

1 SENATE BILL 245

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO PUBLIC RECORDS; UPDATING CERTAIN PROVISIONS
12 CONCERNING INDEXING OF COUNTY RECORDS; PROVIDING FOR PROTECTION
13 OF STATE, COUNTY AND MUNICIPAL DATABASES; RECONCILING MULTIPLE
14 AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2011; DECLARING
15 AN EMERGENCY.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. Section 14-2-6 NMSA 1978 (being Laws 1993,
19 Chapter 258, Section 3, as amended by Laws 2011, Chapter 134,
20 Section 3 and by Laws 2011, Chapter 181, Section 1 and also by
21 Laws 2011, Chapter 182, Section 1) is amended to read:

22 "14-2-6. DEFINITIONS.--As used in the Inspection of
23 Public Records Act:

24 A. "custodian" means any person responsible for the
25 maintenance, care or keeping of a public body's public records,

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1 regardless of whether the records are in that person's actual
2 physical custody and control;

3 B. "file format" means the internal structure of an
4 electronic file that defines the way it is stored and used;

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

7 D. "person" means any individual, corporation,
8 partnership, firm, association or entity;

9 ~~[D-]~~ E. "protected personal identifier information"
10 means:

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

12 (a) taxpayer identification number;

13 (b) financial account number; or

14 (c) driver's license number;

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

17 (3) a social security number;

18 ~~[E-]~~ F. "public body" means the executive,
19 legislative and judicial branches of state and local
20 governments and all advisory boards, commissions, committees,
21 agencies or entities created by the constitution or any branch
22 of government that receives any public funding, including
23 political subdivisions, special taxing districts, school
24 districts and institutions of higher education; and

25 ~~[F-]~~ G. "public records" means all documents,

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1 papers, letters, books, maps, tapes, photographs, recordings
2 and other materials, regardless of physical form or
3 characteristics, that are used, created, received, maintained
4 or held by or on behalf of any public body and relate to public
5 business, whether or not the records are required by law to be
6 created or maintained."

7 SECTION 2. Section 14-2-9 NMSA 1978 (being Laws 1993,
8 Chapter 258, Section 6, as amended by Laws 2011, Chapter 181,
9 Section 2 and by Laws 2011, Chapter 182, Section 3) is amended
10 to read:

11 "14-2-9. PROCEDURE FOR INSPECTION.--

12 A. Requested public records containing information
13 that is exempt and nonexempt from disclosure shall be separated
14 by the custodian prior to inspection, and the nonexempt
15 information shall be made available for inspection. If
16 necessary to preserve the integrity of computer data or the
17 confidentiality of exempt information contained in a database,
18 a partial printout of data containing public records or
19 information may be furnished in lieu of an entire database.
20 Exempt information in an electronic document shall be removed
21 along with the corresponding metadata prior to disclosure by
22 utilizing methods or redaction tools that prevent the recovery
23 of exempt information from a redacted electronic document.

24 B. A custodian shall provide a copy of a public
25 record in electronic format if the public record is available

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1 in electronic format and an electronic copy is specifically
2 requested. However, a custodian is only required to provide
3 the electronic record in the file format in which it exists at
4 the time of the request.

5 C. A custodian:

6 (1) may charge reasonable fees for copying the
7 public records, unless a different fee is otherwise prescribed
8 by law;

9 (2) shall not charge fees in excess of one
10 dollar (\$1.00) per printed page for documents eleven inches by
11 seventeen inches in size or smaller;

12 (3) may charge the actual costs associated
13 with downloading copies of public records to a computer disk or
14 storage device, including the actual cost of the computer disk
15 or storage device;

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

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

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

24 (7) shall provide a receipt, upon request.

25 D. Nothing in this section regarding the provision

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1 of public data in electronic format shall limit the ability of
2 the custodian to engage in the sale of data as authorized by
3 [~~Section~~] Sections 14-3-15.1 and 14-3-18 NMSA 1978, including
4 imposing reasonable restrictions on the use of the database and
5 the payment of a royalty or other consideration."

6 SECTION 3. Section 14-3-15.1 NMSA 1978 (being Laws 1986,
7 Chapter 81, Section 9, as amended) is amended to read:

8 "14-3-15.1. RECORDS OF STATE AGENCIES--PUBLIC RECORDS--
9 COPY FEES--COMPUTER DATABASES--CRIMINAL PENALTY.--

10 A. Except as otherwise provided by federal or state
11 law, information contained in information systems databases
12 shall be a public record and shall be subject to disclosure in
13 printed or typed format by the state agency that has inserted
14 that information into the database, in accordance with the
15 Public Records Act, upon the payment of a reasonable fee for
16 the service.

17 B. The administrator shall recommend to the
18 commission the procedures, schedules and technical standards
19 for the retention of computer databases.

20 C. The state agency that has inserted data in a
21 database may authorize a copy to be made of a computer tape or
22 other medium containing a computerized database of a public
23 record for any person if the person agrees:

24 (1) not to make unauthorized copies of the
25 database;

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1 [~~(2)~~ not to use the database for any political
2 or commercial purpose unless the purpose and use is approved in
3 writing by the state agency that created the database;

4 ~~(3)~~ (2) not to use the database for
5 solicitation or advertisement [~~when the database contains the~~
6 ~~name, address or telephone number of any person~~] unless such
7 use is otherwise specifically authorized by law;

8 [~~(4)~~ (3) not to allow access to the database
9 by any other person [~~unless the use is approved in writing by~~
10 ~~the state agency that created the database~~]; and

11 [~~(5)~~ (4) to pay a royalty or other
12 consideration to the state as may be agreed upon by the state
13 agency that created the database.

14 D. If more than one state agency is responsible for
15 the information inserted in the database, the agencies shall
16 enter into an agreement designating a lead agency. If the
17 agencies cannot agree as to the designation of a lead state
18 agency, the commission shall designate one of the state
19 agencies as the lead agency to carry out the responsibilities
20 set forth in this section.

21 E. Subject to any confidentiality provisions of
22 law, any state agency may permit another state agency, county
23 or municipality access to all or any portion of a computerized
24 database created by a state agency.

25 F. If information contained in a database is

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1 searched, manipulated or retrieved or a copy of the database is
2 made for any private or nonpublic use, a fee shall be charged
3 by the state agency permitting access or use of the database.

4 G. Except as authorized by law or rule of the
5 commission, any person who reveals to any unauthorized person
6 information contained in a computer database or who uses or
7 permits the unauthorized use or access of any computer database
8 is guilty of a misdemeanor, and upon conviction the court shall
9 sentence that person to jail for a definite term not to exceed
10 one year or to payment of a fine not to exceed five thousand
11 dollars (\$5,000) or both. That person shall not be employed by
12 the state for a period of five years after the date of
13 conviction."

14 SECTION 4. Section 14-3-18 NMSA 1978 (being Laws 1963,
15 Chapter 186, Section 2, as amended) is amended to read:

16 "14-3-18. COUNTY AND MUNICIPAL RECORDS--GEOGRAPHIC
17 INFORMATION SYSTEM--COMPUTER DATABASES--COPY FEES.--

18 A. The administrator may advise and assist county
19 and municipal officials in the formulation of programs for the
20 disposition of public records maintained in county and
21 municipal offices.

22 B. Notwithstanding the provisions of Subsection E
23 of this section, a county or municipality may charge a
24 reasonable fee, as adopted by ordinance of the respective board
25 of county commissioners or governing body of a municipality,

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1 for a document or product generated by a geographic information
2 system.

3 C. Except as otherwise provided by federal or state
4 law, information contained in a computer database shall be a
5 public record and shall be subject to disclosure in printed or
6 typed format by a county or municipality that has inserted that
7 information into the database, in accordance with the Public
8 Records Act.

9 D. The administrator may advise and assist county
10 and municipal officials with the procedures, schedules and
11 technical standards for the retention of computer databases.

12 E. A county or municipality that has inserted data
13 in a computer database shall authorize an electronic copy to be
14 made of the computer database of a public record on a currently
15 available electronic medium for a person if the person agrees
16 to pay a reasonable fee based upon the cost of:

- 17 (1) materials;
18 (2) making an electronic copy of the computer
19 database; and
20 (3) personnel time to research and retrieve
21 the electronic record.

22 F. A county or municipality that has inserted data
23 in a computer database created to record property rights or
24 taxation records shall authorize an electronic copy to be made
25 of the computer database of a public record on a currently

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1 available electronic medium for a person if the person agrees:

2 (1) not to make unauthorized copies of the
3 database;

4 (2) not to use the database for solicitation
5 or advertisement unless such use is otherwise specifically
6 authorized by law;

7 (3) not to allow access to the database by any
8 other person; and

9 (4) if the request is for more than one
10 hundred records, to pay a royalty or other consideration to the
11 county or municipality as may be agreed upon by the county or
12 municipality that created the database.

13 ~~[F.]~~ G. Subject to any confidentiality provisions
14 of law, a county or municipality may permit another federal,
15 state or local government entity access to all or any portion
16 of a computer database created by the county or municipality.

17 ~~[G.]~~ H. A county or municipality may at its option,
18 and if it has the capability, permit access or use of its
19 computer and network system to search, manipulate or retrieve
20 information from a computer database and charge reasonable fees
21 based on the cost of materials, personnel time, access time and
22 the use of the ~~[county]~~ county's or municipality's computer
23 network."

24 SECTION 5. Section 14-10-1 NMSA 1978 (being Laws 1903,
25 Chapter 87, Section 1, as amended) is amended to read:

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1 "14-10-1. INDEX.--~~[SEC. 20. That whenever in the opinion~~
2 ~~of the board of county commissioners of any county in the state~~
3 ~~it is necessary]~~ For the convenience of the public and the
4 better preservation of titles to real property, ~~[to have]~~ there
5 shall be a complete and accurate county recording index made of
6 all instruments of record affecting real property ~~[they are~~
7 ~~hereby authorized to have such index]~~ made by the county clerk
8 of ~~[said]~~ each county."

9 SECTION 6. Section 14-10-2 NMSA 1978 (being Laws 1903,
10 Chapter 87, Section 2, as amended) is amended to read:

11 "14-10-2. INDEX--SEARCHABLE DATABASE--REQUIREMENTS.--
12 ~~[SEC. 21.]~~ For the purpose of the county recording index
13 ~~[mentioned in the preceding]~~ created pursuant to Section ~~[there~~
14 ~~shall be provided index books]~~ 14-10-1 NMSA 1978, each county
15 clerk shall maintain a searchable database, and all instruments
16 affecting title to real estate shall be indexed ~~[in their~~
17 ~~regular order alphabetically arranged, as well as in their~~
18 ~~reverse order in the same manner]."~~

19 SECTION 7. Section 14-10-3 NMSA 1978 (being Laws 1903,
20 Chapter 87, Section 3, as amended) is amended to read:

21 "14-10-3. INDEX--REQUIRED FIELDS.--~~[Sec. 22.]~~ The ~~[said]~~
22 county recording index shall ~~[be ruled and headed in the manner~~
23 ~~and form substantially as shown on the following form:~~

Time of Reception		
Month Day Year	Grantor or Mortgagor	Grantees

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				Date of Instrument	
or Mortgagees	Instrument	Book	Page	Month	Day Year
<u>Description of Property</u>					
<u>Subdivision of Sections and Number of Lots</u>				<u>Town or City</u>	
Addition	Sec. Blk.	Tp.	R.	Acres	Remarks.]

contain, at a minimum:

A. the following administrative fields:

- (1) book and page or instrument number; and
- (2) date and time of recordation; and

B. the following descriptive fields:

- (1) names of grantors;
- (2) names of grantees; and
- (3) legal descriptions or references to

recorded instruments in the county containing legal descriptions."

SECTION 8. Section 14-10-4 NMSA 1978 (being Laws 1903, Chapter 87, Section 4, as amended) is amended to read:

"14-10-4. ENTRIES TO THE INDEX--DESCRIPTION OF LANDS.--
~~[SEC. 23.]~~ Searchable information placed in a descriptive field
constitutes an entry in the county recording index. All town
property or lands shall be entered and described in the ~~[said]~~
county recording index in the manner indicated, according to
numbers, metes or bounds; ~~[But]~~ provided, that where this is
impossible from the nature of the description, ~~[then]~~ the tract

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1 ~~[or tracts]~~ may be described by some appropriate title ~~[or the~~
2 ~~owner's name]~~."

3 SECTION 9. Section 14-10-5 NMSA 1978 (being Laws 1903,
4 Chapter 87, Section 5, as amended) is amended to read:

5 "14-10-5. STANDARD FORM--USE REQUIRED.~~---[SEC. 24.]~~ The
6 form of index provided in ~~[the two preceding sections]~~ this
7 article shall be the standard form of index and shall be used
8 throughout the state."

9 SECTION 10. EMERGENCY.--It is necessary for the public
10 peace, health and safety that this act take effect immediately.