FISCAL IMPACT REPORT

SPONSOR Brown **LAST UPDATED** 3/10/2025
ORIGINAL DATE 3/9/2025
SHORT TITLE Inspection of Public Records Act Changes **BILL NUMBER** House Bill 497
ANALYST Gaussoin

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Litigation and Settlement Costs		See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Nonrecurring	Risk Fund
Administrative Costs		See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Relates to House Bills 139, 283, and 429 and Senate Bills 36, 57, and 171.

Sources of Information

LFC Files

Agency Analysis Received From
Commission of Public Records (CPR)
Department of Information Technology (DoIT)
Office of Broadband Access and Expansion
Workforce Solutions Department (WSD)
Department of Public Safety (DPS)
Children, Youth and Families Department (CYFD)
Crime Victims Reparation Commission (CVRC)
General Services Department (GSD)
Attorney General (NMAG)

SUMMARY

Synopsis of House Bill 497

House Bill 497 (HB497) extensively amends the Inspection of Public Records Act (IPRA) to add records to those exempt from public inspection, clarify and constrain the procedures for requesting records, and create parameters for claims against public bodies, including immunizing employees from claims.

Expansion of Exempt Records. The bill expands the type of records excluded from disclosure primarily by adding to the exemption list for law enforcement. In addition to a dozen more

crimes for which the identifying information of witnesses and victims is protected, the bill exempts law enforcement officer work schedules and identifying information for undercover officers and confidential informants. The bill also exempts body camera video from private places unless the footage involves an alleged crime, an injury or the discharge of a firearm, or is part of a legal action against the office or law enforcement agency.

The bill also excludes from public inspection:

- Internal investigation documents;
- Identifying information for those who report abuse of a child or protected adult;
- Identifying information for applicants for permits, unemployment, or public assistance;
- Appraisals related to public property purchases;
- Public facility physical and cybersecurity information;
- Election records from 56 days before the election until voter certification; and
- Brower histories, caches, cookies, login histories, or website visitor information.

In addition, the bill excludes inmates from the those with the right to inspect public records by defining "person" as not including "an individual incarcerated in a correctional facility."

Records Requests. HB497, partly by creating definitions for terms used but undefined in existing law, both creates more restrictions on requests and gives public bodies more flexibility on responses. It defines "broad or burdensome," a term agencies use when a response is expected to take additional time or will be denied, as any request for a record that would take more than three hour to find and redact. Requesters would have to provide "reasonable particularity," newly defined to exclude requests that use identifying "parameters the public body does not use to index, organize, file or record" its records.

In addition, public bodies would be allowed to decide whether to respond to a request based on a reasonable effort to determine if they have the record and whether it is public based on statutes, court decisions, legal advice, New Mexico Attorney General guidance, and "public policy." Public policy is not defined.

Requesters would be required to submit their requests in writing and could use their own device for creating copies and public bodies would have 21 days, up from 15 in existing law, to respond to requests for "current" records (defined as created or received within the prior 12 months) and 60 days to respond to requests for older information or requests for audio or video materials. If the request is delivered to someone who is not the records custodian, the time tolls from the time it arrives with the custodian. Law enforcement agencies would have 45 days from the time they became aware of a possible crime to respond to requests for information on the crime.

Under HB497, a public body does not have to compile information, provide information in a particular format, provide anything that is already on the internet or otherwise published, or conduct research. The public body is allowed to ask the requester for clarification or to narrow the request, to deny records that have been deleted or overwritten, to deny duplicate requests for the same record, and to charge $2 (up from $1 in existing law) per page and $30 an hour, except for the first three hours.

Violations. HB497 requires requesters to notify the public body of a perceived violation in writing, and the public body has 21 days to respond and 21 days to provide a remedy. Civil

claims can be brought against the public body but not an employee. The claim can be denied if the public body acted in good faith; the court may award damages, costs, or reasonable attorney fees of up to $100 per business day, with the count of days starting on the 21st day following written notice of a claimed violation.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

Agencies that responded note HB497 would likely reduce the workload and other costs associated with responding to IPRA requests and litigation, including settlements. As summarized by the Workforce Solutions Department:

> [The bill's provisions] improve efficiency in processing requests and limit exposure to costly litigation based on technical violations or overly broad demands. By adjusting how and when damages and attorney fees are awarded, it also seeks to deter lawsuits filed primarily for financial gain rather than for legitimate public access concerns.

The Department of Information Technology projects HB497 would allow them to eliminate the equivalent of one position through the reduction in time spent on IPRA requests. In a response to the similar House Bill 139, the State Ethics Commission indicates its IPRA-related operational and litigation expenses total $10 thousand a year, which could be reduced by limiting "vexatious" requests, prohibited but not defined in HB139. If House Bill 497 were to have a similar chilling effect on records requests, the savings across all state agencies would be significant. However, because the savings would be spread out over dozens of agencies, the reduction in IPRA requests is unlikely to result in a reduction in positions or spending in state agencies.

Nevertheless, as the Crime Victims Reparation Commission (CVRC) suggests, resources not expended on IPRA requests can be used elsewhere: "CVRC expends significant staff time and effort on response to IPRA requests. A legitimate reduction in frivolous requests would be beneficial to preserve resources for other parts of CVRC's mission."

The Department of Public Safety states the new fee structure in HB497 would allow them to recoup costs and could serve to discourage frivolous requests:

> The new fee structure will likely deter excessive and frivolous requests, particularly from commercial entities that may have previously exploited the low-cost system. With the introduction of this fee, requesters will have to carefully consider the necessity and scope of their requests, leading to a more efficient and manageable workload for public bodies.

The General Services Department, which manages the state's liability fund, contends HB497 has several provisions that could reduce the frequency and severity of litigation: the requirement that the requester notify the public body of a potential claim and the right of the public body to resolve the issue, the court's discretion to deny a claim unless "the public body did not act in good faith or failed to provide a reasonable denial," the expansion of exempted records, and the right of the public body to deny duplicate requests.

SIGNIFICANT ISSUES

Agencies generally praise what they label as the "balance" in HB497. From the Workforce Solutions Department (WSD):

> House Bill 497 seeks to address administrative and financial burdens that public agencies face under the current Inspection of Public Records Act while maintaining the fundamental principle of government transparency. … Together, these changes reflect an effort to bring balance to public records law. Government transparency remains paramount, but the process must also be structured in a way that protects personal privacy, ensures agencies can function efficiently, and prevents legal exploitation of minor procedural issues. By refining the scope of requests, adjusting response timelines, and reducing the incentive for frivolous litigation, HB 497 strengthens the integrity of public records law while allowing agencies to fulfill their duties without undue strain.

WSD notes, in particular, HB497's requirement for greater specificity in requests:

> Agencies frequently receive vague or overly broad requests that require them to conduct extensive searches with little clear direction. Under the new standard, requesters must specify identifiable records, such as by providing a document title, subject, author, or defined date range. For audio and visual records, they must include details like a case number, officer name, or other specific criteria. This change prevents agencies from having to sift through vast amounts of data to interpret what the requester might be looking for, allowing them to allocate resources more efficiently.

However, the Commission of Public Records (CPR) states HB497 would narrow the scope of IPRA and is not in keeping with the spirit of the law:

> From a bird's eye view, there is question whether the substantive revisions to IPRA detract from the original declaration of IPRA public policy in Section 14-2-5 NMSA 1978:
>
> > Recognizing that a representative government is dependent upon an informed electorate, the intent of the Legislature in enacting the Inspection of Public Records Act 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.

The agency raises specific concerns with some of the definitions in the bill:

- "Broad or burdensome" would be defined as any research over three hours to locate a public record and redact information. The three-hour time limit seems arbitrarily chosen …
- "current records" means public records created or received within 12 months preceding receipt and does not include archival records. The Public Records Act and the records retention schedules (See, 1.21.2 NMAC) do not categorize whether a record is current or not based on a yearly schedule. Also, some records are deemed worthy of being kept permanently by an agency, while other documents may be subject to destruction depending upon the schedule. No consideration seems

to be given to any records retention period when determining what is or is not currently accessible when it comes to responding to a request.

- "person" is defined to exclude incarcerated persons. Except for limiting the rights of incarcerated persons, there is no rational for limiting inmate requests under IPRA.
- "private place" means inside a residence, healthcare, or social services facility or any other interior place that is not open to the public where a person has a reasonable expectation of privacy. Such a definition folds into the exception that no law enforcement officer body-cam equipment audio and video recordings and images taken are excluded from being produced. Such an exception could have a chilling effect on obtaining incriminating or exonerating evidence in law enforcement cases.
- "reasonable denial" means a denied request for a record can be based upon a reason supported by IPRA, another state, federal, or local law or rule, or court order justifying a record is exempt, regardless of legal citation or a reasonable justification based on public policy for refusing to release the records. This definition is too overly broad and vague to withstand challenge. It is contrary to established rules of legal construction to allow a public body to rely upon another jurisdiction's body of law to justify denial of public record. Stating that a public body could rely upon some local ordinance or rule to justify record request denial would turn IPRA completely upside-down and make IPRA largely unenforceable.

The agency also suggests the restrictions under the definition of "reasonable particularity" would allow public bodies to deny many requests.

The Children, Youth and Families Department (CYFD), in alignment with CPR's comments on "reasonable denial," notes New Mexico courts have consistently ruled the Attorney General's guide on IPRA cannot be used to justify a record denial. CYFD further reports the use of "public policy" to deny a request may conflict with state Supreme Court rulings.

The Administrative Office of the Courts (AOC) echoes CPR's concern with excluding inmates, stating the provision might violate the U.S. Constitution, and raises additional 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. …

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 21-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.

The Office of Attorney General (NMAG) raises concerns with the removal of language on redacting information from records, the lack of a definition for the "public policy" allowed to guide decisions, the exclusion of inmates, and the definition of "reasonable particularity":

> Section 3 creates a definition for "reasonable particularity" that would require the requestor to be able to specify at least two of: the record title or subject line, the author, or the applicable time or date range for file records and similar specificity for visual and audio records. Many requestors may not be able to identify records with this level of specificity when making their request unless they have seen the records prior to requesting them.

NMAG raises further concerns with the enforcement provisions of HB497, specifically with how the bill's approach would relate with NMAG's statutory responsibilities to enforce the law:

> Section 6 amends the method for enforcement by stating that the requestor is required to provide written notice to the public body prior to filing suit. Section 7 continues to allow for enforcement by the Attorney General, but only after the public body has received notice of a claimed violation and failed to timely respond. Based on the wording of Section 6, the requestor would have to be the person to notify the public body before the Attorney General could begin any enforcement action of its own. It is not clear whether the intention is to limit the Attorney General's enforcement until after the requestor has notified the public body.
>
> Section 7 amends Section 14-2-12 to prevent any kind of writ or injunction to force the production of records until after the written notice of claimed violation and after a court has found the public body failed to produce records. This could affect enforcement by the Attorney General and individuals pursuing records.

In contrast, the Office of Broadband Access and Expansion and the Department of Information Technology draw attention to the provisions on cybersecurity. From OBAE:

> Release of these materials would expose critical vulnerabilities, not only in the broadband

> infrastructure itself, but also corresponding vulnerabilities in water, electricity, and fuel supplies. Bad actors could utilize this information to cripple systems, leading to prolonged or sustained interruption in emergency services, healthcare, education, and utilities.

In addition, the Workforce Solutions Department state the public would benefit from the additional constraints on the release of identifying information:

> One of the bill's key provisions strengthens protections for personally identifiable information (PII) held by public agencies. Individuals who apply for unemployment benefits, economic assistance, or other government services must provide sensitive personal data, including home addresses, email addresses, phone numbers, financial account details, and Social Security numbers. While public accountability is important, the government also has a duty to protect those who entrust their information to state agencies. The bill explicitly exempts certain categories of PII from disclosure to prevent potential identity theft, fraud, or other privacy violations, ensuring that transparency does not come at the cost of individual security.

PERFORMANCE IMPLICATIONS

Responding agencies suggest HB497 would reduce their IPRA workload and improve performance on other agency duties.

ADMINISTRATIVE IMPLICATIONS

While many of the responding agencies indicate HB497 would simplify administrative duties, the Children, Youth and Families Department argues the many timelines in the bill would create additional administrative burdens.

AOC and NMAG note a provision limiting access to witness identifying information when the requester is a convicted criminal represents a significant administrative burden. From AOC:

> 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.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill is similar to but in conflict with House Bill 139, which would repeal the existing IPRA and replace it with a new act with greater curtailments on information requests, and House Bill 429, which would make the names of finalists for college president and other chief officer positions more public. It also relates to House Bill 283, which would amend IPRA to restrict the use of law enforcement records.

It also relates to Senate Bills 36, which would restrict the disclosure of sensitive personal information, including disability, sexual orientation , immigration status or status as a recipient

of public assistance or as a crime victim; 57, which would create protections in IPRA for certain medical providers; and 171, which would allow county clerks to redact the date of birth, social security number, and driver's license number on information on individuals otherwise considered public under IPRA.

TECHNICAL ISSUES

The definition for "reasonable particularity" uses a double negative that makes it hard to understand. This definition should be rewritten.

HG/Sl2/rl