

LFC Requester:

Emily Hilla

### AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

#### SECTION I: GENERAL INFORMATION

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

Date Prepared: 2/21/25

Check all that apply:

Bill Number: HB 497

Original  Correction   
Amendment  Substitute

Sponsor: Rep. Cathrynn N. Brown

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing

Short Title: Inspection of Public Records Act Changes

Analysis: Carrie Cook

Phone: 505-537-7676

Email: legisfir@nmag.gov

#### 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
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

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

**SECTION III: NARRATIVE**

*This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

**BILL SUMMARY**

Synopsis:

Section 1 amends Section 14-2-1 exceptions to more broadly state “medical records”, modifies the employment exception to include procurement, modifies the letters of opinion in personnel files for employees to include reports, notes, and evidence generated in internal investigations. Adds exceptions for the personal email or telephone number provided with a license or permit application; security system records of the public body, cybersecurity records or critical infrastructure; the public body’s security system plans for disaster mitigation or threat mitigation, security codes, computer systems or telecommunications networks; appraisals and offers when a public body seeks to buy property or acquire it through eminent domain; records submitted to a public body for bids on a public contract regarding the financial stability of the bidder; materials submitted in response to a sealed bid or requests for proposals prior to the contract; customer records for utility services provided by the public body; records disclosing or leading to the disclosure of the identity of a person who reported abuse or alleged abuse, neglect, or exploitation of a child; records concerning unemployment insurance or economic assistance; personal information relating to a crime victim or their family, such as their address or phone number, when the requestor has been convicted of an indictable offense relating to the victim.

Section 2 amends Section 14-2-1.2 to remove the language that nonpublic information may be redacted or digitally obscured from a written record, digital or audio record. Section 2 also adds that if a law enforcement agency becomes aware of a crime relating to the records request, that request is tolled for forty-five days from the date they became aware. Section 2 modifies Subsection C to state that PII or other identifying information of the victims and witnesses is exempt from inspection, and expands the list of crimes to include additional offenses such as kidnapping, abandonment of a child, abuse of a child, child solicitation, human trafficking, and abuse under the Resident Abuse and Neglect Act. Exempts PII of juveniles and their guardians, confidential informants, work schedules of law enforcement, and undercover officers. States the production of audio and video taken in a “private place” are exempt unless they depict the commission of a crime, record an encounter that leads to death or great bodily harm, or are the subject of a legal proceeding. Sections 14-2-1.2(4) through (8) have been modified to all state they are exempt from inspection.

Section 3 amends Section 14-2-6 to include a definition of “broad and burdensome” as a

request that requires the public body to spend more than three hours locating and redacting the record. Adds a definition for “current records” for records created or received in the last 12 months to separate them from archival records. Adds a definition for “good faith” as making reasonable efforts to determine the existence of the record and how it can be inspected, and upon denial, reasonably relying on statutes, court decisions, advice of counsel, attorney general guidance and public policy. Defines “person” to include a public body domiciled in New Mexico, but excludes individual incarcerated in a correctional facility. Amends the definition of “protected personal identifier information” to require the redaction of the entire TIN, account number, SSN, DOB, or driver’s license number, and adds employee phone number and email address, employee payroll deduction information, and employee dependent or emergency contact information. Adds “reasonable denial” as a reason supported by IPRA, other law, or a ruling or decision from a court or court order, regardless of whether a precise citation is provided, or a reasonable justification based on public policy, for refusing. “Reasonable particularity” means to identify records by providing at least two of the record title or subject line, the author, or applicable date range; or for visual records, at least one of the CAD number, the police report number, or the applicable date range and name of the officer, approximate location, other criteria established by the public body.

Section 4 amends Section 14-2-8 to remove language regarding oral requests and specifies that requests shall be made in writing. Adds language procedure for forwarding misdirected requests. Amends Section 14-2-8(B) to state that the public body is not required to create or maintain public records, provide documents that are readily available online, answer questions or conduct research, reformat records or provide them in a particular format currently maintained by the public body. Amends 14-2-8(C) to clarify that requests must provide a name, mailing address, and email address, and that “anonymous or pseudonymous requests shall not be submitted”. When an agent submits a request for another person, the agent must disclose the who they are acting for. Modifies 14-2-8(D) from fifteen calendar days to twenty-one business days for current records or 60 business days for “records that are not current” or audio or visual records. Public bodies are not required to recover deleted or overwritten records, or provide inspection of browser histories, metadata, login histories or IP addresses of visitors to their websites. The time limits to inspect records relating to elections are tolled beginning on the 56<sup>th</sup> day prior to an election until the election is certified by the county or state canvassing board.

Section 5 modifies Section 14-2-9 to increase the fee custodians may charge from \$1.00 to \$2.00 and creates a \$30.00/hour fee, excluding the first 3 hours, for the time to locate and redact records. Allows the public body to treat multiple requests as one request if a single person makes 5 or more requests in a forty-five-day period. The public body can allow people to use their own devices to duplicate records, and may decline to let someone inspect the same records more than once.

Section 6 amends Section 14-2-11 to increase the response time from fifteen days to twenty-one business days. Adds that the person requesting the records can pursue remedies after they send written notice to the public body of the claimed violation. The public body will have 21 calendar days to respond to the notice and twenty-one calendar days to remedy the violation. After the two twenty-one calendar days have elapsed, the public body shall be subject to enforcement. Leaves the time period for denial as fifteen business days. Modifies Section 14-2-11(C) to state that damages may be awarded, and the amount in an amount that does not exceed \$100 per business day, and accrues from the twenty-first business day following the receipt of the written notice of claimed violation.

Section 7 modifies Section 14-2-12 to note that enforcement by the requestor or the attorney general can proceed after the public body has received written notice of claimed violation of IPRA and failed to respond within twenty-one days. Limits liability to be exclusively the public body, not the records custodian or other employee. Adds language that actions must be brought as civil actions, the district court cannot issue peremptory writs of mandamus or alternate writs. Amends Section 14-2-12(E) to allow a writ of mandamus or injunction or other remedy only after the public body was served a summons, given due process, and the court found they failed to produce records in violation of that act. Amends Section 14-2-12(F) to include the exception in 14-2-11 that parties are required to send written notice of claimed violation. Amends Section 14-2-12(G) to state that the court may award damages instead of shall, and only in cases where the public body did not act in good faith or failed to provide a reasonable denial.

## **FISCAL IMPLICATIONS**

N/A

## **SIGNIFICANT ISSUES**

Section 2 removes the language regarding redaction of nonpublic information from physical, audio, and visual records in favor of the phrase “exempt from inspection.” However, with the removal of the redaction language, there is no guiding principle for what to do if a record falls into multiple categories and might need to be produced in a redacted format.

Section 3 includes definitions for both “good faith” and “reasonable denial” that state that the public body can refer to public policy to justify their refusal to provide public records. The proposed and current statute have no set definition for “public policy” and the allowance of a public policy exception would significantly expand the current Section 14-2-1(L).

Section 3 modifies the definition of “person” to explicitly exclude inmates in a correctional facility. This would have a significant impact on Section 14-2-1 “every person has the right to inspect public records” by including businesses and other bodies but excluding only inmates. It would limit inmates’ abilities to seek records they would otherwise be entitled to under law.

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.

Section 5 amends Section 14-2-9 to include costs for research and redaction to a \$30.00/hour research fee that can apparently be requested in advance. The cost may be outside what individuals are able or willing to pay and might prevent New Mexicans from accessing records. The proposed statute does not have any guidelines for how to calculate or structure the billing for the hourly fee, or deal with any overage if it is paid in advance.

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 their 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.

## **PERFORMANCE IMPLICATIONS**

Section 1 would exempt from production records for a victim and their family when the requestor has been convicted of an indictable offense under the laws of New Mexico "or another state or the United States," which would require an additional level of verification for all requests involving a felony.

Section 2(B) adds language that when law enforcement becomes aware of a crime regarding a request, the time for responding is tolled for forty-five days from the date they become aware of the request. When a tolled request for records is made to multiple agencies, there is not currently a way to communicate with other custodians that the records are tolled, and it is unclear whether the tolling period is intended to apply to all public bodies or solely to that law enforcement agency. It is also not clear what would happen if multiple people made a request for the same records with regards to the tolling period – whether they tolling would be forty-five days for each request or whether it would continue to count down from the earliest request.

## **ADMINISTRATIVE IMPLICATIONS**

N/A

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None.

## **TECHNICAL ISSUES**

Section 3(R) p.16 ln.23 includes a double negative "does not include a request that seeks records by identifying search terms or parameters that a public body does not use". Recommend modifying for readability and understandability.

## **OTHER SUBSTANTIVE ISSUES**

N/A.

## **ALTERNATIVES**

Other proposed legislation HB 139 and HB 283, which each have some provisions similar to this bill.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

## **AMENDMENTS**

N/A