

HOUSE BILL 283

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

Christine Chandler and Linda M. Trujillo

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO PUBLIC RECORDS; REQUIRING A LAW ENFORCEMENT RECORD REQUESTER TO CERTIFY THAT THE LAW ENFORCEMENT RECORD WILL NOT BE USED TO SOLICIT VICTIMS; PROVIDING A DEFINITION OF "COMMERCIAL PURPOSE" AND MAKING EXCEPTIONS; REQUIRING A RECORD REQUESTER WHO INTENDS TO USE THE RECORD FOR A COMMERCIAL PURPOSE TO CERTIFY THAT THE RECORD WILL BE USED FOR A COMMERCIAL PURPOSE; ALLOWING A PUBLIC BODY TO CHARGE AN HOURLY FEE TO REQUESTERS WHO INTEND TO USE A RECORD FOR A COMMERCIAL

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PURPOSE; REQUIRING A PUBLIC BODY TO PROVIDE AN ESTIMATED FEE TO A REQUESTER WHO INTENDS TO USE A RECORD FOR A COMMERCIAL PURPOSE; ALLOWING A PUBLIC BODY TO WAIVE THE COMMERCIAL PURPOSE FEE; REQUIRING A RECORD REQUESTER WHO HAS BEEN DENIED A REQUEST TO PROVIDE A PUBLIC BODY WITH NOTICE OF A CLAIMED VIOLATION AND ALLOWING THE PUBLIC BODY FIFTEEN CALENDAR DAYS TO REMEDY THE VIOLATION BEFORE AN ENFORCEMENT ACTION CAN BE BROUGHT; LIMITING ACTIONS TO ENFORCE THE INSPECTION OF PUBLIC RECORDS ACT TO WITHIN TWO YEARS OF THE DATE THAT THE PUBLIC BODY RECEIVED NOTICE OF A CLAIMED VIOLATION; CREATING AN INSPECTION OF PUBLIC RECORDS TASK FORCE; MAKING TECHNICAL CHANGES.

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

SECTION 1. Section 14-2A-1 NMSA 1978 (being Laws 1993, Chapter 123, Section 1) is recompiled as Section 14-2-1.3 NMSA 1978 and is amended to read:

"14-2-1.3. PROTECTION OF VICTIMS OF CRIMES OR ACCIDENTS--
[POLICE REPORTS] LAW ENFORCEMENT RECORDS--COMMERCIAL
SOLICITATION PROHIBITED--PENALTIES.--

A. No [~~attorney, health care provider or their agents~~] person shall inspect, copy or use [~~police reports~~] law enforcement records or information obtained from [~~police reports~~] law enforcement records for [~~the purpose of~~] the solicitation of victims or the solicitation of the relatives of victims of reported crimes or accidents.

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B. A person that requests law enforcement records shall certify in the written request that the requested law enforcement records shall not be used for soliciting victims or the relatives of victims of reported crimes or accidents."

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

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

A. "commercial purpose" means the direct or indirect use of any part of a public record in any form for sale, resale, solicitation, rent or lease of a service or any use by which the user expects a profit through commission, salary or fee; and does not include the use of a public record:

(1) by a newspaper or periodical or by a website or social media account associated with the newspaper or periodical;

(2) by a radio or television station in its news or other informational programs or by a website or social media account associated with the radio or television station;

(3) by HGEIC→an online media outlet or←HGEIC a social media account that disseminates news and information to the general public; or

(4) in the preparation for prosecution or defense of litigation or claims settlement by the parties to such action or the attorneys representing the parties;

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~~[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;

~~[G-]~~ D. "information technology systems" means computer hardware, storage media, networking equipment, physical devices, infrastructure, processes and code, firmware, software and ancillary products and services, including:

- (1) systems design and analysis;
- (2) development or modification of hardware or solutions used to create, process, store, secure or exchange electronic data;
- (3) information storage and retrieval systems;
- (4) voice, radio, video and data communication systems;
- (5) network, hosting and cloud-based systems;
- (6) simulation and testing;
- (7) interactions between a user and an information system; and
- (8) user and system credentials;

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

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~~[E.]~~ F. "person" means any individual, corporation, partnership, firm, association or entity;

~~[F.]~~ G. "protected personal identifier information" means:

- (1) all but the last four digits of a:
 - (a) taxpayer identification number;
 - (b) financial account number;
 - (c) credit or debit card number; or
 - (d) driver's license number;
- (2) all but the year of a person's date of birth;
- (3) a social security number; and
- (4) with regard to a nonelected employee of a public body in the context of the person's employment, the employee's nonbusiness home street address, but not the city, state or zip code;

~~[G.]~~ H. "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;

~~[H.]~~ I. "public records" means all documents, papers, letters, books, maps, tapes, photographs, recordings

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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; and

[F.] J. "trade secret" means trade secret as defined in Subsection D of Section 57-3A-2 NMSA 1978."

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

"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 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. The written request shall also include certification from the person:

(1) that the record shall not be used for soliciting victims or the relatives of victims of reported

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crimes or accidents;

(2) confirming or denying that the requested record is intended to be used for a commercial purpose; and

(3) acknowledging that a fee may be charged by the public body for a record that is intended to be used for a commercial purpose, if the person intends to use the record for a commercial purpose.

D. A written request that does not include the information required in Subsection C of this section shall be an incomplete request and shall not be acted upon by the public body until the required information is submitted to the public body.

E. No person requesting records shall be required to state the reason for inspecting the records, except as otherwise provided in the Inspection of Public Records Act.

~~[D-]~~ F. 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 calendar 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-]~~ G. In the event that a written request is not

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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.

[F-] H. For the purposes of this section, "written request" includes an electronic communication, including email or facsimile; provided that the request complies with the requirements of Subsection C of this section."

SECTION 4. Section 14-2-9 NMSA 1978 (being Laws 1993, Chapter 258, Section 6, as amended) is amended to read:

"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. Exempt information in an electronic document shall be removed along with the corresponding metadata prior to disclosure by

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utilizing methods or redaction tools that prevent the recovery of exempt information from a redacted electronic document.

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

C. A custodian:

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

(2) may charge a fee for records that are intended to be used for a commercial purpose as provided in Section 5 of this 2025 act;

~~(2)~~ (3) shall not charge fees in excess of one dollar (\$1.00) per printed page for documents eleven inches by seventeen inches in size or smaller;

~~(3)~~ (4) may charge the actual costs associated with downloading copies of public records to a computer disk or storage device, including the actual cost of the computer disk or storage device;

~~(4)~~ (5) may charge the actual costs associated with transmitting copies of public records by mail, electronic mail or facsimile;

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

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

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

D. A public body may waive any fee.

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

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

"[NEW MATERIAL] COMMERCIAL USE OF PUBLIC RECORDS OBTAINED THROUGH REQUEST FOR INSPECTION.--

A. A requester of a public record who intends to use the public record for a commercial purpose:

(1) shall certify in the written request that:

(a) the requested public record is to be used for a commercial purpose; and

(b) the requester acknowledges that a fee may be charged by a public body for the cost of personnel

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time expended to review and prepare the public record; and

(2) may be charged a fee by a public body not to exceed thirty dollars (\$30.00) per hour for any amount of time beyond the initial hour that was spent reviewing and preparing a public record.

B. After receiving certification in a written request that a requester will use a public record for a commercial purpose, a public body that intends to charge the requester for the time spent preparing and reviewing the public record shall provide the requester with an explanation of the estimated fee to be charged, and the requester shall verify in writing to the public body that the requester would like to proceed before the public body starts to review and prepare the public record. The public body may require advance payment of the estimated fee before the public body starts to review and prepare the public record and shall provide a receipt to the requester upon request."

SECTION 6. Section 14-2-11 NMSA 1978 (being Laws 1993, Chapter 258, Section 8) is amended to read:

"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] acted upon within fifteen calendar days of receipt by the office of the custodian may be deemed denied. The person

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requesting the public records may pursue the remedies provided in the Inspection of Public Records Act after providing the public body from which the public record was requested with written notice of the claimed violation. Once the public body has received the written notice, the public body shall have fifteen calendar days to respond to the written notice and HGEIC→~~fifteen calendar days~~←HGEIC to remedy the violation. After the HGEIC→~~two~~←HGEIC fifteen-calendar-day HGEIC→~~periods~~ have←HGEIC HGEIC→~~period has~~←HGEIC elapsed, the public body shall be subject to enforcement as provided in Section 14-2-12 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 calendar days after the request for inspection was received.

C. A custodian who does not deliver or mail a written explanation of denial within fifteen calendar 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

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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 HGEIC → fifteenth calendar day following the ← HGEIC day the public body [~~is in noncompliance~~] received the written notice of a claimed violation until a written denial is issued; and
- (4) be payable from the funds of the public body."

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

"14-2-12. ENFORCEMENT.--

A. After a public body has received written notice of a claimed violation of the Inspection of Public Records Act and has failed to respond within fifteen calendar days, an action to enforce the Inspection of Public Records Act 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. An action to enforce the Inspection of Public Records Act shall be commenced within two years of the date

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that the written notice of the claimed violation was provided to the public body.

[B-] C. 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.

[G-] D. Except for the written notice of a claimed violation as provided in Section 14-2-11 NMSA 1978, 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-] E. The court shall award damages, costs and reasonable [~~attorneys'~~] attorney fees to any person whose written request has been denied and who is successful in a court action to enforce the provisions of the Inspection of Public Records Act; provided that damages shall not be assessed for any period of time prior to the person providing the written notice of the claimed violation."

SECTION 8. TEMPORARY PROVISION--INSPECTION OF PUBLIC RECORDS TASK FORCE--MEMBERSHIP--DUTIES.--

A. The "inspection of public records task force" is created and consists of the following eleven members:

- (1) the attorney general or the attorney general's designee;
- (2) the director of the legislative council service or the director's designee;

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- (3) a representative of the New Mexico association of counties;
 - (4) a representative of the New Mexico municipal league;
 - (5) a representative of a public school;
 - (6) a representative of a state institution of higher education or public post-secondary educational institution;
 - (7) a representative of a news media organization;
 - (8) a representative of an organization formed to promote an open government;
 - (9) a record custodian employed by the state;
 - (10) a record custodian employed by a county;
- and
- (11) a record custodian employed by a municipality.

B. The chair of the task force shall be the attorney general or the attorney general's designee. The task force shall meet at the call of the chair. The task force shall exist from July 1, 2025 until January 1, 2026.

C. The attorney general shall convene the task force and provide for staff.

D. The task force shall:

- (1) consider and make recommendations on

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alternative enforcement options of claimed violations of the Inspection of Public Records Act before court action is commenced;

(2) consider and make recommendations on the use of ombuds to assist public record requesters and public bodies;

(3) consider and make recommendations on procedures to standardize the inspection of public records process;

(4) study and make recommendations on the misuse of the Inspection of Public Records Act by requesters, including possible penalties and the enforcement of penalties;

(5) solicit comments from affected public record requesters and public bodies; and

(6) report its recommendations for legislation to the governor and the legislature by December 15, 2025."