

## ARTICLE 2 Inspection of Public Records

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

- A. Every person has a right to inspect public records of this state except:
- (1) records pertaining to physical or mental examinations and medical treatment of persons confined to an institution;
  - (2) letters of reference concerning employment, licensing or permits;
  - (3) letters or memorandums that are matters of opinion in personnel files or students' cumulative files;
  - (4) law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime. Law enforcement records include evidence in any form received or compiled in connection with a criminal investigation or prosecution by a law enforcement or prosecuting agency, including inactive matters or closed investigations to the extent that they contain the information listed in this paragraph;
  - (5) as provided by the Confidential Materials Act [ [14-3A-1](#) NMSA 1978];
  - (6) trade secrets, attorney-client privileged information and long-range or strategic business plans of public hospitals discussed in a properly closed meeting;
  - (7) public records containing the identity of or identifying information relating to an applicant or nominee for the position of president of a public institution of higher education;
  - (8) tactical response plans or procedures prepared for or by the state or a political subdivision of the state, the publication of which could reveal specific vulnerabilities, risk assessments or tactical emergency security procedures that could be used to facilitate the planning or execution of a terrorist attack;
  - (9) discharge papers of a veteran of the armed forces of the United States filed with the county clerk before July 1, 2005 that have not been commingled with other recorded documents. These papers will be available only to the veteran who filed the papers, the veteran's next of kin, the deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney or a person designated in writing by the veteran to receive the records;

(10) discharge papers of a veteran of the armed forces of the United States filed with the county clerk before July 1, 2005 that have been commingled with other recorded documents if the veteran has recorded a request for exemption from public disclosure of discharge papers with the county clerk. If such a request has been recorded, the records may be released only to the veteran filing the papers, the veteran's next of kin, the deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney or a person designated in writing by the veteran to receive the records;

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

(12) as otherwise provided by law.

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

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

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

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

## **14-2-2. Repealed.**

### **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.

## **14-2-3. Repealed.**

## **14-2-4. Short title.**

[Chapter 14, Article 2](#) NMSA 1978 may be cited as the "Inspection of Public Records Act".

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

Recognizing that a representative government is dependent upon an informed electorate, the intent of the legislature in enacting the Inspection of Public Records Act [ [14-2-4](#) NMSA 1978] is to ensure, and it is declared to be the public policy of this state, that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees. It is the further intent of the legislature, and it is declared to be the public policy of this state, that to provide persons with such information is an essential function of a representative government and an integral part of the routine duties of public officers and employees.

**14-2-6. Definitions.**

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

- A. "custodian" means any person responsible for the maintenance, care or keeping of a public body's public records, regardless of whether the records are in that person's actual physical custody and control;
- B. "inspect" means to review all public records that are not excluded in
- C. "person" means any individual, corporation, partnership, firm, association or entity;
- D. "public body" means the executive, legislative and judicial branches of state and local governments and all advisory boards, commissions, committees, agencies or entities created by the constitution or any branch of government that receives any public funding, including political subdivisions, special taxing districts, school districts and institutions of higher education; and
- E. "public records" means all documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, regardless of physical form or characteristics, that are used, created, received, maintained or held by or on behalf of any public body and relate to public business, whether or not the records are required by law to be created or maintained.

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

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

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

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

- A. Any person wishing to inspect public records may submit an oral or written request to the custodian. However, the procedures set forth in this section shall be in response to a written request. The failure to respond to an oral request shall not subject the custodian to any penalty.
- B. Nothing in the Inspection of Public Records Act [ [14-2-4](#) NMSA 1978] shall be
- 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.

#### **14-2-9. Procedure for inspection.**

- A. Requested public records containing information that is exempt and nonexempt from disclosure shall be separated by the custodian prior to inspection, and the nonexempt information shall be made available for inspection. If necessary to preserve the integrity of computer data or the confidentiality of exempt information contained in a database, a partial printout of data containing public records or information may be furnished in lieu of an entire database.
- B. A custodian:
  - (1) may charge reasonable fees for copying the public records, unless a different fee is otherwise prescribed by law;
  - (2) shall not charge fees in excess of one dollar (\$1.00) per page for documents eleven inches by seventeen inches in size or smaller;
  - (3) may require advance payment of the fees before making copies of public records;
  - (4) shall not charge a fee for the cost of determining whether any public record is subject to disclosure; and
  - (5) shall provide a receipt, upon request.

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

If a custodian determines that a written request is excessively burdensome or broad, an additional reasonable period of time shall be allowed to comply with the request. The custodian shall provide written notification to the requester within fifteen days of receipt

of the request that additional time will be needed to respond to the written request. The requester may deem the request denied and may pursue the remedies available pursuant to the Inspection of Public Records Act [ [14-2-4](#) NMSA 1978] if the custodian does not permit the records to be inspected in a reasonable period of time.

**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 [ [14-2-4](#) NMSA 1978].

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.

**14-2-12. Enforcement.**

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

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

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

C. The exhaustion of administrative remedies shall not be required prior to bringing any action to enforce the procedures of the Inspection of Public Records Act.

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.

