

## 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 above;
- (5) as provided by the Confidential Materials Act [14-3A-1, 14-3A-2 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; and
- (9) 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.

- I. General Consideration.
- II. Records Subject to Inspection.
- III. Exceptions.

#### I. GENERAL CONSIDERATION.

**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 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.

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

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

**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. 1957-58 Op. Att'y Gen. No. 58-197.

**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, 90 N.M. 790, 568 P.2d 1236 (1977).

**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. 1953-54 Op. Att'y Gen. No. 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 nor the Inspection of Public

Records Act 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.

**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.

**Definition of "public records" in Public Records Act does not apply to section,** the "right-to-know law." Such definition is so broad that no reasonable interpretation of this section could possibly include all of the records that would be subject to inspection by public under that definition. State ex rel. Newsome v. Alarid, 90 N.M. 790, 568 P.2d 1236 (1977). See 14-3-1 to 14-3-16 NMSA 1978 for Public Records Act.

**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.

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. 1963-64 Op. Att'y Gen. No. 63-55.

**Provisions of section contemplate some exception** to the Public Records Act, 14-3-1 NMSA 1978 et seq. 1963-64 Op. Att'y Gen. No. 64-19.

**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, 90 N.M. 790, 568 P.2d 1236 (1977).

**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, 103 N.M. 415, 708 P.2d 327 (1985).

**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, 106 N.M. 769, 750 P.2d 469 (Ct. App. 1988).

**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 records entitled to be scrutinized by the public. 1961-62 Op. Att'y Gen. No. 61-137.

**Temporary or partial grades or records** kept by individual teachers are not public records. 1961-62 Op. Att'y Gen. No. 61-137.

**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. University of N.M. Bd. of Regents*, 107 N.M. 402, 759 P.2d 189 (1988).

**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.

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. 1963-64 Op. Att'y Gen. No. 64-19.

**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*, 90 N.M. 790, 568 P.2d 1236 (1977).

**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.

## 14-2-2. Repealed.

**Repeals.** — Laws 1993, ch. 258, § 10 repeals 14-2-2 NMSA 1978, as enacted by Laws 1947, ch. 130, § 2, requiring officers having custody of certain

**Privilege of inquiry as to faculty salary matters** must be suspended until the board of regents reaches its final conclusion, i.e., the culmination of the contract between the board and the individual. *Sanchez v. Board of Regents*, 82 N.M. 672, 486 P.2d 608 (1971).

Thought processes, or the offer of a contract, are not such a public record as would require public inspection. *Sanchez v. Board of Regents*, 82 N.M. 672, 486 P.2d 608 (1971).

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*, 82 N.M. 672, 486 P.2d 608 (1971).

**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. 1947-48 Op. Att'y Gen. No. 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.

**Records of human services department.** — 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. 1947-48 Op. Att'y Gen. No. 5032.

**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.

records to provide opportunity and facilities for inspection, effective June 18, 1993. For provisions of former section, see 1988 Replacement Pamphlet.

## 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.

**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.

**Repeals.** — Laws 1993, ch. 258, § 10 repeals 14-2-3 NMSA 1978, as amended by Laws 1983, ch. 141, § 1, 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 1988 Replacement Pamphlet. 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.

### 14-2-6. Definitions.

As used in the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978]:

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

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

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

D. “public body” means the executive, legislative and judicial branches of state and local governments and all advisory boards, commissions, committees, agencies or entities created by the constitution or any branch of government that receives any public funding, including political subdivisions, special taxing districts, school districts and institutions of higher education; and

E. “public records” means all documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, regardless of physical form or characteristics, that are used, created, received, maintained or held by or on behalf of any public body and relate to public business, whether or not the records are required by law to be created or maintained.

**History:** Laws 1993, ch. 258, § 3.

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

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

A. receive and respond to requests to inspect public records;

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

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

D. post in a conspicuous location at the administrative office of each public body a notice describing:

- (1) the right of a person to inspect a public body's records;
- (2) procedures for requesting inspection of public records;
- (3) procedures for requesting copies of public records;
- (4) reasonable fees for copying public records; and
- (5) the responsibility of a public body to make available public records for

inspection.

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

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

**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 [Chapter 14, Article 2 NMSA 1978] shall be construed to require a public body to create a public record.

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

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

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

**History:** Laws 1993, ch. 258, § 5.

**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.

B. A custodian:

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

- (2) shall not charge fees in excess of one dollar (\$1.00) per page for documents eleven inches by seventeen inches in size or smaller;
- (3) may require advance payment of the fees before making copies of public records;
- (4) shall not charge a fee for the cost of determining whether any public record is subject to disclosure; and
- (5) shall provide a receipt, upon request.

**History:** Laws 1993, ch. 258, § 6.

**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. 1959-60 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 insure the integrity of the records and to preserve their availability for inspection by others. 1959-60 Op. Att'y Gen. No. 59-170.

**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*, 82 N.M. 445, 483 P.2d 500 (1971).

**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. 1957-58 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.

**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 [Chapter 14, Article 2 NMSA 1978] if the custodian does not permit the records to be inspected in a reasonable period of time.

**History:** Laws 1993, ch. 258, § 7.

**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 [Chapter 14, Article 2 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 [Chapter 14, Article 2 NMSA 1978] 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.

**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 [Chapter 14, Article 2 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 [Chapter 14, Article 2 NMSA 1978].

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

**History:** Laws 1993, ch. 258, § 9.

**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 (1998).