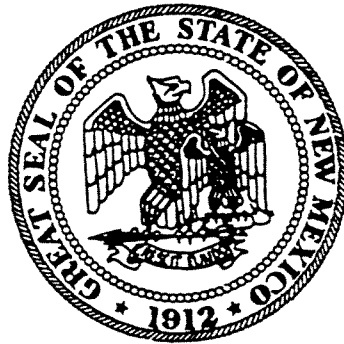


US EPA ARCHIVE DOCUMENT

**NEW MEXICO
STATUTES
1978**

ANNOTATED

**Chapter 14
Records, Legal Notices and Oaths
Pamphlet 30**



1994 CUMULATIVE SUPPLEMENT

This supplement includes laws enacted since the 1988 Replacement Pamphlet through the Second Regular Session of the Forty-First Legislature (1994) and annotations through 865 P.2d 55, 114 S. Ct. 751, 11 F.3d 1074, 838 F. Supp. 817, 151 F.R.D. 143, and 162 Bankr. 50.

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CHAPTER 14

Records, Legal Notices and Oaths

Art.

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ARTICLE 2

Inspection of Public Records

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

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

- A. records pertaining to physical or mental examinations and medical treatment of persons confined to any institution;
- B. letters of reference concerning employment, licensing or permits;
- C. letters or memorandums which are matters of opinion in personnel files or students' cumulative files;
- D. 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 any criminal investigation or prosecution by any law enforcement or prosecuting agency, including inactive matters or closed investigations to the extent that they contain the information listed above;
- E. as provided by the Confidential Materials Act [14-3A-1, 14-3A-2 NMSA 1978]; and
- F. 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.

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

I. GENERAL CONSIDERATION.

Cross references. — As to use of police reports for commercial solicitation, see 14-2A-1 NMSA 1978.

Bracketed material. — The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

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 present Subsections E and F.

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).

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

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.

II. RECORDS SUBJECT TO INSPECTION.

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.

For a discussion of whether certain specific documents found in workers' compensation claim files should be made available for public inspection, see 1988 Op. Att'y Gen. No. 88-16.

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

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.

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.

Effective dates. — Laws 1993, ch. 258 contains no effective date provision, but, pursuant to N. M. Const., art. IV, § 23, is effective on June 18, 1993, 90

days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

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 [this article] 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.

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.

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.

III. EXCEPTIONS.

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).

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

For provisions of former section, see 1988 Replacement Pamphlet. For present comparable provisions, see 14-2-11 NMSA 1978.

History: Laws 1993, ch. 258, § 2.

Bracketed material. — The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

Effective dates. — Laws 1993, ch. 258 contains

no effective date provision, but, pursuant to N. M. Const., art. IV, § 23, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

14-2-6. Definitions.

As used in the Inspection of Public Records Act [this article]:

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.

Bracketed material. — The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

Effective dates. — Laws 1993, ch. 258 contains

no effective date provision, but, pursuant to N. M. Const., art. IV, § 23, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

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; and

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

History: Laws 1993, ch. 258, § 4.

Effective dates. — Laws 1993, ch. 258 contains no effective date provision, but, pursuant to N. M. Const., art. IV, § 23, is effective on June 18, 1993, 90

days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

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 [this article] 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.

Bracketed material. — The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

Effective dates. — Laws 1993, ch. 258 contains

no effective date provision, but, pursuant to N. M. Const., art. IV, § 23, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

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.

Effective dates. — Laws 1993, ch. 258 contains no effective date provision, but, pursuant to N. M. Const., art. IV, § 23, is effective on June 18, 1993, 90

days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

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

History: Laws 1993, ch. 258, § 7.

Bracketed material. — The bracketed material in this section was inserted by the compiler. It was

not enacted by the legislature and is not a part of the law.

Effective dates. — Laws 1993, ch. 258 contains no effective date provision, but, pursuant to N. M. Const., art. IV, § 23, is effective on June 18, 1993, 90

days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

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 [this article].

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.

Bracketed material. — The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

Effective dates. — Laws 1993, ch. 258 contains

no effective date provision, but, pursuant to N. M. Const., art. IV, § 23, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

14-2-12. Enforcement.

A. An action to enforce the Inspection of Public Records Act [this article] 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.

Bracketed material. — The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

Effective dates. — Laws 1993, ch. 258 contains

no effective date provision, but, pursuant to N. M. Const., art. IV, § 23, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."