedy to require respondent to produce public records pursuant to IPRA because petitioners had a clear legal right of enforcement and respondent had a clear legal duty to provide public records. *N.M. Found. for Open Gov't v. Corizon Health*, [2020-NMCA-014](#), cert. denied.

Award of attorney fees was supported by substantial evidence. — Where respondent, a private prison medical services provider that provided contracted healthcare services for the New Mexico corrections department (NMCD), negotiated and settled at least fifty-nine civil claims alleging instances of improper care and/or sexual assault of inmates, and where petitioners submitted written requests pursuant to the Inspection of Public Records Act (IPRA) seeking all settlement documents involving respondent in its role as medical services contractor for NMCD, and where the district

court issued a writ of mandamus ordering respondent to produce the settlement agreements and pay petitioners' reasonable attorney fees, the district court's attorney fee award was supported by substantial evidence where the court considered the attorneys' years of experience and record of fee awards as well as an expert witness's testimony explaining market rates in the relevant jurisdiction. *N.M. Found. for Open Gov't v. Corizon Health*, [2020-NMCA-014](#), cert. denied.

Separate remedies distinguished. — Section [14-2-11](#) NMSA 1978 is focused on deterring nonresponsiveness and noncompliance by public bodies in the first instance, while [14-2-12](#) NMSA 1978 is focused on making whole a person who, believing his or her right of inspection has been impermissibly denied, brings a successful enforcement action. *Britton v. Office of the Att'y Gen.*, [2019-NMCA-002](#).

Incomplete or inadequate responses to IPRA requests. — Where plaintiff made a request for documents from the Attorney General's Office (AGO) pursuant to the Inspection of Public Records Act, §§ 14-2-1 to -12 NMSA 1978, and where the AGO incompletely and inadequately responded to the request, the district court erred in concluding that plaintiff's action is exclusively one that proceeds under [14-2-12](#) NMSA 1978 and limiting the damages plaintiff can recover to actual damages under Subsection D of that provision, because a public body that permits only partial inspection, that is inspection of some but not all nonexempt responsive records, has not complied with its obligation to provide the greatest possible information regarding the affairs of government. *Britton v. Office of the Att'y Gen.*, [2019-NMCA-002](#).

Remedy for inadequate response to IPRA request. — Where plaintiff made a request for documents from the Attorney General's Office (AGO) pursuant to the Inspection of Public Records Act, §§ 14-2-1 to -12 NMSA 1978, and where the AGO failed to permit inspection of approximately 350 records that were responsive to plaintiff's request and for which no claim of exemption was ever asserted or written explanation of denial issued, the district court erred in concluding that plaintiff's action is exclusively one that proceeds under [14-2-12](#) NMSA 1978 and limiting the damages plaintiff can recover to actual damages under Subsection D of that provision, because the AGO's failure to either produce for inspection or deliver or mail a written explanation of denial regarding the 350 documents is the type of wrong that [14-2-11](#) NMSA 1978's statutory penalty seeks to remedy. *Britton v. Office of the Att'y Gen.*, [2019-NMCA-002](#).

Findings as to damages. — If the district court awards damages under Section [14-2-12\(D\)](#) NMSA 1978 for enforcement of a denied request to inspect records, the district court is required to enter findings specifying the nature and measure of the damages. *Faber v. King*, [2013-NMCA-080](#), cert. granted, 2013-NMCERT-007.

Where plaintiff represented employees of defendant in an employment dispute in federal court; the federal court ordered a stay of discovery; plaintiff filed a request for inspection of employment records from defendant's office; defendant denied the request; the district court held that the discovery stay did not preempt rights granted by the Inspection of Public Records Act and ruled that defendant had violated the act; the district court awarded damages of \$10 per day from the date of the wrongful denial to the date the federal court lifted the stay and thereafter damages of \$100 per day until the records were provided; and although the district court did not specify the nature and purpose of the damage award, the record indicated that the damages were punitive, the award was unsupported by findings supporting compensatory damages, which are a

prerequisite to punitive damages. *Faber v. King*, [2013-NMCA-080](#), cert. granted, 2013-NMCERT-007.

Attorney's fees. — Where plaintiff's made two requests for records of payments the school district made to a former employee; the school district denied both requests; the district court ordered the school district to produce the records; to support plaintiffs' request for attorneys' fees in the amount of \$22,899, plaintiffs proffered their attorneys' itemized billing statements and resumes together with the affidavit of an attorney familiar with the prevailing rates charged by attorneys who attested to the reasonableness of the fees charged and the competency of plaintiffs' attorneys; the district court awarded plaintiffs an arbitrary fee of \$5,000 on the grounds that plaintiffs' attorneys charged "strikingly high hourly rates", plaintiff filed only four pleadings, and there were no hearings; the court refused to review the billing statements, rejected the affidavit, and relied on its own assessment of a reasonable hourly rate and a reasonable amount of time to litigate the case; the court did not have a clear grasp of the time and labor involved in litigating the case to a successful conclusion or consider the novelty of the issues addressed in plaintiffs' pleadings or the policy goals of the Inspection of Public Records Act; and the court failed to utilize an objective basis for determining a reasonable award of attorney fees, the court abused its discretion. *Rio Grande Sun v. Jemez Mountains Pub. Sch. Dist.*, [2012-NMCA-091](#), [287 P.3d 318](#), cert. denied, 2012-NMCERT-008.

It is clear the Legislature intended to enforce disclosure by imposing a cost – including attorney fees – for nondisclosure within the time frames set by the Inspection of Public Records Act, regardless of whether the public entity characterizes the nondisclosure as a "denial" or as an indefinite "delay". *Board of Comm'rs v. Las Cruces Sun-News*, [2003-NMCA-102](#), [134 N.M. 283](#), [76 P.3d 36](#).

Remedy for denial of access to tax assessment records. — Taxpayers who believed that assessor wrongfully denied them access to public records should have pursued the remedies provided in this section. To the extent the board found that the information sought was irrelevant to the assessment of taxpayers' property, there was no error in the board's refusal to sanction assessor. *Hannahs v. Anderson*, [1998-NMCA-152](#), [126 N.M. 1](#), [966 P.2d 168](#), cert. denied, 126 N.M. 532, 972 P.2d 351.

This section does not authorize punitive damages. — Although government liability for punitive damages would deter the abuse of governmental power and promote accountability among government officials, the countervailing policy of protecting public revenues must prevail unless punitive damages are specifically authorized by statute. This section does not specifically authorize punitive damages. *Faber v. King*, [2015-NMSC-015](#), *rev'g* [2013-NMCA-080](#), [306 P.3d 519](#).

This section authorizes the recovery of compensatory damages. — The damages provisions contained in the Inspection of Public Records Act (IPRA) are designed to promote compliance and accountability from New Mexico's public servants. This section ensures that IPRA requests are not wrongfully denied, and if the requester is not made whole by the provision of the documents, the legislature authorized a successful litigant, in an action to enforce a wrongfully denied IPRA request, to seek compensatory or actual damages, costs, and attorneys' fees. *Faber v. King*, [2015-NMSC-015](#), *rev'g* [2013-NMCA-080](#), [306 P.3d 519](#).

Where plaintiff was successful in his state court action against the attorney general's office to enforce the provisions of the Inspection of Public Records Act (IPRA), and the state district court issued a writ of mandamus ordering the attorney general's office to comply with the request for public records, and further awarded per diem damages and costs to plaintiff, but failed to clarify the nature of the damages, the supreme court held that this section does not authorize punitive damages or per diem damages for the post-denial enforcement of an IPRA request. In a court action to enforce the provisions of IPRA, this section authorizes costs, reasonable attorneys' fees and compensatory or actual damages only. *Faber v. King*, [2015-NMSC-015](#), *rev'g* [2013-NMCA-080](#), [306 P.3d 519](#).

Damages. — Damages for enforcement of a denied request to inspect records are governed by [14-2-12\(D\)](#) NMSA 1978, not [14-2-11\(C\)](#) NMSA 1978. The statutory maximum per-day penalty of [14-2-11\(C\)](#) NMSA 1978 does not create any standard for an amount of damages under [14-2-12\(D\)](#) NMSA 1978. *Faber v. King*, [2013-NMCA-080](#), cert. granted, 2013-NMCERT-007.