

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HM 125

52nd Legislature, 1st Session, 2015

Tracking Number: .199835.4

Short Title: Study IPRA Requests to Schools

Sponsor(s): Representatives W. Ken Martinez and James M. Dines

Analyst: Kevin Force

Date: March 14, 2015

Bill Summary:

HM 125 first notes that:

- the *Inspection of Public Records Act*¹ (IPRA) requires public bodies to designate records custodians to respond to IPRA requests;
- public records may contain information that may be disclosed, exempt from disclosure, or prohibited from disclosure, and it is the task of the records custodian to determine what information may or may not be disclosed;
- public school districts and public postsecondary educational institutions generate more records than is typically retained by other public bodies; and
- disclosure of records that are prohibited from being disclosed may subject a public body to liability.

Therefore, HM 125 resolves to:

- request the Legislative Finance Committee (LFC) to convene a working group to study and make recommendations:
 - to address administrative and fiscal burdens associated with public postsecondary schools and school districts complying with IPRA requests; and
 - for preserving the privacy needs of individuals making claims under IPRA;
- compose the working group of:
 - one staff member of the LFC; and
 - a representative from each of:
 - the Council of University Presidents;
 - the New Mexico Association of Community Colleges;
 - the New Mexico Coalition of Educational Leaders;
 - the New Mexico School Superintendents Association;
 - the Risk Management Division of the General Services Department;

¹ Chapter 14, Article 2 NMSA 1978

- the New Mexico Association of Counties;
 - the New Mexico Municipal League; and
 - the New Mexico Foundation for Open Government; and
- request the working group to report to the LFC and the interim Courts, Corrections and Justice Committee by November 15, 2015.

Fiscal Impact:

Legislative memorials do not carry appropriations.

Fiscal Issues:

Memorials requesting the formation of a working group are likely to have some form of fiscal impact in terms of staff time, travel, and office supplies.

As noted in the New Mexico State University (NMSU) analysis, the memorial would not create any direct costs but may save money by identifying administrative and fiscal burdens, as well as inefficiencies, to postsecondary educational institutions and school districts arising from the fulfillment of IPRA requests.

Substantive Issues:

NMSU notes that the memorial may result in recognition that privacy needs and potential complaints may discourage individuals from both disclosing personal information and filing complaints, as these sorts of public records may become subject to public disclosure prematurely.

According to IPRA, while the presence of protected personal identifier information in a public record does not exempt such a record from public inspection, personally identifiable information:

- *may* be redacted by a public body prior to inspection or copying of a record; and
- *shall not* be made available in records posted to publicly accessible websites operated by or for a public body (emphasis added).

The permissive language regarding the redaction of personally identifiable information from public records may result in the kind of liability issues contemplated by the memorial and implicated by the analysis from NMSU, noted above. Perhaps future amendments to IPRA provisions might include changing this permissive language to mandatory language that would require such redaction and thus help to avoid liability to public bodies.

Background:

Since its adoption in New Mexico law, IPRA has been amended to include a number of exemptions to its provisions:²

- records pertaining to medical treatment of persons confined to an institution;
- letters of reference concerning employment, licenses, or permits;

² Section 14-2-1(A) NMSA 1978

- letters or memoranda that are matters of opinion in personnel or students' cumulative files;
- law enforcement records that reveal confidential sources, methods, information, or individuals who have been accused of, but not charged with, a crime including records of closed investigations or inactive matters;
- materials protected by the *Confidential Materials Act*,³ including:
 - materials of historical or educational value held by any library, college, university, museum, or institution of the state or its political subdivisions and upon which the donor or seller has imposed restrictions on access to the materials for a definite period of time; but not
 - materials which were public records of New Mexico while in the possession of the donor or seller;
- trade secrets, materials protected by attorney-client privilege, and long-range or strategic plans of public hospitals discussed in a properly closed meeting;
- tactical response plans of the state or its subdivisions that may reveal vulnerabilities, risk assessments, or tactical emergency procedures that may be used to help plan or execute a terrorist attack; and
- other materials provided by law.

Committee Referrals:

HEC

Related Bills:

HB 163aa *School Use of Social Security Numbers*
 HB 271 *CYFD and PED Information Sharing*
 HB 381 *Law Enforcement Academy Records*
 HB 416 *Employee Privacy Act Exemptions*
 CS/HB 432a *Safe Disclosure of Certain Health Information* (Identical to SB 474a)
 HB 511 *Proprietary College Info & Public Records* (Identical to HB 575)
 HB 531 *Expungement of Criminal Records*
 HB 575 *Proprietary College Info & Public Records* (Identical to HB 511)
 SB 243 *Employee Privacy Act Exemptions*
 CS/SB 323 *Safe Disclosure of Certain Health Information*
 SB 365 *Criminal Record Expungement Act*
 SB 474a *Safe Disclosure of Certain Health Information* (Identical to CS/HB 432a)
 SB 537a *Sunshine Portal State Contract Info*

³ Sections 14-3A-1 and 14-3A-2 NMSA 1978