

LFC Requester:	
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov
(Analysis must be uploaded as a PDF)**

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment**

Date 2025-01-29

Correction **Substitute**
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Prepared:
Bill No: HB139

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and Code
Number:

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
0	0		

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
0	0	0		

ESTIMATED ADDITIONAL OPERATION BUDGET (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	0	0	80.4	80.4	Recurring	General Fund

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

BILL SUMMARY

This bill repeals sections 14-2-1 through 14-2-1.2, and 14-2-6 through 14-2-12 of the Inspection of Public Records Act, replacing them, and amending the remainder, as follows.

* Expanding the definitions to include definitions for, among others, “archival records”, “attorney work product”, “broad and burdensome”, “good faith”, “investigatory work product”, “medical information”, “public business”, “reasonable denial”, and “reasonable particularity”; and to expand the definitions of, among others, “protected personal identifiers”.

* “Reasonable particularity” requires that the record(s) be identified with, for physical records, at minimum two out of three specific identifying characteristics (record title or subject line; author; date or date range with reasonable specificity), and, for audio or video records, one of three specific identifying characteristics.

* “Reasonable denial” is a denial which provides (a) a reason support by the Act; another federal, state, or local law or administrative regulation; a rule of court, court order, or case law, of why a record is exempt from inspection, with or without providing the precise legal citation; and, (b) the reasonable justification, based on a public policy ground, for refusing to release the records.

* Defines “person” as an individual, corporation, partnership, firm, entity or public body domiciled in New Mexico, and specifically excludes “individuals incarcerated in a correctional facility” as persons.

- * Establishing that the time for fulfilling a request does not begin until the request has been delivered, in proper form, to the proper records custodian.
- * Prohibiting anonymous or pseudonymous requests; and requiring that a request made by an agent of another person disclose the name of the person the agent is acting for.
- * Extending the deadlines for response to fifteen days for current records, and sixty days for archival, audio, or visual records.
- * Establishing the public body's authority to negotiate with a requester of a large volume of records how to narrow the scope of request.
- * Establishing that, if the requester fails to respond to a request for clarification within fifteen days, the agency may consider the request withdrawn.
- * Establishing guidelines and requirements concerning electronic records, including
 - * Prohibiting a public body from entering into a contract for creation or maintenance of a database that impairs the ability of the public to inspect or copy records;
 - * Waiving copy fees for electronic records, so long as the request is not broad and burdensome, and limiting fees to actual costs if the request is broad and burdensome;
 - * Establishing that the public body is not required to create or compile a record that does not exist, attempt to recover or restore deleted or overwritten records, or provide inspection of browser histories, caches, cookies, file metadata, system logs, login histories, or IP addresses of visitors to websites;
 - * Establishes that the public body is not required to provide an electronically stored record in a different structure or format except as reasonably necessary to reveal the organization of data; and declares that the public body is not required to provide the requester with access to a computer terminal or mobile device; and
 - * Establishes that the public body is not required to provide a copy of a record already available on a publicly accessible website, and their obligation is limited to notifying the requester where the record is located online.
- * Allows the public body to charge a reasonable fee of \$30.00/hour, excluding the initial hour, for any records request which requires more than one hour to locate; and \$30.00/hour, excluding the initial hour, for any records request which requires more than one hour to redact.
- * Allows the public body to concatenate requests for the purpose of charging fees for any requester making five or more requests within a forty-five day period.
- * Increases the per page maximum copy cost from \$1.00 to \$2.00.
- * Grants the public body the authority to refuse to permit inspection or provide copies if repeated requests for records disrupt other essential functions of the public body; and to refuse to permit a second or subsequent inspections of a record which the requester has previously inspected.

* Provides that the public body may decline to again provide inspection of a record to a person who has already been provided inspection of that same record.

* Enacts a new section specific to the creation and maintenance of records declaring that the public body is not required to create or maintain records; compile, format, manipulate, package, summarize, or tailor information; format-shift records; provide records already including a report or document that is printed, published, or online; answer questions, conduct research, provide advice, issue legal opinions; or provide access to premises or material objects which are not public records.

* Enacts a new section specific to attorney-client privilege and litigation records exempting records containing attorney-client information protected by the New Mexico Rules of Professional Conduct; exempts attorney-work product from inspection; exempts records concerning claims or damages until either a final judgment is issued or a settlement agreement signed; requires a public body to produce records in accordance with applicable discovery rules or orders regardless of their status as a party or non-party in the court proceeding, and allows them to deny such a request if the records are privileged under applicable discovery rules; declares exempt from inspection records filed with a court or administrative law agency under seal, pursuant to a protective order, or in a sequestered or confidential proceeding.

* Enacts new sections specific to economic development records and communication provider records; education records; election records; law enforcement records and correction records; infrastructure and cybersecurity records; library records concerning library patrons; medical records; procurement records; public employee records; security records; social services records; utility records; victims of crimes reports; and a new list of general exceptions, including an exemption for records required to be kept confidential by any law or regulation.

* Enacts a new section allowing the public body to petition the state commission of public records to request relief from a person that the public body claims is a vexatious requester, and establishes:

* The required elements of the petition and required actions of the public body;

* Timelines and discovery limitations for the action;

* Appeals process;

* Relieves all public bodies of the requirement to respond to a vexatious requester for three years following issuing of determination; and

* Requires the state commission of public records to maintain a list of all persons declared vexatious, and copies of all decisions.

* Enacts a new section requiring that public bodies be given the chance to cure alleged violations of the Act prior to suit and establishes a sixty day window for same; and replaces the original \$100/day penalty with a grant of authority to the court to award damages, costs, and/or reasonable attorney fees to a requester who has (a) been denied and (b) been successful in the court action only in cases where the public body did not act in good faith or

failed to provide a reasonable denial.

* Finally, the bill grants the public body the authority to file a complaint in district court under the Declaratory Judgment Act to seek determination whether a request made under the Inspection of Public Records Act seeks material exempt from disclosure or otherwise does not comply with the Act.

FISCAL IMPLICATIONS

CYFD currently employs four FTE to process requests submitted pursuant to the Inspection of Public Records Act. While approximately 20% of these are resolved within the three-business day window, and 50% within the fifteen-calendar day window, fully 30% are broad and burdensome, both in terms of volume (in excess of 5,000 records per request) and in terms of available staff, and require significant additional time to process. To accommodate any additional increase in workload which may occur as a result of the more nuanced approach to requests that this bill enshrines, CYFD will need an additional FTE (records custodian).

SIGNIFICANT ISSUES

New Mexico is among a handful of states where the public records inspection laws are very broad, often leading to an unworkable number of inspection requests to an agency. Requesters can follow their requests with an enforcement action brought before the district court, which can result in a settlement offer of less than the \$100/day penalty prescribed in current law, or a settlement offer which is unrealistic given an agency's inability to respond to multiple broad requests submitted in a tight period of time. CYFD has experienced both the first type – an enforcement action where the requester offered to settle for half of the statute-based penalty – and the second, where the requester submitted 39 requests for “all records” concerning a broadly defined topic in the space of 15 days, followed by an enforcement action demanding more than \$500,000.

Additionally, CYFD has received “all records” requests concerning a broad topic (e.g., all communications for four years concerning a federal program from which the agency derives significant funds) or a keyword or words (e.g., all communications for ten months containing any of the following: Jack, Jackson, discipline, disciplinary action). Within the realm of legal discovery, these requests would be objected to as overly broad and unlikely to produce useful material. Within the realm of New Mexico's IPRA, these requests must be processed to the fullest of the custodian's ability.

This bill balances the public interest of ensuring an informed public with the public interest of ensuring an agency that serves the public is not distracted from its primary mission. This bill additionally, by requiring individuals to

better define and target their requests, will provide the requester with a more useful set of records for inspection. When an individual is interested in a specific business element, requesting six months' worth of emails which contain keywords which may or may not be related to that business element is not going to produce a useful set of records and is guaranteed to result in the agency's inability to meet the mandated deadlines in statute.

PERFORMANCE IMPLICATIONS

Requests which are more narrowly defined and targeted will improve CYFD's ability to respond in an efficient and timely manner; and will better serve the public by providing them with records which are more closely aligned with the requester's specific interests.

ADMINISTRATIVE IMPLICATIONS

If the definitions of "archival" and "current" records is taken at face value, it could require an additional tracking system for all records created or received by the public body to be able to calculate the characterization of the record. Simply looking at the date on records does not tell one when that record came into the possession of the agency.

With respect to tracking employee time spent fulfilling IPRA requests for the purposes of charging reasonable fees, these administrative implications will be absorbed by existing resources.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Related to SB057, SB171.

TECHNICAL ISSUES

* The fifteen-day, sixty-day, and forty-five-day periods do not specify business or calendar days and, for clarity, should address weekends and

holidays.

- * While the bill prohibits pseudonymous and anonymous requests and requires a person acting as an agent for another, it defines “person” as an individual, corporation, partnership, firm, entity or public body domiciled in New Mexico, and specifically excludes “individuals incarcerated in a correctional facility” as persons. This raises the question of how an individual acting on behalf of a corporation or other “artificial person” should properly identify themselves.
- * While the bill requires that an agent acting on behalf of another person, real or artificial, must disclose their principal, it does not establish a penalty if an agent fails to so disclose.
- * While most current enforcement cases brought under the Inspection of Public Records Act state that a denial is “wrongful”, this bill does not establish a definition for wrongful or provide specific direction on what constitutes a wrongful denial. Further, the bill is silent on the subject of punitive damages, which is an oversight.
- * The definition of “archival records” and “current records” should be expanded to include an appropriate definition of “previously” which establishes whether it means “prior to the date of the request” or uses some other measuring date. Taken at face value, the current definitions could require establishing a tracking system capable of tracking all records by receipt or creation date in order to determine whether they are “archive” or “current” for the purposes of this bill.
- * There is no guidance on what a “reasonable fee” should look like.
- * The list of protected personal identifiers is a restrictive list which does not address other identifiers issued by government entities or other public or quasi-public agencies which can be used to identify an individual.
- * Section 2B suggests that if an agency elects to respond in a medium other than the one used by the requester, they must also respond in the original requesting medium. Example: an individual uses a written letter to request electronic records in their original format, even though the requester has internet access and can inspect the records via that medium.
- * Section 1Y defines a "person", among other things, as being “domiciled in New Mexico”. That restrictive of a definition is a potential invitation for litigation. CYFD receives a number of requests from entities and people outside of New Mexico. By including these outside requestors into the definition of "person" potential litigation or charges of discrimination can be avoided.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If this bill is not enacted, CYFD will continue to be forced to deal with IPRA issues that have developed over the 78 years since IPRA has been enacted without significant updating. Those problematic issues include, but many not be limited to: multiple vexatious requests that divert the resources of CYFD with no benefit to our clients; no practical way to address vexatious IPRA requests; repeated IPRA requests for identical or overlapping records; CYFD will be prevented from recapturing revenue that is lost due to diverting employee time from their jobs to respond to IPRA requests; CYFD will not have a statutory structure within which it can cure an alleged denial before a lawsuit is filed, thereby reducing litigation involved in IPRA enforcement matters; CYFD will not have the statutory authority to file a declaratory judgment action to clarify whether requested records should or should not be produced. Each of these elements of the bill would provide CYFD with the opportunity to avoid many future IPRA problems and will go a long way to modernize the IPRA process and balance the requester/agency interaction regarding IPRA.

AMENDMENTS

- * Clarification whether the deadline periods are calendar days or business days.
- * Clarification as to how an individual acting on behalf of a corporation or other “artificial person” should properly identify themselves.
- * Include a specific definition or direction on what “wrongful denial” entails.
- * Clarify “archival records” and “current records” – see technical issues.
- * Provide guidance on how agencies should calculate a “reasonable fee”.
- * Consider expanding the definition of “protected personal identifiers” to be an inclusive rather than exclusive definition.
- * Establish whether an agent who fails to disclose their principal is subject to any penalty.