

# OPEN GOVERNMENT GUIDE

Access to Public Records  
and Meetings in

NEW MEXICO

**REPORTERS  
COMMITTEE**  
FOR FREEDOM OF THE PRESS

Sixth Edition  
2011



# OPEN GOVERNMENT GUIDE

## OPEN RECORDS AND MEETINGS LAWS IN

# NEW MEXICO

*Prepared by:*

Christina C. Sheehan, Esq.

Patrick J. Rogers, Esq.

Modrall, Sperling, Roehl, Harris & Sisk, P.A.

500 Fourth Street, Suite 1000

Post Office Box 2168

Albuquerque, New Mexico 87103-2168



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2011

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Access to Public Records and Meetings in

## **NEW MEXICO**

**SIXTH EDITION**  
**2011**

Previously Titled  
Tapping Officials' Secrets

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Lucy A. Dalglish, Executive Director

### **EDITORS**

Gregg Leslie, Legal Defense Director  
Mark Caramanica, Freedom of Information Director

### **ASSISTANT EDITORS**

Christine Beckett, Jack Nelson Legal Fellow  
Aaron Mackey  
Emily Peterson

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## Introductory Note

The OPEN GOVERNMENT GUIDE is a comprehensive guide to open government law and practice in each of the 50 states and the District of Columbia. Fifty-one outlines detail the rights of reporters and other citizens to see information and attend meetings of state and local governments.

The OPEN GOVERNMENT GUIDE — previously published as *Tapping Officials' Secrets* — is the sole reference on open government laws in many states.

Written to follow a standard outline to allow easy comparisons between state laws, the compendium has enabled open government advocates in one state to use arguments successful in other states to enhance access rights at home. Press associations and lobbyists have been able to invoke other sunshine laws as they seek reforms in their own.

Volunteer attorneys, expert in open government laws in each state and in Washington, D.C., generously donated their time to prepare the initial outlines for the first incarnation of this project in 1989. In most states these same attorneys or their close associates updated and rewrote the outlines for the 1993, 1997, 2001 and 2006 editions as well this current 2011 edition.

Attorneys who are new to the compendium in this edition are also experts in open government and access issues, and we are grateful to them for their willingness to share in this ongoing project to create the first and only detailed treatise on state open government law. The rich knowledge and experience all the participating attorneys bring to this project make it a success.

While most of the initial users of this compendium were journalists, we know that lawyers and citizens have discovered it and find it to be indispensable as well.

At its core, participatory democracy decries locked files and closed doors. Good citizens study their governors, challenge the decisions they make and petition or vote for change when change is needed. But no citizen can carry out these responsibilities when government is secret.

Assurances of open government exist in the common law, in the first state laws after colonization, in territorial laws in the west and even in state constitutions. All states

have passed laws requiring openness, often in direct response to the scandals spawned by government secrecy. The U.S. Congress strengthened the federal Freedom of Information Act after Watergate, and many states followed suit.

States with traditionally strong access laws include Vermont, which provides virtually unfettered access on many levels; Florida, which was one of the first states to enact a sunshine law; and Ohio, whose courts have issued several access-friendly rulings. Other jurisdictions, such as Pennsylvania and the District of Columbia, have made significant changes to their respective open government laws since the fifth edition was published designed to foster greater public access to information. Historically, Pennsylvania had a reputation as being relatively non-transparent while the District of Columbia was known to have a very restrictive open meetings law.

Some public officials in state and local governments work hard to achieve and enforce open government laws. The movement toward state freedom of information compliance officers reflects a growing activism for access to information in the states.

But such official disposition toward openness is exceptional. Hardly a day goes by when we don't hear that a state or local government is trying to restrict access to records that have traditionally been public — usually because it is feared release of the records will violate someone's "privacy" or threaten our nation's security.

It is in this climate of tension between broad democratic mandates for openness and official preference for secrecy that reporters and good citizens need to garner their resources to ensure the passage and success of open government laws.

The Reporters Committee genuinely hopes that the OPEN GOVERNMENT GUIDE will help a vigorous press and citizenry to shape and achieve demands for openness, and that it will serve as a primer for those who battle in government offices and in the courts for access to records and meetings. When challenges to secrecy are successful, the news is better and so is the government.

## User's Guide

Whether you are using a guide from one state to find a specific answer to an access issue, or the complete compendium encompassing all states to survey approaches to a particular aspect of open government law around the country, knowing a few basics on how the OPEN GOVERNMENT GUIDE is set up will help you to get the most out of it.

*Following the outline.* Every state section is based on the same standard outline. The outline is divided into two parts: access to records and access to meetings.

Start by reviewing the table of contents for each state. It includes the first two tiers of that state's outline. Once you are familiar with the structure of the outline, finding specific information is simple. Typically, the outline begins by describing the general structure of the state law, then provides detailed topical listings explaining access policies for specific kinds of records or meetings.

Every state outline follows the standard outline, but there will be some variations. Some contributors added items within the outline, or omitted subpoints found in the complete outline which were not relevant to that state's law. Each change was made to fit the needs of a particular state's laws and practices.

In general, outline points that appear in boldface type are part of the standard outline, while additional topics will appear in italicized type.

Whether you are using one state outline or any number of outlines, we think you will find the outline form helpful in finding specific information quickly without having to read an entire statute or search through many court cases. But when you do need to consult statutes, you will find the complete text of the relevant portions at the end of each outline.

Additional copies of individual state booklets, or of the compendium covering the 50 states and the District of Columbia, can be ordered from The Reporters Committee for Freedom of the Press, 1101 Wilson Blvd., Suite 1100, Arlington, Virginia 22209, or by calling (703) 807-2100. The compendium is available in electronic format on CD.

The state outlines also are available on our World-Wide Web site, [www.rcfp.org/ogg](http://www.rcfp.org/ogg). The Internet version of the outlines allows you to search the database and compare the law in different states.

*Updates:* The Reporters Committee published new editions of THE OPEN GOVERNMENT GUIDE in 1989, 1993, 1997, 2001, 2006, and now in 2011. We expect future updates to follow on approximately the same schedule. If we become aware of mistakes or material omissions in this work, we will post notices on this project's page on our World-Wide Web site, at [www.rcfp.org/ogg](http://www.rcfp.org/ogg). This does not mean that the outlines will constantly be updated on the site — it simply means known errors will be corrected there.

For our many readers who are not lawyers: This book is designed to help journalists, lawyers, and citizens understand and use state open records and meetings law. Although the guides were written by lawyers, they are designed to be useful to and readable by nonlawyers as well. However, some of the elements of legal writing may be unfamiliar to lay readers. A quick overview of some of these customs should suffice to help you over any hurdles.

Lawyers are trained to give a "legal citation" for most statements of law. The name of a court case or number of a statute may therefore be tacked on to the end of a sentence. This may look like a sentence fragment, or may leave you wondering if some information about that case was omitted. Nothing was left out; inclusion of a legal citation provides a reference to the case or statute supporting the statement and provides a shorthand method of identifying that authority, should you need to locate it.

Legal citation form also indicates where the law can be found in official reporters or other legal digests. Typically, a cite to a court case will be followed by the volume and page numbers of a legal reporter. Most state cases will be found in the state reporter, a larger regional reporter, or both. A case cite reading 123 A.2d 456 means the case could be found in the Atlantic (regional) reporter, second series, volume 123, starting at page 456.

Note that the complete citation for a case is often given only once. We have tried to eliminate as many cryptic second-reference cites as possible, but you may encounter cites like "Jackson at 321." This means that the author is referring you to page 321 of a case cited earlier that includes the name Jackson. Authors may also use the words *supra* or *infra* to refer to a discussion of a case appearing earlier or later in the outline, respectively.

Except for these legal citation forms, most "legalese" has been avoided. We hope this will make this guide more accessible to everyone.



**Prepared by:**

Christina C. Sheehan, Esq.  
 Patrick J. Rogers, Esq.  
 Modrall, Sperling, Roehl, Harris & Sisk, P.A.  
 500 Fourth Street, Suite 1000  
 Post Office Box 2168  
 Albuquerque, New Mexico 87103-2168

**FOREWORD**

New Mexico, the “Sunshine State,” has historically provided a hospitable climate for open government.

In 1993, because of the efforts of the New Mexico Press Association and the New Mexico Foundation for Open Government, the Legislature enacted some significant improvements to the Inspection of Public Records Act. The 1993 legislation provides a broad definition of public records to include virtually all documents or information “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.” §14-2-6(E), NMSA 1978.

The 1993 amendments (§14-2-5) created both a significant presumption that all records are public, and that access to public records is an essential part of the duties of public officers and employees:

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 same legislation created procedures similar to the federal Freedom of Information Act. For example, generally a public official (custodian of the records) must respond to a written request within three (3) business days. §14-2-8(D), NMSA 1978.

The improvements in both the open records and open meetings provisions in New Mexico law can be traced in large part to a private organization called the New Mexico Foundation for Open Government, known as FOG. This organization, although receiving most of its funding from media organizations, has broad public membership. FOG has been aggressive in supporting requests for public records through educational seminars, letters to public officials, and litigation. FOG’s Executive Director is Sarah Welsh. FOG can be contacted as follows: New Mexico Foundation for Open Government Inc., 115 Gold Avenue SW, Suite 201, Albuquerque, NM 87102, telephone 888-843-9121, local telephone 505-764-3750, telefax 505-764-3711.

The New Mexico Attorney General publishes compliance guides for New Mexico, and copies are available from the Attorney General’s office: Civil Division, Office of the Attorney General, State of New Mexico, Bataan Memorial Building, P.O. Drawer 1508, Santa Fe, New Mexico 87504-1508, telephone 505-827-6070. The guides provide analyses of the statutes with examples and some form letters. The New Mexico Press Association and FOG drafted portions of the commentary and the appendices to the guides which contain analyses of the Acts, deadlines applicable to the Acts and form letters to request public records.

*History of New Mexico Open Records Law:* Even in the absence of statutory provisions, the common law right of access, to inspect at least some public records, has been recognized in New Mexico since at least 1925. See 1925-26 N.M. Op. Att’y Gen. 10 (“House journal and bills

are public records and should be open to public inspection at reasonable hours.”).

No appellate court decision defined the right of common law access until passage of the state’s first Open Records Law, in 1947. The law limited access to “citizens,” contained a few exceptions, no definition of what constituted a public record; the 1947 Act did provide a penalty, including a possible jail term for violations.

In 1973, additional exceptions to the right of inspection were added. In 1993, the Legislature created a private right of action allowing prevailing citizens to collect court costs, damages, and attorneys’ fees, but deleted the fines and imprisonment penalties. The 1993 overhaul was significant, establishing procedures similar to those of the Federal Freedom of Information Act, and a presumption that all records are public. The 2011 amendments include a requirement that records custodians respond to a public records request in the same medium in which they receive the request (electronic or paper). §14-2-7(B). Additionally, if the public record is available in electronic format and is requested in an electronic format the public body must provide it to the requester in an electronic format §14-2-9(B). Public bodies may charge a requester actual costs of downloading copies of public records to a storage device and the actual cost of the storage device. §14-2-9(C). Public bodies are required to post a notice informing the public of the right to inspect records and the procedures for copying and inspecting records on the publically accessible website with contact information for the public records custodian. §14-2-7(E). Finally, in 2011 the legislature included a new section on “protected personal identifier information” §14-2-1(B). Public bodies may redact “protected personal identifier information” before providing a public record. “Protected personal identifier information” is defined as: (1) a social security number; (2) all but the year of a person’s birth date; (3) all but the last four digits of a taxpayer identification number, financial account number or driver license number. §14-2-6(E).

*Open Meetings:* The New Mexico Open Meetings Act is contained at §10-15-1 through §10-15-4, NMSA 1978. The first Open Meetings Act was enacted in 1959 and significant amendments were added in 1993. The provisions added in 1993 include a section just like the Inspection of Public Records Act, creating a presumption that meetings should be open:

In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be 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 those officers and employees who represent them. The formation of public policy or the conduct of business by vote shall not be conducted in closed meeting. All meetings of any public body except the legislature and the courts shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations of proceedings. Reasonable efforts shall be made to accommodate the use of audio and video recording devices.

The 1993 changes also require: 1) agendas; 2) minutes, including a statement that any closed session was limited to the subject announced in the motion or notice of closure; and 3) strict procedures for telephone conference meetings.

In 1997 NMPA and FOG successfully pushed an important amendment to provide some teeth for the formerly toothless enforcement provision. The 1997 amendment provided for a mandatory award of costs and reasonable fees to a successful plaintiff in a suit to enforce the Open Meetings Act.

NMPA and FOG efforts to open up the secret legislative conferences were partially successful. An amendment to the Open Meeting Act in 2009 provides that “all meetings of any committee or policy-making body of the legislature held for the purpose of taking any action within the authority...of the body are declared to be public meetings open to the public at all times...” §10-15-2, NMSA 2009.

The New Mexico Attorney General's office has published the Seventh Edition of the Open Meeting Act Compliance Guide. This guide includes all amendments to the Act passed during the 2009 legislative session. Copies are available from the Civil Division of the Office of the Attorney General, State of New Mexico, Post Office Drawer 1508, Santa Fe, New Mexico 87504-1508.

The New Mexico Foundation for Open Government (FOG) has been particularly active in pursuing compliance with the Open Meetings Act. Seminars, expert testimony and analysis, and the occasional lawsuit have resulted in a much better environment for open government in New Mexico. For additional information, contact FOG's Executive Director, Sarah Welsh, New Mexico Foundation for Open Government Inc., 115 Gold Avenue SW, Suite 201, Albuquerque, NM 87102, telephone 888-843-9121, local telephone 505-764-3750, telefax 505-764-3711.

## Open Records

### I. STATUTE -- BASIC APPLICATION

Procedures are similar to the Federal Freedom of Information Act.

#### A. Who can request records?

##### 1. Status of requestor.

Every person has the right to inspect any public record. §14-2-1, NMSA 1978.

##### 2. Purpose of request.

No person requesting records shall be required to state the reasons for inspecting the records. §14-2-8(C), NMSA 1978.

##### 3. Use of records.

Section 14-2A-1 purports to prohibit attorneys, health care providers, and their agents from inspecting, copying or using police reports or information obtained from police reports to solicit victims or relatives of victims. This statute has been ruled unconstitutional in an unreported New Mexico Federal District Court opinion, *Lavelle v. Udall*, CV 94-0404M, Slip Op. (Feb. 16, 1996). Consistent with pronouncements by the Supreme Court (*Florida Bar v. Went For It Inc.*, 515 U.S. 618 (1995)), the New Mexico State Bar's ban on direct mail advertising by attorneys to accident victims is also unconstitutional. *Revo v. Disciplinary Bd. of the Sup. Ct. of N.M.*, 106 F.3d 929 (10th Cir. 1997).

Additionally, §14-3-15.1(C)(2), NMSA 1978, purports to limit the use of "computerized databases of public records" for any political or commercial purpose "unless the purpose and use is approved in writing by the state agency that created the database." This provision is of questionable constitutionality, as well. See *Crutchfield v. N.M. Dep't of Taxation and Revenue*, 2005-NMCA-022, 106 P.3d 1273. (The appellate court declined to hear FOG's constitutional challenge on the basis that the plaintiff did not properly preserve the issue at the trial level.)

#### B. Whose records are and are not subject to the act?

##### 1. Executive branch.

The New Mexico Inspection of Public Records Act specifically provides that the executive branch is subject to the Act, §14-2-6(E), NMSA 2011. However, in addition to all of the statutory exceptions noted below, the Executive Branch has occasionally asserted an exception for "executive privilege," the parameters of which remain unclear. See *Republican Party of N.M. v. N.M. Taxation and Revenue Dep't*, 2010 NMCA 80, ¶¶ 21-36, 148 N.M. 877, 242 P.3d 444. ("The fact that executive privilege is not listed as a specific exception does not mean the Legislature has prohibited the assertion of the privilege as a basis for protecting the confidentiality of certain documents requested under IPRA.")

##### a. Records of the executives themselves.

Presumably these records would be determined to be open due to §14-2-6(E), NMSA 2011, the strong statutory presumption of open access. §14-2-5, NMSA 1978.

##### b. Records of certain but not all functions.

The Attorney General and government advocates have occasionally advanced arguments suggesting the existence of somewhat amorphous exceptions to public access similar to exceptions in federal law, such as "executive privilege" or "deliberate privilege." A New Mexico Supreme Court opinion that may provide guidance is currently pending. See §14-2-5, NMSA 1978. See *Republican Party of N.M. v. N.M. Taxation and Revenue Dep't*, 2010 NMCA 80, ¶¶ 21-36, 148 N.M. 877, 242 P.3d 444.

##### 2. Legislative bodies.

The Legislature is generally subject to the Inspection of Public Records Act. §14-2-6(E), NMSA 2011.

### 3. Courts.

The 1993 amendments specifically included the Courts by §14-2-6(E), NMSA 2011, but debate exists as to whether the Legislature or the Supreme Court, by rule, has jurisdiction over court records pursuant to separation of powers limitations. The courts have jealously guarded their prerogative to determine access to their records; no reported decisions exist constraining access to court records pursuant to the Inspection of Public Records Act. *But see*, N.M. Op. Att’y Gen. 1979-14; and *State ex rel., N.M. Press Assoc. v. Kaufman*, 98 N.M. 261, 648 P.2d 300 (1982) (the names of jurors in criminal cases are public records). The Supreme Court by Order Dated October 2, 1996 promulgated a court rule similar to the Inspection of Public Records Act.

### 4. Nongovernmental bodies.

#### a. Bodies receiving public funds or benefits.

There is no statutory or case law addressing this issue. However, the definition of public body contained in the Inspection of Public Records provides that all advisory boards, commissions, committees, agencies or entities *created* by the Constitution or any branch of government that receives any public funding are subject to the Act. §14-2-6(E), NMSA 2011.

#### b. Bodies whose members include governmental officials.

There is no statutory or case law addressing this issue. That said, it depends upon the “body.” The definition of public body contained in the Inspection of Public Records provides that all advisory boards, commissions, committees, agencies or entities created by the Constitution or any branch of government that receives any public funding are subject to the Act. §14-2-6(E), NMSA 2011.

### 5. Multi-state or regional bodies.

Presumptively open, but depends upon the “body.” *See* N.M. Op. Att’y Gen. 90-27, and the determining factor, according to the Attorney General, is whether the body has been “cloaked with some policy-making and decision-making powers.” Similarly, the presumption created in the 1993 amendments, that all persons are entitled “to the greatest possible information regarding the affairs of government, official acts of public officers and employees,” §14-2-5, NMSA 1978, further tilts the field in favor of openness from both state and regional bodies that receive “any public funding.” §14-2-6(E), NMSA 2011.

### 6. Advisory boards and commissions, quasi-governmental entities.

Presumptively open. *See* N.M. Op. Att’y Gen. 90-27, the determining factor, according to the Attorney General, is whether the body has been “cloaked with some policy-making and decision-making powers.” (Interpreting the Open Meetings Act, similar provisions.) Similarly, the presumption created in the 1993 amendments, that all persons are entitled “to the greatest possible information regarding the affairs of government, official acts of public officers and employees,” §14-2-5, NMSA 1978 further tilts the field in favor of disclosure from both the state and regional bodies that receive “any public funding.” §14-2-6(E), NMSA 2011.

#### C. What records are and are not subject to the act?

##### 1. What kind of records are covered?

Public records is given a very broad definition: “All documents, papers, letters, books, maps, tapes, photographs, recordings 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.” §14-2-6(F), NMSA 2011.

##### 2. What physical form of records are covered?

Information in any form, regardless of physical form or characteristics, is considered a public record. §14-2-6(F), NMSA 2011.

### 3. Are certain records available for inspection but not copying?

No. All records subject to inspection may be copied. E-mail and “computer data” are subject to the Act.

§ 14-2-9, NMSA 2011.

#### D. Fee provisions or practices.

##### 1. Levels or limitations on fees.

Public bodies may not charge for providing records for inspection, but may charge a “reasonable fee for copying public records,” not to exceed \$1 per page for documents 11” x 17” or smaller. §14-2-9(C)(2), NMSA 2011. The Attorney General has opined that the fee is limited to the actual cost of copying.

Public bodies may charge actual costs associated with downloading copies of public records to a computer disk or storage device, including the actual cost of the storage device §14-2-9(C)(3), 2011.

##### 2. Particular fee specifications or provisions.

###### a. Search.

By statute, a custodian may charge (only) reasonable fees for copying and shall not charge a fee for the cost of determining whether any public record is subject to disclosure. §14-2-9(C)(6), NMSA 2011. This has been commonly interpreted to prohibit a fee for a search or an inspection, although there is no written appellate decision presumably because of the relatively clear statutory provisions.

###### b. Duplication.

A public body is limited to a “reasonable fee for copying public records,” not to exceed \$1 per page for documents 11” x 17” or smaller. §14-2-9(C)(2), NMSA 1978.

##### 3. Provisions for fee waivers.

No provisions, but arguably a fee waiver may be unconstitutional pursuant to the New Mexico Anti-Donation clause.

##### 4. Requirements or prohibitions regarding advance payment.

A public body “may require advance payment of the fees.” §14-2-9(C)(5), NMSA 2011.

##### 5. Have agencies imposed prohibitive fees to discourage requesters?

Since the enactment of the 1993 amendments, all such reported attempts have been unsuccessful.

#### E. Who enforces the act?

The Attorney General or District Attorney in the jurisdiction has authority to enforce the Inspection of Public Records Act, §14-2-12(A)(1) NMSA 1978. Any person whose request has been denied may enforce the Act. §14-2-12(A)(2). A previously unnamed principal may enforce Inspection of Public Records Act, either directly in its own name or through its agent. *San Juan Agric. Water Users Ass’n v. KNME-TV*, 2011 NMSC 11.

##### 1. Attorney General’s role.

The Attorney General publishes a compliance guide and participates in seminars, but rarely exercises the prosecutorial powers available.

##### 2. Availability of an ombudsman.

Not available.

##### 3. Commission or agency enforcement.

No authority.

## F. Are there sanctions for noncompliance?

Sanctions for noncompliance are damages, court costs and reasonable attorneys' fees which "shall" be awarded. §14-2-12(D), NMSA 1978.

## II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

### A. Exemptions in the open records statute.

#### 1. Character of exemptions.

##### a. General or specific?

The specific exemptions are enumerated in §14-2-1(A)(1) - (12), NMSA 1978: "(1) records of medical, physical or mental examinations and medical records of persons in institutions; (2) letters of reference concerning employment, licensing or permits; (3) letters or memorandums that are a matter of opinion in cumulative files; (4) law enforcement records that reveal confidential sources, methods, information or individuals accused, but not charged with a crime. Law enforcement records including evidence in any form or received or compiled in connection with any criminal investigation or prosecution by any law enforcement or prosecuting agency, including inactive matters or closed investigations to the extent that they contain the information listed above; (5) as provided by the Confidential Materials Act (§14-3A-1, NMSA 1978); (6) trade secrets, attorney-client privileged information and hospital business plans; (7) public records containing the identity of or identifying information relating to an applicant or nominee for the position of president of a public institution of higher education; (8) tactical response plans or procedures prepared for or by the state or a political subdivision of the state, the publication of which could reveal specific vulnerabilities, risk assessments or tactical emergency security procedures that could be used to facilitate the planning or execution of a terrorist attack; (9) discharge papers of a veteran of the armed forces of the United States filed with the county clerk before July 1, 2005 that have not been commingled with other recorded documents. These papers will be available only to the veteran who filed the papers, the veteran's next of kin, the deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney or a person designated in writing by the veteran to receive the records; (10) discharge papers of a veteran of the armed forces of the United States filed with the county clerk before July 1, 2005 that have been commingled with other recorded documents if the veteran has recorded a request for exception from public disclosure of discharge papers with the county clerk. If such a request has been recorded, the records may be released only to the veteran filing the papers, the veteran's next of kin, the deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney or a person designated in writing by the veteran to receive the records; (11) discharge papers of a veteran of the armed forces of the United States filed with the county clerk after June 30, 2005. These papers will be available only to the veteran who filed them, the veteran's next of kin, the deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney or a person designated in writing by the veteran to receive the records; and (12) as otherwise provided by law.

##### b. Mandatory or discretionary?

Discretionary, except § 14-2-1(A)(5) and possibly §14-2-1(A)(4). See related Arrest Records Act provisions, §29-10-8, NMSA 1978.

##### c. Patterned after federal Freedom of Information Act?

Yes, but procedures and definitions are more favorable and exceptions are more limited.

#### 2. Discussion of each exemption.

a. Medical records. Although the statute suggests the exemption from disclosure for medical records may concern (only) persons con-

fining to public institutions, the exception has been interpreted by the New Mexico Supreme Court to exempt any medical records. *Newsome v. Alarid*, 90 N.M. 790, 568 P.2d 1236 (1977). See also 1959-60 NM Op. Att'y Gen. 60-155 ("any record which might fairly be called a record of examination of a patient or record of medical treatment of a patient of any institution is not a public record and need not be submitted to public scrutiny.") Cf. 1968 N.M. Op. Att'y Gen. 68-110. Medical records that may otherwise be exempt from disclosure but are introduced into evidence in any public hearing lose their exempt status and may be inspected by the public. 1988 NM Op. Att'y Gen. 88-16.

b. Letters of reference concerning employment, licensing or permits. Under former law, this exception was determined to allow a public body to withhold the names of former state employees terminated for disciplinary reasons. *State ex rel., Barber v. McCotter*, 106 N.M. 1, 738 P.2d 119 (1987). It is not clear that *Barber v. McCotter* would be decided in the same manner after the 1993 amendments. See *City of Las Cruces v. Public Employee Labor Rels. Bd.* 1996 NMSC 24, 121 N.M. 688, 917 P.2d 451 (upholding *Barber v. McCotter*; "A public employee's privacy interest in his personal position regarding union representation requires protecting representation petitions from public disclosure."); see also *City of Farmington v. Daily Times*, 2009 NMCA 57, 146 N.M. 349, 210 P.3d 246 (requiring disclosure of applications of the position of city manager).

c. Letters or memorandums that are matters of opinion in personnel files or students' cumulative files. Prior to the 1993 amendments, which created a presumption of open records, a variety of court decisions suggested a broad reading of this authority to withhold documents, a reading that is no longer warranted. See, e.g., *Spadaro v. Univ. of N.M. Bd. Of Regents*, 107 N.M. 402, 759 P.2d 189 (1988) (complaints filed in a student job office at the University are not public records); *Newsome v. Alarid*, 90 N.M. 790, 568 P.2d 1236 (1977) (variety of information in a personnel file is not public record).

d. Law enforcement records that reveal confidential sources, methods, information or individuals accused, but not charged with a crime. Law enforcement records include evidence in any form received or compiled in connection with any criminal investigation or prosecution by any law enforcement or prosecuting agency, including inactive matters or closed investigations to the extent they contain the information listed above. See also §29-10-1, the Arrest Record Information Act, NMSA 1978. After the 1993 amendments, the Inspection of Public Records Act had been largely reconciled and specifically provides a wide variety of documents are now public: posters, announcements or lists identifying fugitives or wanted persons, police blotters, court records of public judicial proceedings, records of traffic defenses and accident reports, etc. This exception has been the focus of most of the public records battle over the last few years.

e. As provided in the Confidential Materials Act, this very narrow exemption covers only those documents donated to a museum, university or other public institution wherein the grantor specifically reserves and requires confidentiality for a certain term of years.

f. Trade secrets, attorney-client privileged information and strategic business plans of hospitals.

g. Name of applicants for presidents of state colleges and universities. §14-2-1(A)(7). But see mandatory disclosure process: §14-2-1(B), NMSA 1978.

h. Tactical response plans and procedures propounded by the state government to address terrorist threats are exempt from disclosure.

i-k. Discharge papers of a veteran of the armed services filed with "recording" documents.

l. As otherwise provided by law. The Supreme Court of New Mexico determined that regulations adopted by a public body may have the force of law. *City of Las Cruces v. Pub. Employees Labor Relations Bd.* 1996-NMSC-24, 121 N.M. 688, 917 P.2d 451. The case before the court concerned a labor board's promulgation of regulations to with-

hold representation petitions otherwise public. The Supreme Court determined the regulations were “necessary to accomplish performance functions and duties which included protecting representation petitions from public disclosure.” The Supreme Court resurrected the “balancing test” (*State ex rel., Newsome*, 90 N.M. 790, 797, 568 P.2d 1236, 1243 (1977)) and held that public employees’ privacy interests related to union representation required the protection of the representation petitions from public disclosure. Given the (assumed) possibility of retaliation against employees who support labor activities and the failure of the plaintiff to offer any evidence of the benefit to the public that would outweigh the privacy interest, the court’s resurrection of the balancing test and the balancing test itself may be more narrowly construed in the future.

### B. Other statutory exclusions.

The New Mexico statutes contain more than 100 additional references to specific documents that are specifically open or closed to the public. For example, §1-3-1(B), NMSA 1978 specifically provides that boundary maps and descriptions maintained by county clerks are public records. §61-11A-7, NMSA 1987 decrees that the names of pharmacists who enter an impairment program voluntarily are confidential.

The bulk of the specific provisions are very narrow and very specific to the substantive area of law in which they are contained. A complete collection is contained in the New Mexico Open Records Task Force, Source Materials, available through FOG. The vast majority of the separate, specific citations deeming records to be open are redundant in light of the 1993 amendments providing for a broad definition of public records and a presumption of access. *See, e.g.*, §21-1-16, NMSA, 1978, which provides that the various boards of regents at state colleges records are open; §3-9-5(B), NMSA 1978, ballot registrations are public records.

Other provisions do provide that certain records are secret, but the bulk of the specific statutes are redundant or non-controversial. §40-13-7.1, NMSA 2011, provides that adoption records shall be largely confidential, medical research subjects shall be confidential, client records of community health programs are confidential, etc.

### C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.

The New Mexico Supreme Court resurrected a vague “balancing test” that may be reconsidered or more narrowly construed in the future. *City of Las Cruces v. Pub. Employees Labor Relations Bd.*, 1996-NMSC-24, (2) N.M. 688, 917 P.2d 451.

### D. Are segregable portions of records containing exempt material available?

Yes. §14-2-9(A)(7), NMSA 1978, provides that a records custodian must separate exempt from non-exempt records and provide the non-exempt information for inspection. The administrative burden in separating the exempt information from the non-exempt information is not a sufficient reason for failure to make public records available. *Gordon v. Sandoval County Assessor*, 2001-NMCA-44, 130 N.M. 573, 28 P.3d 1114.

### E. Homeland Security Measures.

Section 14-2-1(A)(7) was enacted to provide a specific exception for tactical response plans or procedures to address planning to prevent or deal with terrorist attacks.

## III. STATE LAW ON ELECTRONIC RECORDS

### A. Can the requester choose a format for receiving records?

Yes. “Public records” is broadly defined (§14-2-6(F)) and no specific restrictions as to the requested format exist, but the public body has discretion when responding to a request for public information in a certain format. §14-2-9 (A), NMSA 2011 allows the public body

to provide a hard copy partial printout of data containing the public information if “necessary to preserve the integrity of the computer data or the confidentiality of exempt information.” Additionally, §14-3-15.1(A) provides specifically that “information contained in information systems databases shall be a public record,” but some restrictions and variations on access to this information exist, including the payment of a “reasonable fee.” *See also* §14-3-18 NMSA 1978, which applies to county and municipal database information. *Crutchfield v. N.M. Dep’t of Taxation and Revenue*, 2005-NMCA-22, 106 P.3d 1273. The New Mexico Court of Appeals has held that a public agency has no duty to produce computer database records in electronic format if the party requesting the information is unwilling to enter into an agreement as set forth by §14-3-15.1(C). *Crutchfield v. N.M. Dep’t. of Taxation and Revenue*, 2005-NMCA-22, 106 P.3d 1273.

### B. Can the requester obtain a customized search of computer databases to fit particular needs?

The Inspection of Public Records Act specifically provides that the Act should not be construed to require a public body to create a public record. §14-2-8(B), NMSA 1978. Under the specific computer database statutes, §14-3-15.1 and §14-3-18, a customized search is discretionary. The 2011 amendments specifically states a custodian “shall” provide a copy of a public record in electronic format if the public record is available in electronic format, but is only required to provide the electronic record in the file format in which it existed at the time of the request. §14-2-9(B), NMSA 2011.

### C. Does the existence of information in electronic format affect its openness?

No, the Inspection of Public Records Act provides a very broad definition of public records without regard to physical form or characteristics. §14-2-6(F), NMSA 1978. The 2011 amendments specifically states a custodian “shall” provide a copy of a public record in electronic format if the public record is available in electronic format §14-2-9(B), NMSA 2011. On the other hand, §14-3-15.1 and §14-3-18, which address information contained in information system databases are more restrictive and no reported appellate decisions or Attorney General’s opinions indicate how these two statutes might be reconciled. The better view is that access to public records is very broad, but access in a specific form or format may be restricted.

### D. How is e-mail treated?

Subject to disclosure under §14-2-6(F), NMSA 2011.

#### 1. Does e-mail constitute a record?

Yes, the Public Records Act provides a broad definition of public records without regard to physical form or characteristics. §14-2-6(F), NMSA 2011 (including in definition of “public records” all “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”). In addition, the Public Records Act states that information contained in information systems or computer databases shall be a public record. §§14-3-15.1 and 14-3-18(C), NMSA 1978.

#### 2. Public matter on government e-mail or government hardware

Yes, information contained in information systems or computer databases is public. §§14-3-15.1 and 14-3-18(C), NMSA 1978.

#### 3. Private matter on government e-mail or government hardware

If the private matter does not relate to public business, the matter does not constitute a public record. *See* §14-2-6(F), NMSA 1978.

#### 4. Public matter on private e-mail

If the public matter is contained in a computer database and relates to public business, the matter constitutes a public record. *See* §14-2-6(F), NMSA 2011, §§14-3-15.1 and 14-3-18(C), NMSA 1978.

## 5. Private matter on private e-mail

Private matter on private e-mails are not public records. See §14-2-6(F), NMSA 2011, §§14-3-15.1 and 14-3-18(C), NMSA 1978.

### E. How are text messages and instant messages treated?

The Inspection of Public Records Act provides a very broad definition of public records that seems to encompass text/instant messages. See §14-2-6(F), NMSA 2011.

#### 1. Do text messages and/or instant messages constitute a record?

Text and instant messages on public databases or public equipment likely constitute a record pursuant to the act's broad definition of public records. See §14-2-6(F), NMSA 2011. In addition, the Public Records Act states that information contained in information systems or computer databases shall be a public record. §§14-3-15.1, 14-3-18(C), NMSA 1978.

#### 2. Public matter message on government hardware.

Yes, information contained in information systems or computer databases shall be available to the public. §§14-3-15.1, 14-3-18(C), NMSA 1978. A public matter message that relates to public business will constitute a public record. See §14-2-6(F), NMSA 2011.

#### 3. Private matter message on government hardware.

As long as the private matter message does not relate to public business, the private message should not constitute a public record. See §14-2-6(F), NMSA 2011.

#### 4. Public matter message on private hardware.

There is no statute or case law addressing this issue but without a public database or public equipment the statute does not seem to apply.

#### 5. Private matter message on private hardware.

If the private matter message does not relate to public business and is not contained on a public database or public equipment, the message should not constitute a public record. See §14-2-6(F), NMSA 2011.

### F. How are social media postings and messages treated?

There is no statutory or case law addressing this issue. However, social media postings should be treated the same as emails and text/instant messages. See §14-2-6(F), NMSA 2011, §§14-3-15.1 and 14-3-18(C), NMSA 1978. To determine under what circumstances such postings will or will not be public, see the sections infra discussing emails and text/instant messages.

### G. How are online discussion board posts treated?

There is no statutory or case law addressing this issue. However, online discussion board posts should be treated the same as emails and text/instant messages. See §14-2-6(F), NMSA 2011, §§14-3-15.1 and 14-3-18(C), NMSA 1978. To determine under what circumstances such posts will or will not be public, see the sections infra discussing emails and text/instant messages.

### H. Computer software

The Public Records Act states that information contained in information systems or computer databases shall be a public record. §§14-3-15.1 and 14-3-18(C), NMSA 1978.

#### 1. Is software public?

There is no statutory or case law addressing this issue.

#### 2. Is software and/or file metadata public?

There is no statutory or case law addressing this issue.

### I. How are fees for electronic records assessed?

In assessing fees for electronic records, a custodian may: (1) charge reasonable fees for copying the public records, but shall not charge

more than one dollar per printed page for documents eleven inches by seventeen inches in size or smaller; (2) 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; (3) charge the actual costs of sending copies of public records by mail, email or facsimile; and (4) require advance payment of the fees before making copies of public records. §14-2-9(C), NMSA 2011.

### J. Money-making schemes.

A party requesting a copy of a computerized database of public records may not use the copy for a "money-making scheme" unless the purpose and use of the scheme is approved in writing by the state agency that created the database. §14-3-15.1(C)(2), NMSA 1978. This statute is very likely unconstitutional. See *Crutchfield v. N.M. Dept. of Taxation and Revenue*, 2005 NMCA 022, 106 P.3d 1273.

#### 1. Revenues.

The party requesting electronic records may be required to "pay a royalty or other consideration to the state as may be agreed upon by the state agency that created the database." §14-3-15.1(C)(5), NMSA 1978; *Crutchfield v. New Mexico Dept. of Taxation and Revenue*, 2005-NMCA-022, 106 P.3d 1273. See also NMSA 1978, § 14-2-9(D) ("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 Section 14-3-15.1 NMSA 1978, including imposing reasonable restrictions on the use of the database and the payment of a royalty or other consideration.")

#### 2. Geographic Information Systems.

A county or municipality may charge a reasonable fee for a document or product generated by a geographic information system. §14-3-18(B), NMSA 1978.

### K. On-line dissemination.

A county or municipality may allow users to access its network system to search and retrieve information from a computer database and may charge reasonable fees for such online dissemination. §14-3-18(G), NMSA 1978.

## IV. RECORD CATEGORIES -- OPEN OR CLOSED

### A. Autopsy reports.

The Office of the Medical Investigator should make autopsy reports available to "anyone demonstrating a tangible and direct interest." §24-14-28(A) NMSA 1978; see generally §24-14-20, NMSA 1978 (Death registrations.) There is no reported decision as to what constitutes a "tangible and direct interest."

### B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations)

The general catch-all exception to the right to inspect public records is that state or federal law may provide additional exceptions. §14-2-1(A)(12), NMSA 1978. The rules for dissemination of administrative enforcement records vary according to specific statutes. The following are examples of state laws that address the disclosure of administrative records:

- §69-11-2, NMSA 1978: Mining reports shall be held confidential except that they may be revealed to specified agencies.

- §24-1-5, NMSA 1978: Health facility complaints shall not be publicly disclosed if, upon investigation, the complaint is unsubstantiated and disclosure will reveal the identity of the individuals or facilities involved.

- §41-8-4, NMSA 1978: Information received by specified state and federal agencies regarding a fire loss investigation is confidential.

§50-9-21, NMSA 1978: Information obtained by the Department of Labor “in connection with an investigation under or the administration or enforcement of the provisions of the Occupational Health and Safety Act shall be made available except to the extent privileged by law.”

§66-7-213, NMSA 1978: Accident reports made to the state highway and transportation department are confidential, unless a specified exception states otherwise.

### 1. Rules for active investigations.

These rules vary by statute. For example, health facility complaints may not be publicly disclosed until after an investigation is complete. §24-1-5, NMSA 1978.

### 2. Rules for closed investigations.

These rules vary by statute. Because an investigation is closed does not mean that information therefrom is available for inspections. If the material reveals “confidential sources, information or individuals accused but not charged with a crime,” it will remain confidential despite the investigation being closed. See §14-2-1(A)(4), NMSA 1978.

### C. Bank records.

Governmental bank records in the possession of the state are presumably public. See §58-14-8, NMSA 1978. Private records in the possession of a bank or financial institution are probably not available.

### D. Budgets.

State budgets are not exempted from public disclosure under §14-2-1(A), NMSA 1978 and are presumably public.

### E. Business records, financial data, trade secrets.

Trade secrets are exempt from disclosure. §14-2-1(A)(6), NMSA 1978. The exact nature of the information is important. See, e.g., §58-1-48, NMSA 1978 (records of financial institutions are secret); certain corporate records filed with the Public Regulation Commission limit publicly available information to the name of corporation, names and addresses of the officers, and certain financial information is not disclosed. *But see*, 1951 N.M. Op. Att’y Gen. 5342 which suggests that most business and financial records are public records. Presumably, a significant burden of establishing that the records are not public would rest on the public body arguing secrecy. See §14-2-5, NMSA 1978. See also *City of Las Cruces v. Public Employees Labor Relations Board*, 1996-NMSC-24, 121 N.M. 688, 917 P.2d 451 (“balancing test” criteria).

### F. Contracts, proposals and bids.

Contracts are public record; bids are public after the contract is awarded.

### G. Collective bargaining records.

Certain portions are probably confidential. Under the Open Meetings Act, §10-15-1(E), NMSA 1978, collective bargaining meetings are closed. See also, *City of Las Cruces v. Public Employees Labor Relations Board*, 1996-NMSC-24121 N.M. 688, 917 P.2d 451 (representation petitions are confidential).

### H. Coroners reports.

Generally are not available. According to §24-14-28(A), NMSA 1978, the state registrar shall provide copies to anyone “with a direct and tangible interest.” Under New Mexico Law, the coroner means the district medical investigator. §24-11-4 NMSA 1978. Death certificates are addressed under §24-11-6. See also §24-14-20, NMSA 1978.

### I. Economic development records.

Audits of economic development projects are to be performed annually, and they constitute public records. §5-10-11, NMSA 1978. However, proprietary information obtained by the Technology Enterprise Division of the Economic Development Department “shall not

be deemed a public record” under the Public Records Act or be open to inspection under Section 14-2-1 NMSA 1978. §9-15-18, NMSA 1978.

### J. Election records.

Certain information from voter databases may only be disclosed with the county clerk’s authorization and must not be used for unlawful purposes. §1-5-24, NMSA 1978.

#### 1. Voter registration records.

“Voter registration lists maintained by the secretary of state and voter registration certificates filed with the county clerks are not covered by [§ 1-5-24, NMSA 1978] and are public records that must be disclosed as provided by law.” Office of New Mexico Attorney General, Inspection of Public Records Act *Compliance Guide* (2008). In disclosing voter data, “the county clerk or secretary of state shall not provide data or lists that include voters’ social security numbers, codes used to identify agencies where voters have registered, a voter’s day and month of birth or voters’ telephone numbers if prohibited by voters.” §1-5-24(B), NMSA 1978. The statute does not specify whether “voting data” includes individual voting results.

#### 2. Voting results.

Voting results are open, see e.g. New Mexico Constitution.

### K. Gun permits.

According to Section 14-2-1(A)(2), NMSA 1978, permits are exempted from the general right to inspect public records.

### L. Hospital reports.

Individual medical information is not subject to disclosure. §14-2-1(A)(1). Beyond that, some “hospital reports” will be public. See §14-6-1, NMSA 1978, which has been identified as prohibition against releasing any “health information.” The statute, however, is ambiguous, and customarily hospitals give out the name of the patient and a general health status report.

### M. Personnel records.

Personnel records are public unless they consist of “letters or memorandums that are matters of opinion.” §14-2-1(A)(3), NMSA 1978.

#### 1. Salary.

Salaries are public because it does not involve “matters of opinion.” See §14-2-1(A)(3), NMSA 1978.

#### 2. Disciplinary records.

Insofar as disciplinary records contain “letters or memorandums that are matters of opinion,” they do not constitute public records. See §14-2-1(A)-(B), NMSA 1978. The question as to whether final disciplinary records are public is likely to be resolved by future litigation.

#### 3. Applications.

Insofar as applications do not involve “matters of opinion,” do not contain “letters of reference concerning employment” and do not divulge personally identifying information, they likely constitute public records. See §14-2-1(A)-(B), NMSA 1978. See *City of Farmington v. Daily Times*, 2009 NMCA 57, 146 N.M. 349, 210 P.3d 246 (requiring disclosure of applications of the position of city manager).

#### 4. Personally identifying information.

Senate Bill 369, which was approved in New Mexico’s 50th legislative session, amended Section 14-2-6, NMSA 2011 to include a definition of “protected personal identifier information.” According to the provision, “protected personal identifier information” includes “(1) all but the last four digits of a taxpayer identification number, financial account number, or driver’s license number; (2) all but the year of a person’s date of birth; and (3) a social security number.” This type of

information does not exempt a record from inspection. §14-2-1(B), NMSA 1978. However, a public body must redact this information from public records before the records are inspected or copied. §14-2-6, NMSA 2011.

#### 5. Expense reports.

Such reports are public records. §14-2-1(A)(3), NMSA 1978.

#### 6. Other.

Records contained in personnel files will be publicly available to the extent they do not involve “matters of opinion” or fall under another statutory exception. *See* §14-2-1(A)(3), NMSA 1978.

### N. Police records.

Law enforcement records are public unless the requested records reveal confidential sources, information or individuals accused but not charged with a crime. §14-2-1(A)(4), NMSA 1978. “Law enforcement records include evidence in any form received or compiled in connection with a criminal investigation or prosecution by a law enforcement or prosecuting agency, including inactive matters or closed investigations.” *Id.* However, information about an accused party not charged with a crime is open to public inspection if it is contained in any record set forth in Section 29-10-7, NMSA 1978.

#### 1. Accident reports.

Accident reports made by state police officers “shall be furnished to any person upon written application accompanied by a fee as set by the New Mexico state police board.” §29-2-25, NMSA 1978. *See also* §29-10-7(A), NMSA 1978 (stating that accident reports are available for public inspection).

#### 2. Police blotter.

Police blotters generally include “the name, physical description, place and date of birth, address and occupation of persons arrested, the time and place of arrest, the offenses for which the individuals were arrested or detained, and the name of the arresting officer.” Office of New Mexico Attorney General, Inspection of Public Records Act *Compliance Guide* (2008). Police blotters are open to public inspection. §29-10-7, NMSA 1978.

#### 3. 911 tapes.

911 tapes and original records of entry that are maintained by criminal justice agencies and compiled chronologically are available for public inspection. §29-10-7, NMSA 1978. Office of New Mexico Attorney General, Inspection of Public Records Act *Compliance Guide* (2008).

#### 4. Investigatory records.

The availability of investigatory records for public disclosure may depend on the phase of the investigation. Office of New Mexico Attorney General, Inspection of Public Records Act *Compliance Guide* (2008). For instance, a person’s name will no longer be confidential once the investigation is closed and the person is charged with a crime. *Id.* “However, if the target of an investigation . . . is not charged, that person’s identity can remain confidential even after the investigation is closed.” *Id.*

##### a. Rules for active investigations.

Generally, information obtained during active investigations is not publicly available if any information would “reveal confidential sources, information or individuals accused but not charged with a crime.” *See* § 14-2-1(A)(4), NMSA 1978.

##### b. Rules for closed investigations.

Because an investigation is closed does not necessarily mean that information from the investigation is available for inspection. If the material reveals “confidential sources, information or individuals accused but not charged with a crime,” it will remain confidential despite the investigation being closed. *See* §14-2-1(A)(4), NMSA 1978.

#### 5. Arrest records.

Notations of the arrest or filing of criminal charges against an individual that reveal confidential sources, methods, information or individuals accused but not charged with a crime are confidential and dissemination is unlawful except as otherwise provided by law. §29-10-4, NMSA 1978.

#### 6. Compilations of criminal histories.

Compilations of criminal histories are not available for inspection insofar as they reveal confidential sources, methods, information or individuals accused but not charged with a crime. *See* §29-10-4, NMSA 1978. However, if a criminal history merely reveals an individual who has been charged with a crime, such record should be made available to the public. *See id.*

#### 7. Victims.

Insofar as victims constitute evidence in connection with a criminal investigation, their identities should not be public if they reveal confidential information. *See* §14-2-1(A)(4), NMSA 1978.

#### 8. Confessions.

Law enforcement records are public unless the requested records reveal confidential sources, information or individuals accused but not charged with a crime. §14-2-1(A)(4), NMSA 1978. Confessions may not be public if they reveal confidential sources or information.

#### 9. Confidential informants.

The identity of such an informant is not available to the public according to Section 14-2-1(A)(4), NMSA 1978.

#### 10. Police techniques.

Police techniques are typically confidential information and thus not available to the public. §14-2-1(A)(4), NMSA 1978; §29-10-4, NMSA 1978.

#### 11. Mug shots.

Mug shots are public because they reveal the identity of someone who has been charged with a crime. *See* §14-2-1(A)(4), NMSA 1978.

#### 12. Sex offender records.

Sex offender registration information (except social security numbers) regarding certain sex offenders must be provided no later than seven days after the request is received. §29-11A-5.1, NMSA 1978.

#### 13. Emergency medical services records.

Health information relating to and identifying specific individuals is confidential and is not available to the public “even though the information is in the custody of or contained in the records of a governmental agency.” §14-6-1, NMSA 1978.

### O. Prison, parole and probation reports.

No specific exemption, except records subject to other exceptions (medical) and certain exceptions that apply to juveniles.

### P. Public utility records.

No exemption exists for public utility records, so they are presumably available to the public. However, any records under the Public Utility Act determined to contain confidential or proprietary information are not subject to the Public Records Act. §62-6-17, NMSA 1978.

### Q. Real estate appraisals, negotiations.

#### 1. Appraisals.

Upon request, the commissioner of public lands must provide copies of any records kept by the state land office. §19-1-21, NMSA 1978. Records of appraisals of public lands are held by the state land office. *See* Office of New Mexico Attorney General, Opinion Request—Applicability of Inspection of Public Records Act (2007).

## 2. Negotiations.

There are no exceptions for public land negotiations under Section 14-2-1, NMSA 1978. In addition, the commissioner of public lands must provide copies of any records kept by the state land office when requested. §19-1-21, NMSA 1978.

## 3. Transactions.

There are no exceptions for public land negotiations under Section 14-2-1, NMSA 1978. In addition, the commissioner of public lands must provide copies of any records kept by the state land office when requested. §19-1-21, NMSA 1978.

## 4. Deeds, liens, foreclosures, title history.

There are no exceptions for deeds, liens, foreclosures and title history under Section 14-2-1, NMSA 1978. In addition, the commissioner of public lands must provide copies of any records kept by the state land office when requested. §19-1-21, NMSA 1978.

## 5. Zoning records.

There are no exceptions for zoning records under Section 14-2-1, NMSA 1978. In addition, the commissioner of public lands must provide copies of any records kept by the state land office when requested. §19-1-21, NMSA 1978.

### R. School and university records.

Student, faculty and staff lists with personal identifying information obtained from a public school may not be used for marketing goods and services to students, faculty, staff or their families. §22-21-2, NMSA 1978. Letters or memorandums that are matters of opinion contained in students' cumulative files are also not available to the public. §14-2-1(A), NMSA 1978. Information that is confidential under federal law is also exempt from disclosure under state law. *See e.g.* §14-2-1(A)(12).

#### 1. Athletic records.

There is no statutory or case law addressing this issue.

#### 2. Trustee records.

There is no statutory or case law addressing this issue.

#### 3. Student records.

There is no statutory or case law addressing this issue. Letters or memorandums that are matters of opinion contained in students' files are not available to the public. §14-2-1(A), NMSA 1978.

#### 4. Other.

Requests for student records are subject to Section 14-2-1, NMSA 1978. If no specific exemption exists, the party opposing inspection of a school record can argue that disclosure will violate the public policy behind the act. *See* §14-2-5, NMSA 1978.

### S. Vital statistics.

Information found in vital records (birth and death certificates) that are maintained by the vital statistics bureau is not available for public inspection, except as authorized by law. §24-14-27, NMSA 1978.

#### 1. Birth certificates.

"When one hundred years have elapsed after the date of birth or fifty years have elapsed after the date of death, the vital records of these events in the custody of the state registrar shall become open public records . . . provided that vital records of birth shall not become open public records prior to the individual's death." §24-14-27, NMSA 1978.

#### 2. Marriage & divorce.

Marriage and divorce records are not included in the definition of vital records. *See* §24-14-2, NMSA 1978.

#### 3. Death certificates.

*See* "birth certificates" section.

## 4. Infectious disease and health epidemics.

Any person may obtain any aggregate data from the health information system. §24-14A-6(C), NMSA 1978.

## V. PROCEDURE FOR OBTAINING RECORDS

### A. How to start.

#### 1. Who receives a request?

Each public body must designate at least one custodian of public records and requests are sent to the custodian. §14-2-7, NMSA 1978.

#### 2. Does the law cover oral requests?

The failure to respond to an oral request shall not subject the custodian to any penalty. §14-2-8(A), NMSA 1978. Informally, most public bodies honor oral requests and may do so faster than a written request. Public bodies will often produce documents for inspection and copying without a written request.

##### a. Arrangements to inspect & copy.

There is no statutory or case law addressing this issue.

##### b. If an oral request is denied:

Request the records in writing. §14-2-8(A), NMSA 1978.

##### (1). How does the requester memorialize the refusal?

Government custodian is obligated to respond in writing to a written request. §14-2-8(D), NMSA 1978.

##### (2). Do subsequent steps need to be in writing?

Yes. §14-2-8, NMSA 1978.

#### 3. Contents of a written request.

##### a. Description of the records.

Persons seeking access shall identify the records sought with "reasonable particularity." §14-2-8(C), NMSA 1978.

##### b. Need to address fee issues.

A person requesting copies may be charged a reasonable fee, not to exceed \$1 per page for ordinary-sized documents and the public body may require advance payment of the fee, but no specific language is necessary in the initial written request for documents. §14-2-9(B), NMSA 2011.

##### c. Plea for quick response.

The initial written request does not need to contain any specific request for a quick response as the timeframes are specifically set out in the statute. Under §14-2-8(D), NMSA 1978, the custodian of the records must respond to a written request "immediately or as soon as practicable under the circumstances."

##### d. Can the request be for future records?

There is no statutory or case law addressing this issue.

##### e. Other.

The requester must provide the name, address and telephone number of the person seeking the records and, optionally, the person may request a receipt, §14-2-8(C), NMSA 1978. Sample request to inspect public records is included in the Appendix to the Attorney General's Compliance Guide.

### B. How long to wait.

#### 1. Statutory, regulatory or court-set time limits for agency response.

Custodian is obligated to permit the inspection immediately or as soon as practicable under the circumstance, but not later than 15 days

after receiving a written request. If the inspection is not permitted within three (3) business days, the Custodian shall explain in writing when records will be available or when the public body will respond to the request, §14-2-8(D), NMSA 1978. Excessively burdensome or broad requests may allow the custodian additional time to permit the inspection. §14-2-10, NMSA 1978.

## 2. Informal telephone inquiry as to status.

There is no statutory or case law addressing this issue.

## 3. Is delay recognized as a denial for appeal purposes?

A written request that has not been permitted within fifteen (15) days of receipt may be deemed denied. §14-2-11(A), NMSA 1978. And any administrative remedies do not have to be exhausted prior to an action to enforce the inspection of Public Records Act. §14-2-11(A) and §14-2-12(C), NMSA 1978.

## 4. Any other recourse to encourage a response.

Telephone reminders and additional letters may encourage a response.

### C. Administrative appeal.

Exhaustion of administrative remedies is *not* required prior to an action to enforce the inspection of Public Records Act. §14-2-12(C), NMSA 1978.

## 2. To whom is an appeal directed?

No formal administrative appeal procedures exist. The New Mexico Foundation for Open Government strongly advises disappointed requesters to create a clear written paper train to the custodian to avoid unnecessary disputes and litigation.

### a. Individual agencies.

There is no statutory or case law addressing this issue.

### b. A state commission or ombudsman.

There is no statutory or case law addressing this issue.

### c. State attorney general.

An action to enforce the Inspection of Public Records Act may be brought by the state attorney general. §14-2-12(A)(1), NMSA 1978

## 3. Fee issues.

There is no statutory or case law addressing this issue.

## 4. Contents of appeal letter.

### a. Description of records or portions of records denied.

There is no statutory or case law addressing this issue.

### b. Refuting the reasons for denial.

There is no statutory or case law addressing this issue.

## 5. Waiting for a response.

There is no statutory or case law addressing this issue.

## 6. Subsequent remedies.

There is no statutory or case law addressing this issue.

### D. Court action.

#### 1. Who may sue?

The Attorney General, the District Attorney or any person whose written request has been denied. §14-2-12(A), NMSA 1978.

## 2. Priority.

No special priority on the docket.

## 3. Pro se.

New Mexico allows a *pro se* suit.

## 4. Issues the court will address:

### a. Denial.

A court will address any denial of records and has the full authority to issue a Writ of Mandamus, order an injunction or other appropriate remedy to enforce the provision of Public Records Act, including damages and attorney fees. §14-2-12(B), NMSA 1978.

### b. Fees for records.

Court will address any fee dispute or denial of records and has the full authority to issue a Writ of Mandamus, order an injunction or other appropriate remedy to enforce the provision of Public Records Act, including damages, costs and attorney fees. §14-2-12(D), NMSA 1978.

### c. Delays.

Court will address any delay or denial of records and has the full authority to issue a Writ of Mandamus, order an injunction or other appropriate remedy to enforce the provision of Public Records Act, including damages and attorney fees. §14-2-12(D), NMSA 1978.

### d. Patterns for future access (declaratory judgment).

Courts can order any appropriate remedy to enforce the provision of Public Records Act, including provisions for future compliance, damages and attorneys' fees. §§14-2-12(B)(D), NMSA 1978.

## 5. Pleading format.

Normal pleading format.

## 6. Time limit for filing suit.

There is no statutory or case law addressing this issue. Unlikely to be less than two years.

## 7. What court.

District Court.

## 8. Judicial remedies available.

A Writ of Mandamus, injunction or other appropriate remedy including damages and attorneys' fees, §14-2-12, NMSA 1978.

## 9. Litigation expenses.

The Court "shall" order damages, costs and reasonable attorneys' fees to any person whose written request has been denied and is successful in a court action to enforce the act, §14-2-12(D), NMSA 1978.

### a. Attorney fees.

Attorney fees are recoverable. §14-2-12(D), NMSA 1978.

### b. Court and litigation costs.

Some costs are recoverable. §14-2-12(D), NMSA 1978.

## 10. Fines.

A custodian who does not deliver or mail a written explanation of denial in fifteen days after receipt of written request for inspection is subject to an action to enforce the act and the requester may be awarded damages not to exceed \$100 per day. §14-2-11(C)(2), NMSA 1978. *But see Derringer v. State of N.M.*, 2003-NMCA-73, 133 N.M. 721, 68 P.3d 961 (filing suit *after* compliance may eliminate possibility of an attorney fee, damages or cost award).

## 11. Other penalties.

Damages are available §14-2-12(D), NMSA 1978.

## 12. Settlement, pros and cons.

The revisions of the 1993 law which provide a presumption of openness and put the burden of justifying secrecy on the public body and most significantly the attorneys' fee provisions and damages provide significant leverage in settlement discussions. All reported or known settlements to date have required specific compliance procedures and almost universally have required payment of all or some significant portion of the attorneys' fees and costs.

### E. Appealing initial court decisions.

#### 1. Appeal routes.

Court of Appeals and New Mexico Supreme Court.

#### 2. Time limits for filing appeals.

Generally, thirty days, but may be subject to exceptions depending on various procedures.

#### 3. Contact of interested amici.

*Amicus curiae* briefs may be advisable. The New Mexico Foundation for Open Government, the New Mexico Press Association, the Reporters Committee for Freedom of the Press are potential *amici* with an ongoing interest in open records and meetings cases.

### F. Addressing government suits against disclosure.

No significant trend or reported appellate cases.

# Open Meetings

## I. STATUTE -- BASIC APPLICATION.

### A. Who may attend?

Any interested person. §10-15-1(A), NMSA 1978; *Gutierrez v. City of Albuquerque*, 96 N.M. 398, 631 P.2d 304 (1981); Att'y Gen. Op. 1973-10.

### B. What governments are subject to the law?

All boards, commissions, administrative adjudicatory body or other policymaking body of any state agency, any agency or authority of any county, municipality, district or any political subdivision are subject to the law. §10-15-1(B), NMSA 1978.

#### 1. State.

See §10-15-1(B), NMSA 1978.

#### 2. County.

See §10-15-1(B), NMSA 1978.

#### 3. Local or municipal.

See §10-15-1(B), NMSA 1978.

### C. What bodies are covered by the law?

#### 1. Executive branch agencies.

##### a. What officials are covered?

Individual officials in their individual capacity are not covered, but any and all officials as part of a quorum of a board, commission, administrative adjudicatory body or other policymaking body of any state, county or city, district or other political subdivision are covered. §10-15-1(B), NMSA 1978.

##### b. Are certain executive functions covered?

Any and all officials as part of a quorum of a board, commission, administrative adjudicatory body or other policymaking body of any state, county or city, district or other political subdivision are covered. §10-15-1(B), NMSA 1978.

##### c. Are only certain agencies subject to the act?

All agencies are covered. §10-15-1(B), NMSA 1978.

#### 2. Legislative bodies.

The Legislature exempted itself from significant portions of the critical work of certain legislative committees, including conference committees, any matters pertaining to personnel matters, matters "adjudicatory in nature" or any bill, resolution or other legislative matter not yet presented to either House of the Legislature, § 10-15-2(A)(B), NMSA 1978. The New Mexico Press Association and the New Mexico Foundation for Open Government attempts to close the loophole have failed in the face of the legislative refrain that open government is good for everyone except the Legislature.

#### 3. Courts.

The Open Meetings Act does not address the Court system.

#### 4. Nongovernmental bodies receiving public funds or benefits.

Unlike the New Mexico Inspection of Public Records Act, whether a body is subject to the Open Meetings Law does not turn solely on whether the entity receives public funds or benefits but rather on whether the entity is a board, commission, administrative adjudicatory body or other policymaking board of a state agency, any agency or authority of any county, municipality, district or other political subdi-

vision or has received any such powers by delegation and whether the body makes “public policy.” §10-15-1(B); *see also Raton Pub. Serv. Co. v. Hobbes*, 76 N.M. 535, 417 P.2d 32 (1966) (decided under prior law) (receipt of public funds is determinative).

#### 5. Nongovernmental groups whose members include governmental officials.

Unlike the New Mexico Inspection of Public Records Act, whether a body is subject to the Open Meetings Law does not turn solely on whether the entity receives public funds or benefits but rather on whether the entity is a board, commission, administrative adjudicatory body or other policymaking board of a state agency, any agency or authority of any county, municipality, district or other political subdivision or has received any such powers by delegation and whether the body makes “public policy.” §10-15-1(B); *see also* 1991 Op. Att’y Gen. 91-07 (water association composed of two villages subject to Act).

#### 6. Multi-state or regional bodies.

Such may be subject to the Open Meetings Law if they exercise any authority of any state board, commission or other policymaking body. §10-15-1(B), NMSA 1978.

#### 7. Advisory boards and commissions, quasi-governmental entities.

Probably, if the body is “cloaked with policymaking and decision making powers” by the entity with ultimate authority. *See* Att’y Gen. Op. 90-27. (The Las Cruces Selection Advisory Committee was a policy body subject to the Open Meetings Act because its purpose was to narrow the list of potential contractors by reviewing qualifications and reporting to the City Council.)

#### 8. Other bodies to which governmental or public functions are delegated.

Probably, if the body is “cloaked with policymaking and decision making powers” by the entity of ultimate authority. *See* Att’y Gen. Op. 90-27. (The Las Cruces Selection Advisory Committee was a policy body subject to the Open Meetings Act because its purpose was to narrow the list of potential contractors by reviewing qualifications and reporting to the City Council.)

#### 9. Appointed as well as elected bodies.

Covered by the Act, §10-15-1(B), NMSA 1978.

#### D. What constitutes a meeting subject to the law.

##### 1. Number that must be present.

###### a. Must a minimum number be present to constitute a “meeting”?

Quorum, §10-15-1(B), NMSA 1978.

###### b. What effect does absence of a quorum have?

A resolution, rule, regulation, ordinance or action violating the Act’s procedures may be invalidated. §10-15-3(A), NMSA 1978.

##### 2. Nature of business subject to the law.

###### a. “Information gathering” and “fact-finding” sessions.

The New Mexico Open Meetings Act broadly defines the nature of business subject to the law including the development of personnel policy, rules, regulations or ordinances, discussing public business or for the purpose of taking any action within the authority or delegated authority of the public body. §10-15-1(B), NMSA 1978.

###### b. Deliberations toward decisions.

These are subject to the Open Meetings Act. §10-15-1(B), NMSA 1978.

### 3. Electronic meetings.

#### a. Conference calls and video/Internet conferencing.

Limited exception for conference calls if local rule or ordinance specifically permits for situations in which it is “difficult or impossible” for a member to attend the meeting in person, but each member participating by conference telephone must be identified when speaking, all participants must be able to hear each other at the same time, and members of the public attending the meeting must be able to hear any member of the public body who speaks during the meeting. §10-15-1(C), NMSA 1978.

#### b. E-mail.

There is no statutory or case law addressing this issue.

#### c. Text messages.

There is no statutory or case law addressing this issue.

#### d. Instant messaging.

There is no statutory or case law addressing this issue.

#### e. Social media and online discussion boards.

There is no statutory or case law addressing this issue.

### E. Categories of meetings subject to the law.

#### 1. Regular meetings.

Regular, special and emergency meetings are subject to the New Mexico Open Meetings Law. *See* §10-15-1(B) and (F), NMSA 1978.

##### a. Definition.

Emergency refers to unforeseen circumstances that if not addressed immediately, will likely result in injury or damages to persons or property or substantial financial loss to the public body. §10-15-1(F), NMSA 1978.

##### b. Notice.

###### (1). Time limit for giving notice.

Except in a case of an emergency, the agenda shall be available to the public at least 24 hours prior to the meeting. The public body shall determine at least annually in a public meeting what notice for a public meeting is reasonable for that public body. §10-15-1(D) and (E). The Attorney General recommends 10 days for regular meetings, 3 days for special and no less than 24 hours for emergency meetings. 1990 Op. Att’y Gen. No. 90-29.

###### (2). To whom notice is given.

Notice shall include broadcast stations and newspapers that have provided a written request for such notice. §10-15-1(D), NMSA 1978.

###### (3). Where posted.

No specific, statutory posting requirements except for recessed and reconvened meetings, and for such meetings, the public body must post notice of the date, time and place for the reconvened meeting on or near the door of the place where the original meeting was held and at least one other location appropriate to provide the public notice of the continuance of the meeting. §10-15-1(E), NMSA 1978. Because “reasonable notice” is required, the Attorney General recommends posting in several places readily accessible to the public.

###### (4). Public agenda items required.

A list of specific items of business to be discussed or transacted at the meeting or information on how the public may obtain a copy of such an agenda. §10-15-1(F), NMSA 1978.

**(5). Other information required in notice.**

None.

**(6). Penalties and remedies for failure to give adequate notice.**

The general invalidation penalty would appear to be applicable. Section 10-15-3, NMSA 1978, invalidates any resolution, rule or regulation, ordinance or action of the public body in violation of the requirements of the Open Meetings Law.

**c. Minutes.****(1). Information required.**

The minutes shall include the date, time and place of the meeting, names of members in attendance, the substance of the proposals and record of how decisions and votes are taken. § 10-15-1(G), NMSA 1978. *See Vil. Of Angel Fire v. Wheeler*, 2003-NMCA-73, 133 N.M. 721, 68 P.3d 961.

**(2). Are minutes public record?**

All minutes are open to public inspection. §10-15-1(G), NMSA 1978. *See, generally, Vil. Of Angel Fire*, 2003-NMCA-73 133 N.M. 721, 68 P.3d 961

**2. Special or emergency meetings.****a. Definition.**

An emergency refers to unforeseen circumstances that, if not addressed immediately, will likely result in injury or damage to persons or properties or substantial financial loss to the public body. §10-15-1(F), NMSA 1978.

**b. Notice requirements.****(1). Time limit for giving notice.**

Meetings shall be held “only after reasonable notice to the public.” §10-15-1(D), NMSA 1978. The body’s internal rules may also provide a limitation. §10-5-1(D), NMSA 1978.

**(2). To whom notice is given.**

“Reasonable notice” to the public is required, including to broadcast stations licensed by the FCC and newspapers of general circulation that provide a written request for such notice. §10-15-1(D), NMSA 1978.

**(3). Where posted.**

No specific, statutory obligation to post, but the Attorney General has advised that posting in places readily accessible to the public is necessary.

**(4). Public agenda items required.**

No obligation to provide an agenda for emergency meetings. §10-15-1(F), NMSA 1978.

**(5). Other information required in notice.**

None.

**(6). Penalties and remedies for failure to give adequate notice.**

Presumably, §10-15-3(A), NMSA 1978, would apply, and may invalidate any action taken by a body where it was determined that the body did not provide “reasonable notice” of any meeting.

**c. Minutes.****(1). Information required.**

Same as requirements for regular meetings.

**(2). Are minutes a public record?**

Yes. *See, generally, Vil. Of Angel Fire*, 2003-NMCA-73, 133 N.M. 721, 68 P.3d 961

**3. Closed meetings or executive sessions.****a. Definition.**

No explicit definition. *See generally*, §§10-15-1(B)(H)(I)(1), NMSA 1978.

**b. Notice requirements.****(1). Time limit for giving notice.**

If made by motion in an on-going open meeting, no separate, additional notice is necessary. §10-15-1(I)(1), NMSA 1978. If called for when the public body is not in an open meeting, “appropriate” notice is required. §10-15-1(I)(2), NMSA 1978. *See also* §10-15-1(D), NMSA 1978, which requires a public body to determine at least annually what notice for public meetings is reasonable.

**(2). To whom notice is given.**

If, in an open meeting, to those persons present at the meeting. §10-15-1(I)(1), NMSA 1978. If scheduled when the public body is not in an open meeting, notice must be given to the members and to the general public. §10-15-1(I)(2), NMSA 1978. Again, §10-15-1(B), NMSA 1978, requiring the public body to determine what notice is reasonable may be applicable. Additionally, arguably, the notice must include broadcast stations licensed by the FCC and those papers of general circulation that have provided a written request for such notice.

**(3). Where posted.**

No specific, statutory obligation to post, but the Attorney General has advised that posting in places readily accessible to the public is necessary. 1993 Op. Att’y Gen. No. 93-2.

**(4). Public agenda items required.**

The general subject must be identified with “reasonable specificity,” §10-15-1(I)(1), NMSA 1978.

**(5). Other information required in notice.**

None.

**(6). Penalties and remedies for failure to give adequate notice.**

A resolution, rule, regulation, ordinance or action of any public body is not valid unless taken or made at a meeting held in accordance with all of the requirements of the New Mexico Open Meetings Act. §10-15-3(A).

**c. Minutes.****(1). Information required.**

Meeting minutes must specifically state that only identified matters were discussed in the closed meeting. §10-15-1(J), NMSA 1978.

**(2). Are minutes a public record?**

Yes, but details of closed meetings are not required to be reported, only that the secret discussions concerned only the identified subjects. §10-15-1(G) and (J).

**d. Requirement to meet in public before closing meeting.**

No.

**e. Requirement to state statutory authority for closing meetings before closure.**

If made in an open meeting, requires a majority vote of the body by roll call and the motion must state the authority for the closure

and the subject to be discussed with reasonable specificity. The vote shall be taken in open meeting and the vote of each member shall be recorded in the minutes. Only those subjects announced prior to the closure by the body may be discussed in a closed meeting. §10-15-1(I)(1), NMSA 1978. If a closed session is called for when the public body is not in an open meeting, the notice must state the specific provision of law authorizing a closed meeting and state with reasonable specificity the subject to be discussed. §10-15-1(I)(2), NMSA 1978.

**f. Tape recording requirements.**

No statutory requirement. Most bodies tape record as a matter of practice and the tape recording is a public document.

**F. Recording/broadcast of meetings.**

**1. Sound recordings allowed.**

Reasonable efforts shall be made to accommodate the use of audio and video recording devices. §10-15-1(A), NMSA 1978.

**2. Photographic recordings allowed.**

Reasonable efforts shall be made to accommodate the use of audio and video recording devices. §10-15-1(A), NMSA 1978.

**G. Are there sanctions for noncompliance?**

A misdemeanor criminal penalty is on the books, but no appellate cases exist. The Attorney General and the District Attorney have authority to bring criminal or civil suits, but rarely use or threaten such actions. In 1976, the Attorney General successfully prosecuted an open meetings violation, and in 2002, the Attorney General brought charges and successfully prosecuted five school board members, fining each \$500. Any person who is successful in a civil action to enforce the Open Meetings Act “shall” be awarded costs and reasonable attorneys’ fees. §10-15-3(C), NMSA 1978.

**II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS**

**A. Exemptions in the open meetings statute.**

**1. Character of exemptions.**

**a. General or specific.**

The ten exemptions are specific.

**b. Mandatory or discretionary closure.**

Discretionary, under the Open Meetings Law.

**2. Description of each exemption.**

The Legislature has provided for ten specific exemptions to the New Mexico Open Meetings Act.

1) meetings pertaining to the issuance, suspension, renewal or revocation of a license, except that hearing in which evidence is offered or rebutted is open and all final actions must be taken at open meetings. §10-15-1(H)(1), NMSA 1978; this section also protects confidential communications between attorneys and their public agency clients, but settlement agreements may be outside the privilege. *Bd. of Comm’rs of Dona Ana County v. Las Cruces Sun News*, 2003-NMCA-102, 134 N.M. 283, 76 P.3d 36;

2) limited (individual) personnel matters; an aggrieved public employee may demand a public hearing. Judicial candidates interviewed by any commission shall have the right to demand an open interview. §10-15-1(H)(2), NMSA 1978;

3) deliberations by a public body in connection with an administrative adjudicatory proceeding but an open meeting is required for any proceeding in which evidence is offered or rebutted, as well as the final action taken. §10-15-1(H)(3), NMSA 1978;

4) discussions that identify any individual student unless a student, parent or guardian requests otherwise. §10-15-1(H)(4), NMSA 1978;

5) meetings to discuss bargaining strategy, preliminary to collective bargaining negotiations and bargaining sessions. §10-15-1(H)(5), NMSA 1978;

6) discussions of purchases exceeding \$2,500 that could be made only from one source, the meetings at which the contents of competitive sealed proposals solicited pursuant to procurement code are discussed during the contract negotiating process. Final action and approval shall be made in an Open Meeting. §10-15-1(H)(6), NMSA 1978;

7) meetings subject to the attorney-client privilege pertaining to threatened or pending litigation. §10-15-1(H)(7), NMSA 1978;

8) meetings to discuss the purchase acquisition or disposal of real property or water rights. §10-15-1(H)(8), NMSA 1978;

9) meetings of certain public hospitals in which strategic and long-range business plans are discussed. §10-15-1(H)(9), NMSA 1978, and;

10) gaming control board meetings dealing with information that is confidential under the Gaming Control Act. §60-2E-1, *et seq.*, NMSA 1978.

**B. Any other statutory requirements for closed or open meetings.**

At the completion of a closed meeting, the minutes of the next open meeting must state that the matters discussed in the closed meeting were limited only to those specified in the motion. The statement must be approved by the public body by individual vote. §10-15-1(J), NMSA 1978.

**C. Court mandated opening, closing.**

No reported New Mexico cases mandating (additional) open or closed meetings except pursuant to the statutory framework and court rules.

**III. MEETING CATEGORIES -- OPEN OR CLOSED.**

**A. Adjudications by administrative bodies.**

A general provision, §10-15-1(H)(3), NMSA 1978 provides for a closed meeting for an administrative adjudicatory proceeding. Substantive statutes and specific applicable agency regulations should also be considered.

**1. Deliberations closed, but not fact-finding.**

Deliberations are closed, but that portion of the hearing where evidence is offered or rebutted and the final action must occur in an open meeting. §10-15-1(H)(3), NMSA 1978.

**2. Only certain adjudications closed, i.e. under certain statutes.**

A variety of other substantive statutes provide for additional rules or modifications to this general rule, and regulations of the administrative body should be consulted as well.

**B. Budget sessions.**

For the executive or administrative bodies, no special rule. Meetings of the legislative conference committees on appropriation bills have been closed pursuant to §10-15-2(B), NMSA 1978. Whether Article IV, Section 12 of the New Mexico Constitution which requires public sessions of each House, allows the Legislature to close conference committees has not been addressed.

**C. Business and industry relations.**

Except for the specific statutory exemptions, such meetings are treated as other public meetings under the Open Meetings Act.

**D. Federal programs.**

No special or particular provision in the Open Meetings Act; obviously federal law would impact this question, as well.

**E. Financial data of public bodies.**

There is no statutory or case law addressing this issue.

**F. Financial data, trade secrets or proprietary data of private corporations and individuals.**

There is no statutory or case law addressing this issue.

**G. Gifts, trusts and honorary degrees.**

There is no statutory or case law addressing this issue.

**H. Grand jury testimony by public employees.**

Grand jury proceedings in New Mexico are closed pursuant to §31-6-4(B), NMSA 1978.

**I. Licensing examinations.**

Subject to Open Meetings exclusion, except that portion in which evidence is offered or rebutted shall be open. §10-15-1(H)(1), NMSA 1978.

**J. Litigation; pending litigation or other attorney-client privileges.**

May be closed pursuant to §10-15-1(H)(7), NMSA 1978.

**K. Negotiations and collective bargaining of public employees.****1. Any sessions regarding collective bargaining.**

Both the collective bargaining sessions and meetings to discuss bargaining strategy preliminary to collective bargaining negotiations may be closed. §10-15-1(H)(5), NMSA 1978.

**2. Only those between the public employees and the public body.**

Both the collective bargaining sessions and meetings to discuss bargaining strategy preliminary to collective bargaining negotiations may be closed. §10-15-1(H)(5), NMSA 1978.

**L. Parole board meetings, or meetings involving parole board decisions.**

Presumably open. No specific statutory exemption exists under the Open Meetings Act, but an Attorney General's Opinion, 1955-1956 Op. Atty Gen. 6509 suggests that the parole board is obligated to avoid a disclosure of any "social record." (Opinion rendered under previous versions of the Open Meetings and Inspection of Public Records Act. *See e.g.*, § 31-21-6, NMSA 1978, which suggests all "social records" including presentence reports, pre-parole reports and supervision histories are confidential.)

**M. Patients; discussions on individual patients.**

No explicit statutory exception under the Open Meetings Act but it is likely due to the specific open records exception for medical records and related information that discussions of individual patients would be subject to closed meetings pursuant to the personnel exception, the individual student exception or other existing specific exemptions.

**N. Personnel matters.**

A specific exemption exists under the Open Meetings Act, but an aggrieved employee entitled to an open hearing upon demand and all final actions must be taken at an open meeting. §10-15-1(H)(2), NMSA 1978. Closed meetings to review contracts of contract employees for a public hospital did not violate the Open Meetings Act, because the meetings fell under the personnel exception and no final actions were taken at the closed meetings. *Treloar v. County of Chaves*, 2001-NMCA-74, 130 N.M. 794, 32 P.3d 803.

**1. Interviews for public employment.**

May be closed pursuant to §10-15-1(H)(2), NMSA 1978. *See Treloar*

*v. County of Chaves*, 2001-NMCA-74, 130 N.M. 794, 32 P.3d 803

**2. Disciplinary matters, performance or ethics of public employees.**

May be closed pursuant to § 10-15-1(H)(2), NMSA 1978. In addition, public body may have adopted additional requirements or procedures for disciplinary hearings.

**3. Dismissal; considering dismissal of public employees.**

May be subject to closed meetings pursuant to §10-15-1(H)(2), NMSA 1978.

**O. Real estate negotiations.**

May be closed pursuant to §10-15-1(H)(6) and (8), NMSA 1978.

**P. Security, national and/or state, of buildings, personnel or other.**

There is no statutory or case law addressing this issue.

**Q. Students; discussions on individual students.**

The discussion of personally identifiable information about any individual student may be in a closed meeting unless a student's parent or guardian requests otherwise. §10-15-1(H)(4), NMSA 1978.

**IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS****A. When to challenge.**

Immediately, although no special statute of limitations applies to the Open Meetings Act.

**1. Does the law provide expedited procedure for reviewing request to attend upcoming meetings?**

The Open Meetings Act does not provide expedited procedures for reviewing requests to attend meetings.

**2. When barred from attending.**

No specific, special rules, but the usual rules for obtaining a Temporary Restraining Order to open a meeting would apply. No specific statute of limitations exists, but *laches* may be a problem. The general limitation period, four years, is contained at §37-1-4, NMSA 1978.

**3. To set aside decision.**

No resolution, rule or regulation or ordinance or action of any public body is valid unless made at a meeting held in accordance with the Open Meetings Act. However, all actions taken are presumed to be in accord with the Act. §10-15-3(A), NMSA 1978.

**4. For ruling on future meetings.**

A court could have the general authority to address future meetings.

**B. How to start.****1. Where to ask for ruling.****a. Administrative forum.**

No administrative procedure for challenging decisions exists. Internal rules purporting to establish a procedure may or may not be mandatory.

**(1). Agency procedure for challenge.**

Not addressed in the Act, and unclear as to any authority for an agency to adopt such requirement.

**(2). Commission or independent agency.**

Not addressed in the Act, and unclear as to any authority for committee or independent agency to adopt such requirement.

### b. State attorney general.

State Attorney General and the district attorney shall enforce the Open Meetings Act. §10-15-3(B), NMSA 1978. As a practical matter, the Attorney General will address violations by writing letters and requesting compliance. Criminal charges are rare, occurring once in 1976 and once in 2002.

### c. Court.

Any person may enforce the purpose of the Open Meetings Act by injunction or mandamus or other appropriate order by suit in the District Court. §10-15-3(C), NMSA 1978.

#### 2. Applicable time limits.

No administrative appeal procedure, no applicable administrative time limits.

#### 3. Contents of request for ruling.

No administrative procedure, no specific contents for ruling required.

#### 4. How long should you wait for a response?

No specific response deadlines.

#### 5. Are subsequent or concurrent measures (formal or informal) available?

A violation of the Open Meetings Act may be corrected by holding a prompt public meeting, publicly voting on ratifying the violation. *Kleinberg v. Bd. Of Educ.*, 107 N.M. 38, 751 P.2d 722 (Ct. App. 1988).

### C. Court review of administrative decision.

#### 1. Who may sue?

Any person may enforce the purpose of the Open Meetings Act by injunction or mandamus or other appropriate order. §10-15-3(C), NMSA 1978.

#### 2. Will the court give priority to the pleading?

No priority is required to be given to an Open Meetings case by the district court.

#### 3. Pro se possibility, advisability.

A *pro se* filing under the Open Meetings Act is possible but would be difficult and the public body will be represented by legal counsel.

#### 4. What issues will the court address?

The court may address any violation of the Open Meetings Act.

##### a. Open the meeting.

A court could require a meeting be open.

##### b. Invalidate the decision.

A court could invalidate improper decisions made at the meeting.

##### c. Order future meetings open.

A court could direct the public body to abide by the Open Meetings Act in future meetings.

#### 5. Pleading format.

Follows normal New Mexico Rules of Civil Procedure.

#### 6. Time limit for filing suit.

No reported decision, probably a four-year statute of limitations applies. However, particularly with injunctive or other extraordinary

relief, immediately filing is always advisable, and *laches* could be a problem for any lawsuit that is not promptly filed.

### 7. What court.

Actions are filed in the state district court. Venue will lie in the district where the public body normally meets or perhaps where the action of the public body will take effect. §10-15-3(C), NMSA 1978.

### 8. Judicial remedies available.

Judicial remedies include injunctive relief, a mandamus order, or other "appropriate order." §10-15-3(C), NMSA 1978.

### 9. Availability of court costs and attorneys' fees.

The court shall award costs and fees to a successful plaintiff. If a public body defendant prevails and if the court determines the plaintiff brought the suit without sufficient information and belief that good grounds support the suit, the court shall award reasonable attorneys' fees. §10-15-3(C), NMSA 1978.

### 10. Fines.

Theoretically, the statute provides for fines of not more than \$500, but fines are rarely pursued. Two successful prosecutions have been reported from 1976 and 2002. *See* §10-15-4, NMSA 1978.

### 11. Other penalties.

None.

### D. Appealing initial court decisions.

#### 1. Appeal routes.

New Mexico Court of Appeals and Supreme Court.

#### 2. Time limits for filing appeals.

The time for filing an appeal is 30 days from the date of the final ruling by the District Court.

#### 3. Contact of interested amici.

*Amicus curiae* briefs may be advisable. The New Mexico Foundation for Open Government, the New Mexico Press Association, the Reporters Committee for Freedom of the Press are potential *amici* with an ongoing interest in open meetings cases.

## V. ASSERTING A RIGHT TO COMMENT.

### A. Is there a right to participate in public meetings?

No statutory right to speak. By rules, an individual body may provide a right to participate.

### B. Must a commenter give notice of intentions to comment?

No statutory right to speak. Most public bodies maintain an informal list of persons who want to speak. Call in advance and ask about any formal or informal rules or lists.

### C. Can a public body limit comment?

Yes.

### D. How can a participant assert rights to comment?

There is no statutory or case law addressing this issue. Check the rules of the public body.

### E. Are there sanctions for unapproved comment?

There is no statutory or case law addressing this issue.

## Statute

### Open Records

*N.M.Stat. § 14-2-1 et seq.*

#### *14-2-1. Right to inspect public records; exceptions.*

A. Every person has a right to inspect public records of this state except:

(1) records pertaining to physical or mental examinations and medical treatment of persons confined to an institution;

(2) letters of reference concerning employment, licensing or permits;

(3) letters or memorandums that are matters of opinion in personnel files or students' cumulative files;

(4) law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime. Law enforcement records include evidence in any form received or compiled in connection with a criminal investigation or prosecution by a law enforcement or prosecuting agency, including inactive matters or closed investigations to the extent that they contain the information listed above;

(5) as provided by the Confidential Materials Act [14-3A-1, NMSA 1978];

(6) trade secrets, attorney-client privileged information and long-range or strategic business plans of public hospitals discussed in a properly closed meeting;

(7) public records containing the identity of or identifying information relating to an applicant or nominee for the position of president of a public institution of higher education.

(8) tactical response plans or procedures prepared for or by the state or a political subdivision of the state, the publication of which could reveal specific vulnerabilities, risk assessments or tactical emergency security procedures that could be used to facilitate the planning or execution of a terrorist;

(9) discharge papers of a veteran of the armed forces of the United States filed with the county clerk before July 1, 2005 that have not been commingled with other recorded documents. These papers will be available only to the veteran who filed the papers, the veteran's next of kin, the deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney or a person designated in writing by the veteran to receive the records;

(10) discharge papers of a veteran of the armed forces of the United States filed with the county clerk before July 1, 2005 that have been commingled with other recorded documents if the veteran has recorded a request for exemption from public disclosure of discharge papers with the county clerk. If such a request has been recorded, the records may be released only to the veteran filing the papers, the veteran's next of kin, the deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney or a person designated in writing by the veteran to receive the records;

(11) discharge papers of a veteran of the armed forces of the United States filed with the county clerk after June 30, 2005. These papers will be available only to the veteran who filed them, the veteran's next of kin, the deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney or a person designated in writing by the veteran to receive the records; and

(12) as otherwise provided by law.

B. Protected personal identifier information contained in public records may be redacted by a public body before inspection or copying of a record. The presence of protected personal identifier information on a record does not exempt the record from inspection. Unredacted records that contain protected personal identifier information shall not be made available on publicly accessible web sites operated by or managed on behalf of a public body.

#### *14-2-2.1. Copies of public records furnished.*

When a copy of any public record is required by the veterans' administration to be used in determining the eligibility of any person to participate in benefits made available by the veterans' administration, the official custodian of such public record shall, without charge, provide the applicant for such benefits, or

any person acting on his behalf, or the authorized representative of the veterans' administration, with a certified copy of such record.

#### *14-2-6. Definitions.*

As used in the Inspection of Public Records Act:

A. "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. "inspect" means to review all public records that are not excluded in Section 14-2-1 NMSA 1978;

C. "person" means any individual, corporation, partnership, firm, association or entity;

D. "protected personal identifier information" means:

(1) all but the last four digits of a:

(a) taxpayer identification number;

(b) financial account number; or

(c) driver's license number;

(2) all but the year of a person's date of birth; and

(3) a social security number;

E. "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; and

F. "public records" means all documents, papers, letters, books, maps, tapes, photographs, recordings 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."

#### *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. No person requesting records shall be required to state the reason for inspecting the records.

D. 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 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. In the event that a written request is not 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.

#### *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 con-

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

B. A custodian shall provide a copy of 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) shall not charge fees in excess of one dollar (\$1.00) per page for documents eleven inches by seventeen inches in size or smaller;

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

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

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

(7) shall provide a receipt, upon request.

D. 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 Section 14-3-15.1 NMSA 1978, including imposing reasonable restrictions on the use of the database and the payment of a royalty or other consideration.

#### *14-2-10. Procedure for excessively burdensome or broad requests.*

If a custodian determines that a written request is excessively burdensome or broad, an additional reasonable period of time shall be allowed to comply with the request. The custodian shall provide written notification to the requester within fifteen days of receipt of the request that additional time will be needed to respond to the written request. The requester may deem the request denied and may pursue the remedies available pursuant to the Inspection of Public Records Act if the custodian does not permit the records to be inspected in a reasonable period of time.

#### *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 within fifteen days of receipt by the office of the custodian may be deemed denied. The person requesting the public records may pursue the remedies provided in the Inspection of Public Records Act.

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 days after the request for inspection was received.

C. A custodian who does not deliver or mail a written explanation of denial within fifteen 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 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 day the public body is in noncompliance until a

written denial is issued; and

(4) be payable from the funds of the public body.

#### *14-2-12. Enforcement.*

A. 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. 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.

C. 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. The court shall award damages, costs and reasonable attorneys' fees to any person whose written request has been denied and is successful in a court action to enforce the provisions of the Inspection of Public Records Act.

#### *14-2A-1. Protection of victims of crimes or accidents; police reports; commercial solicitation prohibited.*

No attorney, health care provider or their agents shall inspect, copy or use police reports or information obtained from police reports for the purpose of the solicitation of victims or the solicitation of the relatives of victims of reported crimes or accidents.

#### *14-3-2. Definitions.*

As used in the Public Records Act:

A. "commission" means the state commission of public records;

B. "administrator" means the state records administrator;

C. "public records" means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government or because of the informational and historical value of data contained therein. Library or museum material of the state library, state institutions and state museums, extra copies of documents preserved only for convenience of reference and stocks of publications and processed documents are not included;

D. "agency" means any state agency, department, bureau, board, commission, institution or other organization of the state government, the territorial government and the Spanish and Mexican governments in New Mexico;

E. "records center" means the central records depository which is the principal state facility for the storage, disposal, allocation or use of noncurrent records of agencies or materials obtained from other sources;

F. "microphotography system" means all microphotography equipment, services and supplies; and

G. "microphotography" means the transfer of images onto film and electronic imaging or other information storage techniques that meet the performance guidelines for legal acceptance of public records produced by information system technologies pursuant to regulations adopted by the commission.

#### *14-3A-2. Donation of confidential material.*

A. Any library, college, university, museum or institution of the state or any of its political subdivisions may hold in confidence materials of a historical or educational value upon which the donor or seller has imposed restrictions with respect to access to and inspection of the materials for a definite period of time as specified by the donor or seller.

B. Access to and inspection of such materials may be restricted during the

period specified by the donor or seller in the manner specified by the donor or seller.

C. The provisions of Subsections A and B of this section do not apply to materials which were public records of New Mexico as defined in Section 14-2-1 NMSA 1978 while in the possession of the donor or seller at the time of the donation or sale.

### Open Meetings

*10-15-1. Formation of public policy; procedures for open meetings; exceptions and procedures for closed meetings.*

A. In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be 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 those officers and employees who represent them. The formation of public policy or the conduct of business by vote shall not be conducted in closed meeting. All meetings of any public body except the legislature and the courts shall be public meetings, and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. Reasonable efforts shall be made to accommodate the use of audio and video recording devices.

B. All meetings of a quorum of members of any board, commission, administrative adjudicatory body or other policymaking body of any state agency, any agency or authority of any county, municipality, district or any political subdivision, held for the purpose of formulating public policy, including the development of personnel policy, rules, regulations or ordinances, discussing public business or for the purpose of taking any action within the authority of or the delegated authority of any board, commission or other policymaking body are declared to be public meetings open to the public at all times, except as otherwise provided in the constitution of New Mexico or the Open Meetings Act. No public meeting once convened that is otherwise required to be open pursuant to the Open Meetings Act shall be closed or dissolved into small groups or committees for the purpose of permitting the closing of the meeting.

C. If otherwise allowed by law or rule of the public body, a member of a public body may participate in a meeting of the public body by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting are able to hear any member of the public body who speaks during the meeting.

D. Any meetings at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs and at which a majority or quorum of the body is in attendance, and any closed meetings, shall be held only after reasonable notice to the public. The affected body shall determine at least annually in a public meeting what notice for a public meeting is reasonable when applied to that body. That notice shall include broadcast stations licensed by the federal communications commission and newspapers of general circulation that have provided a written request for such notice.

E. A public body may recess and reconvene a meeting to a day subsequent to that stated in the meeting notice if, prior to recessing, the public body specifies the date, time and place for continuation of the meeting and, immediately following the recessed meeting, posts notice of the date, time and place for the reconvened meeting on or near the door of the place where the original meeting was held and in at least one other location appropriate to provide public notice of the continuation of the meeting. Only matters appearing on the agenda of the original meeting may be discussed at the reconvened meeting.

F. Meeting notices shall include an agenda containing a list of specific items of business to be discussed or transacted at the meeting or information on how the public may obtain a copy of such an agenda. Except in the case of an emergency, the agenda shall be available to the public at least twenty-four hours prior to the meeting. Except for emergency matters, a public body shall take action only on items appearing on the agenda. For purposes of this subsection, an "emergency" refers to unforeseen circumstances that, if not addressed immediately by the public body, will likely result in injury or damage to persons or property or substantial financial loss to the public body.

G. The board, commission or other policymaking body shall keep written minutes of all its meetings. The minutes shall include at a minimum the date, time and place of the meeting, the names of members in attendance and those absent, the substance of the proposals considered and a record of any decisions and votes taken that show how each member voted. All minutes are open to

public inspection. Draft minutes shall be prepared within ten working days after the meeting and shall be approved, amended or disapproved at the next meeting where a quorum is present. Minutes shall not become official until approved by the policymaking body.

H. The provisions of Subsections A, B and G of this section do not apply to:

(1) meetings pertaining to issuance, suspension, renewal or revocation of a license, except that a hearing at which evidence is offered or rebutted shall be open. All final actions on the issuance, suspension, renewal or revocation of a license shall be taken at an open meeting;

(2) limited personnel matters; provided that for purposes of the Open Meetings Act, "limited personnel matters" means the discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or the investigation or consideration of complaints or charges against any individual public employee; provided further that this subsection is not to be construed as to exempt final actions on personnel from being taken at open public meetings, nor does it preclude an aggrieved public employee from demanding a public hearing. Judicial candidates interviewed by any commission shall have the right to demand an open interview;

(3) deliberations by a public body in connection with an administrative adjudicatory proceeding. For purposes of this paragraph, an "administrative adjudicatory proceeding" means a proceeding brought by or against a person before a public body in which individual legal rights, duties or privileges are required by law to be determined by the public body after an opportunity for a trial-type hearing. Except as otherwise provided in this section, the actual administrative adjudicatory proceeding at which evidence is offered or rebutted and any final action taken as a result of the proceeding shall occur in an open meeting;

(4) the discussion of personally identifiable information about any individual student, unless the student, his parent or guardian requests otherwise;

(5) meetings for the discussion of bargaining strategy preliminary to collective bargaining negotiations between the policymaking body and a bargaining unit representing the employees of that policymaking body and collective bargaining sessions at which the policymaking body and the representatives of the collective bargaining unit are present;

(6) that portion of meetings at which a decision concerning purchases in an amount exceeding two thousand five hundred dollars (\$2,500) that can be made only from one source and that portion of meetings at which the contents of competitive sealed proposals solicited pursuant to the Procurement Code [13-1-28 NMSA 1978] are discussed during the contract negotiation process. The actual approval of purchase of the item or final action regarding the selection of a contractor shall be made in an open meeting;

(7) meetings subject to the attorney-client privilege pertaining to threatened or pending litigation in which the public body is or may become a participant;

(8) meetings for the discussion of the purchase, acquisition or disposal of real property or water rights by the public body;

(9) those portions of meetings of committees or boards of public hospitals where strategic and long-range business plans or trade secrets are discussed; and

(10) that portion of a meeting of the gaming control board dealing with information made confidential pursuant to the provisions of the Gaming Control Act [Chapter 60, Article 2E NMSA 1978].

I. If any meeting is closed pursuant to the exclusions contained in Subsection H of this section, the closure:

(1) if made in an open meeting, shall be approved by a majority vote of a quorum of the policymaking body; the authority for the closure and the subject to be discussed shall be stated with reasonable specificity in the motion calling for the vote on a closed meeting; the vote shall be taken in an open meeting; and the vote of each individual member shall be recorded in the minutes. Only those subjects announced or voted upon prior to closure by the policymaking body may be discussed in a closed meeting; and

(2) if called for when the policymaking body is not in an open meeting, shall not be held until public notice, appropriate under the circumstances, stating the specific provision of the law authorizing the closed meeting and stating with reasonable specificity the subject to be discussed is given to the members and to the general public.

J. Following completion of any closed meeting, the minutes of the open

meeting that was closed or the minutes of the next open meeting if the closed meeting was separately scheduled shall state that the matters discussed in the closed meeting were limited only to those specified in the motion for closure or in the notice of the separate closed meeting. This statement shall be approved by the public body under Subsection G of this section as part of the minutes.

*10-15-1.1. Short title.*

Chapter 10, Article 15 NMSA 1978 may be cited as the “Open Meetings Act”.

*10-15-2. State legislature; meetings.*

A. All meetings of a quorum of members of any committee or policy-making body of the state legislature held for the purpose of discussing public business or for the purpose of taking any action within the authority of or the delegated authority of such committee or body are declared to be public meetings open to the public at all times

B. The provisions of Subsection A of this section shall not apply to matters relating to personnel, or matters adjudicatory in nature, or any bill, resolution or other legislative matter not yet presented to either house of the legislature or general appropriation bills

C. For the purposes of this section, “meeting” means a gathering of the members called by the presiding officer of a standing committee.

*10-15-3. Invalid actions; standing.*

A. No resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be valid unless taken or made at a meeting held in accordance with the requirements of Section 10-15-1 NMSA 1978. Every resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be presumed to have been taken or made at a meeting held in accordance with the requirements of Section 10-15-1 NMSA 1978.

B. All provisions of the Open Meetings Act shall be enforced by the attorney general or by the district attorney in the county of jurisdiction. However, nothing in that act shall prevent an individual from independently applying for enforcement through the district courts, provided that the individual first provides written notice of the claimed violation to the public body and that the public body has denied or not acted on the claim within fifteen days of receiving it. A public meeting held to address a claimed violation of the Open Meetings Act shall include a summary of comments made at the meeting at which the claimed violation occurred

C. The district courts of this state shall have jurisdiction, upon the application of any person to enforce the purpose of the Open Meetings Act, by injunction, mandamus or other appropriate order. The court shall award costs and reasonable attorney fees to any person who is successful in bringing a court action to enforce the provisions of the Open Meetings Act. If the prevailing party in a legal action brought under this section is a public body defendant, it shall be awarded court costs. A public body defendant that prevails in a court action brought under this section shall be awarded its reasonable attorney fees from the plaintiff if the plaintiff brought the action without sufficient information and belief that good grounds supported it.

D. No section of the Open Meetings Act shall be construed to preclude other remedies or rights not relating to the question of open meetings.

*10-15-4. Penalty.*

Any person violating any of the provisions of Section 10-15-1 or 10-15-2 NMSA 1978 is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars (\$500) for each offense.

Note: New Section of Chapter 14, Article 8 NMSA 1978

Public Records—Inspection—Exceptions

A. Except as provided in this section, all documents filed and recorded in the office of the county clerk are public records, subject to disclosure pursuant to the Inspection of Public Records Act

B. The county clerk shall publicly post in the office of the county clerk and on the county’s web page a notice that documents recorded in the office of the county clerk are public records, subject to inspection and disclosure.

C. Before digitalizing or purchasing of documents by third parties, protected personal identifier information, as defined in the Inspection of Public Records Act, shall be redacted.

D. Documents containing health information that relates to and identifies specific individuals as patients are exempt as a public record pursuant to Section 14-6-1 NMSA 1978.

E. Discharge papers of a veteran of the armed forces of the United States recorded in the office of the county clerk shall be segregated from public records in the office of the county clerk. Discharge papers recorded before July 1, 2005 that have been commingled with public records and that remain unsegregated are available for inspection in the office of the county clerk but shall not be copied, digitalized or purchased by any third party, except by those persons authorized in this section. As the technology becomes available, county clerks shall segregate commingled discharge papers from the public records in the office of the county clerk. Discharge papers recorded in the office of the county clerk are available only to:

1. the veteran who filed the papers;
2. the veteran’s next of kin;
3. the deceased veteran’s properly appointed personal representative or executor;
4. a person holding the veteran’s general power of attorney; or
5. a person designated by the veteran in an acknowledged statement to receive the records.

F. Death certificates that have been recorded in the office of the county clerk may be inspected, but shall not be copied, digitized or purchased by any third party unless fifty years have elapsed after the date of death and the cause of death and any other medical information contained on the death certificate is redacted, in addition to redaction of protected personal identifier information. Death certificates and other vital records recorded in the office of the county clerk are exempt from the restrictions contained in Subsection A of Section 24-14-27 NMSA 1978. The act of recording a death certificate in the office of the county clerk is considered a convenience; provided that no person shall be required to record a death certificate in the office of the county clerk to effect change of title or interest in property.