

1 SENATE BILL 232

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Pat Woods

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10 AN ACT

11 RELATING TO PUBLIC RECORDS; ALLOWING A PUBLIC BODY TO CHARGE
12 ADDITIONAL COSTS AND FEES FOR PUBLIC RECORDS REQUESTS THAT
13 REQUIRE EXCESSIVE USE OF TECHNOLOGY OR PERSONNEL; ALLOWING A
14 PUBLIC BODY TO RECOVER COSTS AND ATTORNEY FEES IN A PUBLIC
15 RECORDS ACT LAWSUIT; PROSCRIBING PROCEDURES AND FEES FOR
16 REQUESTS FOR A COMMERCIAL PURPOSE; ALLOWING FOR INJUNCTIONS.

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18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 SECTION 1. Section 14-2-6 NMSA 1978 (being Laws 1993,
20 Chapter 258, Section 3, as amended) is amended to read:

21 "14-2-6. DEFINITIONS.--As used in the Inspection of
22 Public Records Act:

23 A. "commercial purpose" means:

24 (1) the use of a public record for the purpose

25 of:

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(a) sale or resale;

(b) producing a document containing all or part of the public record for sale;

(c) obtaining names and addresses from public records for the purpose of solicitation or the sale of the names and addresses to another for the purpose of solicitation; or

(d) for any purpose for which the requester can reasonably anticipate the receipt of monetary gain from the direct or indirect use of the public record; and

(2) does not mean the use of a public record:

(a) as evidence or as research for evidence in an action in any judicial or quasi-judicial body; or

(b) for journalistic purposes;

~~[A.]~~ B. "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.]~~ C. "file format" means the internal structure of an electronic file that defines the way it is stored and used;

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

~~[D.]~~ E. "person" means any individual, corporation,

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1 partnership, firm, association or entity;

2 ~~[E.]~~ F. "protected personal identifier information"
3 means:

4 (1) all but the last four digits of a:

5 (a) taxpayer identification number;

6 (b) financial account number; or

7 (c) driver's license number;

8 (2) all but the year of a person's date of
9 birth; and

10 (3) a social security number;

11 ~~[F.]~~ G. "public body" means the executive,
12 legislative and judicial branches of state and local
13 governments and all advisory boards, commissions, committees,
14 agencies or entities created by the constitution or any branch
15 of government that receives any public funding, including
16 political subdivisions, special taxing districts, school
17 districts and institutions of higher education;

18 ~~[G.]~~ H. "public records" means all documents,
19 papers, letters, books, maps, tapes, photographs, recordings
20 and other materials, regardless of physical form or
21 characteristics, that are used, created, received, maintained
22 or held by or on behalf of any public body and relate to public
23 business, whether or not the records are required by law to be
24 created or maintained; and

25 ~~[H.]~~ I. "trade secret" means trade secret as

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1 defined in Subsection D of Section 57-3A-2 NMSA 1978."

2 SECTION 2. Section 14-2-8 NMSA 1978 (being Laws 1993,
3 Chapter 258, Section 5, as amended) is amended to read:

4 "14-2-8. PROCEDURE FOR REQUESTING RECORDS.--

5 A. Any person wishing to inspect public records may
6 submit an oral or written request to the custodian. However,
7 the procedures set forth in this section shall be in response
8 to a written request. The failure to respond to an oral
9 request shall not subject the custodian to any penalty.

10 B. Nothing in the Inspection of Public Records Act
11 shall be construed to require a public body to create a public
12 record.

13 C. A written request shall provide the name,
14 address and telephone number of the person seeking access to
15 the records, and shall identify the records sought with
16 reasonable particularity. Except for a statement of commercial
17 purpose as required by Section 5 of this 2019 act, no person
18 requesting records shall be required to state the reason for
19 inspecting the records.

20 D. A custodian receiving a written request shall
21 permit the inspection immediately or as soon as is practicable
22 under the circumstances, but not later than fifteen days after
23 receiving a written request. If the inspection is not
24 permitted within three business days, the custodian shall
25 explain in writing when the records will be available for

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1 inspection or when the public body will respond to the request.
2 The three-day period shall not begin until the written request
3 is delivered to the office of the custodian.

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

13 F. For the purposes of this section, "written
14 request" includes an electronic communication, including email
15 or facsimile; provided that the request complies with the
16 requirements of Subsection C of this section."

17 **SECTION 3.** Section 14-2-9 NMSA 1978 (being Laws 1993,
18 Chapter 258, Section 6, as amended) is amended to read:

19 "14-2-9. PROCEDURE FOR INSPECTION.--

20 A. Requested public records containing information
21 that is exempt and nonexempt from disclosure shall be separated
22 by the custodian prior to inspection, and the nonexempt
23 information shall be made available for inspection. If
24 necessary to preserve the integrity of computer data or the
25 confidentiality of exempt information contained in a database,

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1 a partial printout of data containing public records or
2 information may be furnished in lieu of an entire database.
3 Exempt information in an electronic document shall be removed
4 along with the corresponding metadata prior to disclosure by
5 utilizing methods or redaction tools that prevent the recovery
6 of exempt information from a redacted electronic document.

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

13 C. A custodian:

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

17 (2) shall not charge fees in excess of one
18 dollar (\$1.00) per printed page for documents eleven inches by
19 seventeen inches in size or smaller;

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

24 (4) may charge the actual costs associated
25 with transmitting copies of public records by mail, electronic

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1 mail or facsimile;

2 (5) may charge a service fee, in addition to
3 the other costs or fees allowed by this subsection, if the
4 request requires extensive use of information technology
5 resources or extensive clerical or supervisory assistance by
6 personnel of the agency involved; provided that the service fee
7 shall not exceed the actual cost incurred by the agency for the
8 extensive use of information technology resources or labor
9 costs of the personnel providing the services;

10 [~~5~~] (6) may require advance payment of the
11 fees before making copies of public records;

12 [~~6~~] (7) shall not charge a fee for the cost
13 of determining whether any public record is subject to
14 disclosure; and

15 [~~7~~] (8) shall provide a receipt, upon
16 request.

17 D. In addition to the costs and fees provided in
18 Subsection C of this section, a custodian may charge the
19 following for the inspection of public records for a commercial
20 purpose:

21 (1) a reasonable fee for the cost of time,
22 materials, equipment and personnel in producing the public
23 records; and

24 (2) the reasonable value of the reproduction
25 on the commercial market as best determined by the public body.

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

7 **SECTION 4.** Section 14-2-12 NMSA 1978 (being Laws 1993,
8 Chapter 258, Section 9) is amended to read:

9 "14-2-12. ENFORCEMENT.--

10 A. An action to enforce the Inspection of Public
11 Records Act may be brought by:

12 (1) the attorney general or the district
13 attorney in the county of jurisdiction; or

14 (2) a person whose written request has been
15 denied.

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

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

22 D. The court shall award damages, costs and
23 reasonable ~~[attorneys']~~ attorney fees to any person whose
24 written request has been denied and who is successful in a
25 court action to enforce the provisions of the Inspection of

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1 Public Records Act. A public body may recover costs and
2 reasonable attorney fees if the court action brought against
3 the public body is frivolous or the public body prevails."

4 SECTION 5. A new section of the Inspection of Public
5 Records Act is enacted to read:

6 "[NEW MATERIAL] COMMERCIAL PURPOSE.--

7 A. If a person requests to inspect public records
8 for a commercial purpose, the person shall provide a statement
9 in the person's request setting forth the commercial purpose
10 for which the public records will be used.

11 B. If the custodian of a public record determines
12 that the commercial purpose stated in the statement is a misuse
13 of public records or is an abuse of the right to receive public
14 records, the custodian may apply to the governor requesting
15 that the governor by executive order prohibit the inspection.
16 The governor, upon application from a custodian of public
17 records, shall determine whether the commercial purpose is a
18 misuse or an abuse of the public record. If the governor
19 determines that the public record shall not be provided for the
20 commercial purpose, the governor shall issue an executive order
21 prohibiting the inspection. If the governor does not issue an
22 order within thirty days, the custodian shall permit the
23 inspection upon being paid the fees determined pursuant to
24 Section 14-2-9 NMSA 1978.

25 C. A person who obtains a public record for a

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1 commercial purpose without indicating the commercial purpose;
2 for a noncommercial purpose and uses or knowingly allows the
3 use of the public record for a commercial purpose; for a
4 commercial purpose and uses or knowingly allows the use of the
5 public record for a different commercial purpose; or from
6 anyone other than the custodian of the records and uses the
7 records for a commercial purpose, in addition to other
8 penalties, shall be liable to the public body for:

9 (1) damages in the amount of three times the
10 amount that would have been charged for the public record had
11 the commercial purpose been stated, plus costs and reasonable
12 attorney fees; or

13 (2) the amount of three times the public
14 body's actual damages if it can be shown that inspection of the
15 public record would not have been allowed had the commercial
16 purpose of actual use been stated at the time of the request of
17 the records."

18 SECTION 6. A new section of the Inspection of Public
19 Records Act is enacted to read:

20 "[NEW MATERIAL] INJUNCTION--PERSONS SERVING IN
21 CORRECTIONAL FACILITIES.--A public body may obtain an
22 injunction against filling a request from a person who is
23 serving a sentence in a correctional facility if the public
24 body can show that the request:

25 A. was made to harass or intimidate the public body

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1 or its employees;

2 B. was in retaliation for an action by the public
3 body;

4 C. creates an undue burden on the public body; or

5 D. was made to assist in criminal activity."

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