

LFC Requester:

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}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date Prepared: 2025-02-21
Bill No: HB497

Sponsor(s) Cathrynn N. Brown
:

Agency Name and Code CYFD 69000
Number:

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Short Title: INSPECTION OF PUBLIC RECORDS ACT CHANGES

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

ESTIMATED ADDITIONAL OPERATION BUDGET (dollars in thousands)

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

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

BILL SUMMARY

This bill amends the existing Inspection of Public Records Act (IPRA) statutes, expanding the number and types of records that would be exempt from production under the new provisions, including, but not limited to:

- * It codifies the privacy of certain personal contact information provided to a public body in connection with an application for a permit or license.
- * It expands the privacy of specific security-related information, including codes, passwords, plans, disaster mitigation records, and financial stability records related to a bidder on a public contract before the bid is awarded.
- * It exempts records that could reveal or lead to the identification of a person who reported suspected abuse, neglect, or exploitation of a child or protected adult, as defined in Section 27-7-16 NMSA 1978.
- * It includes records related to applicants for unemployment compensation.
- * It establishes a 45-day tolling period for law enforcement agencies to respond to an IPRA request under certain circumstances.
- * It expands the number and classification of law enforcement records that would be exempt from disclosure.
- * It exempts identification information of juveniles and their parents or guardians when the juvenile is a victim or witness to a crime.
- * It defines "broad or burdensome" as a request requiring more than three hours to locate and redact exempt information from a public record.
- * It creates a definition of "current records" as public records created or received by a public body within the twelve months prior to an inspection request, excluding archival records.
- * It does not define "archival records."
- * It establishes definitions for "good faith," "reasonable denial," and "reasonable particularity" in relation to IPRA requests.
- * It codifies that public bodies are not required to produce records already published or available online.
- * It prohibits anonymous or pseudonymous requests and requires agents making requests to disclose the principal.
- * It extends the time allowed for the production of records and introduces a "blackout" period before elections, during which no public body must process IPRA requests related to the election.
- * It allows public bodies to charge for the time spent fulfilling IPRA requests

beyond the initial three hours.

- * It requires an aggrieved requester to notify the public body of an alleged grievance related to delays and provides a timeframe for the public body to address the issue.
- * It changes the award of damages for failure to comply with IPRA from mandatory to permissive.
- * It mandates that actions to enforce alleged breaches of IPRA be brought against the public body, not the records custodian.
- * It prohibits courts from issuing preemptory writs of mandamus to enforce IPRA but allows the issuance of writs of mandamus after the public body has been served with a summons and complaint, ensuring due process is afforded.

FISCAL IMPLICATIONS

SIGNIFICANT ISSUES

SECTION 1, W: The public body would be responsible for determining whether the IPRA requester has been convicted of certain indictable offenses, not only in New Mexico but also throughout the United States and potentially its territories. This imposes a significant burden on CYFD, requiring the creation of a new process for handling IPRA requests, which would involve additional resources and procedures.

SECTION 3 – Definitions:

* Subsection A: The definition of "broad or burdensome" provides some guidance but would necessitate the establishment of a time tracking system or procedure. It is possible that the three hours specified in the bill may not be accumulated in a single block of time. For instance, one hour on one day by Person A, thirty minutes on another day by Person B, and two hours on a third day by Person C would meet the requirement. However, each person would need to track their time, submit it to someone (likely the records custodian), and ensure that the total hours are calculated accurately to determine whether a request is broad or burdensome. Given the current prevalence of IPRA enforcement lawsuits, tracking these hours and minutes could create additional opportunities for the public to claim that CYFD violated the IPRA statutes.

* Subsection C: The definition of "current records" could require the tracking of each record that could be requested in the future, necessitating the development and maintenance of another tracking system. Furthermore, there is no definition for "archival records."

* Subsection G: The definition of "good faith," which includes "guidance by the

Attorney General" (presumably referring to the DOJ IPRA manual), may present an issue. Courts have consistently ruled that the contents of this manual cannot be used as precedent and should not be relied upon to contribute to a judgment. Additionally, this section appears to suggest that public policy is an acceptable reason to deny an IPRA request, which may conflict with the New Mexico Supreme Court's decision in Republican Party of NM v. NM Taxation & Revenue Dep't, 2012 NMSC 026, which overruled the "rule of reason." If passed, this provision could lead to further litigation.

* Subsection Q: The concept of "reasonable denial" may also present challenges in light of the Republican Party of NM v. NM Taxation & Revenue Dep't decision.

PERFORMANCE IMPLICATIONS

To the extent the bill would require additional administrative efforts by CYFD to track current records, to keep time for the broad or burdensome three hour time period, or any other time or records keeping responsibilities, it would necessarily take away the time staff needs to devote to their current duties.

ADMINISTRATIVE IMPLICATIONS

* The administrative efforts needed to implement and maintain the new time and records keeping efforts under this bill will deplete the time the staff needs to perform their current duties. Additional staff may be necessary to "pick up the slack".

* Additionally, the administrative efforts to determine whether a requester has been convicted of an indictable crime in any state in the union could lead to additional administrative efforts for which we are not currently prepared.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If not enacted, several new definitions will not be available to provide necessary guidance and support for key aspects of IPRA requests, including:

- * The definition of "broad or burdensome"
- * The definition of "good faith" as it pertains to denials of record production
- * The definition of "reasonable denial" regarding the denial of record production

The bill also introduces an amended process for making requests, along with a provision stating that records already published or available online need not be assembled or produced. Without this provision, CYFD will be required to repeatedly produce these records whenever requested, resulting in a significant number of redundant requests.

Additionally, without the fee-charging provisions outlined in the bill, CYFD will continue to face occasional "fishing expeditions" through IPRA requests. If requesters were responsible for paying staff time, it may encourage them to submit more precise and focused requests, ultimately saving both time and resources for CYFD and the requesters themselves.

AMENDMENTS

It would be highly beneficial to include a "Vexatious Requester" provision, which would provide CYFD with the opportunity to protect itself from individuals who are misusing IPRA for malicious or disruptive purposes.