

LFC Requester:	Gaussoin
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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}

Date Prepared: 22 Feb *Check all that apply:*
Bill Number: HB497 Original Correction
 Amendment Substitute

Sponsor: Rep. Brown **Agency Name and Code** 218 AOC
Short Title: INSPECTION OF PUBLIC RECORDS ACT CHANGES **Number:** _____
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: The bill amends the Inspection of Public Records Act, which is the statute providing for access to public records of the various governmental entities in the state.

Request Process Changes: The bill changes the process for making requests by first, expanding the amount of time that a public body must permit inspection of public records from fifteen calendar days to twenty-one business days. However, the three business day deadline for an initial response remains the same. Second, requested law enforcement records related to a crime would not have to be produced until 45 days following the day the agency was aware of the crime, and election records would not be disclosed from 56 days before the election to certification of the results. Third, if a requester sends a request to the incorrect records custodian, the time to respond is specifically tolled until delivered to the correct records custodian. Fourth, a requester may now explicitly make copies using their own device. Finally, the bill amends the process to prohibit any requests from anonymous requesters or requests through an agent without disclosing who it is they represent.

Cost Recovery. The bill amends what costs a public body may recover. If a request takes longer than three hours to locate or redact, the public body may charge \$30 per hour after that initial time. The bill also permits the records custodian to treat as one request for the purpose of calculating this time, when a requestor submits five or more requests in a forty-five day period. Additionally, the public body may charge \$2 per page of copies made.

Enforcement. The bill changes how the Act may be enforced by requiring the requestor provide a records custodian an opportunity to cure any noncompliance prior to filing suit. Under this provision, a requester must notify the records custodian of the alleged noncompliance, and the records custodian then has twenty-one days to respond, and an additional twenty-one days to remedy the noncompliance. Then damages are up to \$100 per business day, rather than calendar day, and may only be assessed if the court finds that the public body did not act in good faith to respond, or did not provide a reasonable denial.

Exemptions. The Act provides that all records are considered public and subject to disclosure unless there is a specific exemption. The bill provides an expansion of the defined exemptions. The major additions are: Security/Cybersecurity - relates to physical security (security systems of the facility, access codes) and cybersecurity; Election Records (prior to certification); Social Services Records; Utility Records; Law Enforcement Records (expands crimes where can withhold information about individuals); Private Places depicted in Law Enforcement Records; Procurement Records related to sealed bid documents prior to award or real estate records prior to a contract, and, finally all Medical Records as a class.

FISCAL IMPLICATIONS

The courts are subject to the Inspection of Public Records Act. The ability to charge for staff time, and to charge an additional dollar per page for copies will help to offset the cost of complying with the Act. Also, the opportunity to cure will offset potential litigation costs.

Further, the change in the way damages are calculated in an enforcement action mean that were the courts ever found to have violated the Act, then the cost would presumably be lower as it is based on business days and not calendar days.

SIGNIFICANT ISSUES

1. *No inmate requests.* The bill exempts people who are incarcerated from the definition of person, and any “person” may make requests. The effect then is to prohibit requests from inmates. This may not be a right the bill would have stripped from those convicted of crimes. There are potential First Amendment information access and Fourteenth Amendment equal protection challenges to this provision.
2. *Expanded exemptions and court records.* The bill establishes several records that are related to criminal process that are not ever subject to disclosure under IPRA. Two prominent ones are information related to victims and witnesses of certain enumerated crimes and audio/video recordings made by law enforcement. The bill does not provide a time when those records are subject to disclosure. However, if those witnesses and victims are part of the court process a new set of sequestered cases would need to be created to prevent that information from being part of the case file. This would greatly expand what types of court cases are not publicly available. Further, the exemption for audio/video from law enforcement does not include a provision to allow records to be public when they are used as evidence in a criminal case. This would require the courts to separately manage evidence from those sources.
3. *Victim Information.* Section 1, new Subparagraph (W) would exempt records that displayed information about a victim when requested by a person who was convicted of a crime. This would create a difficulty in the process as it would require the court to know the identity of the requester, know they were convicted of a crime, and know that the request was for the victim of that crime. It would also greatly complicate every request for court records. Further, where court records are public, the courts would essentially have to not maintain any victim information publicly available as it would then be available to the convicted requester.
4. *Court control of rules.* The act prescribes that a suit to enforce the Act shall be brought “under the rules of court for civil complaints.” This may impermissibly infringe on the judiciary’s role of establishing procedure for cases, and may not be enforceable.
5. *Enforcement Standards.* If a suit is brought, a public body will only be subject to damages if they did not act in “good faith.” This is defined as having used “reasonable efforts” to locate records or “reasonable reliance” in making a denial. While this is a common-law legal standard, it will require a factual determination in each suit which could increase the length of these trials. It may also lead to an inconsistent application until the matter is refined at the appellate level.
6. *Definition of Broad and Burdensome.* If a local public body determines that a request is “broad and burdensome” then it is afforded additional, reasonable time beyond the twenty-one day limit. The bill would add a statutory definition that the records would take longer than three hours to locate or redact. This is an unusual standard in that the time to locate a record could vary between public bodies based on a number of factors not related to the scope of the request (e.g. number of staff available, organization of records, and types of records sought). Therefore, it would be difficult for courts to apply this as a standard.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

The courts are subject to IPRA. This would afford additional time to respond to requests and allow for cost recovery of some requests. This may allow some courts to not require so many man-hours dedicated to IPRA, and would provide some recovery of the time used in responding to large requests.

Section C of the bill provides specific provisions as to what is *not* required of public records custodians, which will help guide records custodians and will increase consistency in responses from all court records custodians in New Mexico

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

1. *Security Plans*. The Act currently does not allow a public body to exempt information about physical building security unless it might be used in the execution of a terrorist act. The bill would allow for more records to be exempt to prevent them from being used to compromise the security of court facilities or networks.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS