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SENATE BILL 208

**55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022**

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO PUBLIC RECORDS; ADDING A DEFINITION TO THE  
INSPECTION OF PUBLIC RECORDS ACT; PROVIDING THAT A CUSTODIAN  
MAY CONVERT AN ELECTRONIC RECORD TO AN OPEN FORMAT WITHOUT THAT  
BEING CONSIDERED THE CREATION OF A NEW PUBLIC RECORD.

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

SECTION 1. Section 14-2-6 NMSA 1978 (being Laws 1993,  
Chapter 258, Section 3, as amended) is amended to read:

"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. "file format" means the internal structure of an

1 electronic file that defines the way it is stored and used;

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

4 D. "open format" means a file format that is  
5 machine-readable, exportable, easily accessible to the public  
6 and made available without restrictions that would impede the  
7 reuse of that information;

8 ~~[D.]~~ E. "person" means any individual, corporation,  
9 partnership, firm, association or entity;

10 ~~[E.]~~ F. "protected personal identifier information"  
11 means:

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

13 (a) taxpayer identification number;

14 (b) financial account number; or

15 (c) driver's license number;

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

18 (3) a social security number;

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

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

8           [~~H.~~] I. "trade secret" means trade secret as  
9 defined in Subsection D of Section 57-3A-2 NMSA 1978."

10           SECTION 2. Section 14-2-8 NMSA 1978 (being Laws 1993,  
11 Chapter 258, Section 5, as amended) is amended to read:

12           "14-2-8. PROCEDURE FOR REQUESTING RECORDS.--

13           A. Any person wishing to inspect public records may  
14 submit an oral or written request to the custodian. However,  
15 the procedures set forth in this section shall be in response  
16 to a written request. The failure to respond to an oral  
17 request shall not subject the custodian to any penalty.

18           B. Nothing in the Inspection of Public Records Act  
19 shall be construed to require a public body to create a public  
20 record; provided that converting an electronic record to an  
21 open format shall not be considered the creation of a public  
22 record.

23           C. A written request shall provide the name,  
24 address and telephone number of the person seeking access to  
25 the records and shall identify the records sought with

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1 reasonable particularity. No person requesting records shall  
2 be required to state the reason for inspecting the records.

3 D. A custodian receiving a written request shall  
4 permit the inspection immediately or as soon as is practicable  
5 under the circumstances, but not later than fifteen days after  
6 receiving a written request. If the inspection is not  
7 permitted within three business days, the custodian shall  
8 explain in writing when the records will be available for  
9 inspection or when the public body will respond to the request.  
10 The three-day period shall not begin until the written request  
11 is delivered to the office of the custodian.

12 E. In the event that a written request is not made  
13 to the custodian having possession of or responsibility for the  
14 public records requested, the person receiving the request  
15 shall promptly forward the request to the custodian of the  
16 requested public records, if known, and notify the requester.  
17 The notification to the requester shall state the reason for  
18 the absence of the records from that person's custody or  
19 control, the records' location and the name and address of the  
20 custodian.

21 F. For the purposes of this section, "written  
22 request" includes an electronic communication, including email  
23 or facsimile; provided that the request complies with the  
24 requirements of Subsection C of this section."

25 SECTION 3. Section 14-2-9 NMSA 1978 (being Laws 1993,

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1 Chapter 258, Section 6, as amended) is amended to read:

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

3 A. Requested public records containing information  
4 that is exempt and nonexempt from disclosure shall be separated  
5 by the custodian prior to inspection, and the nonexempt  
6 information shall be made available for inspection. If  
7 necessary to preserve the integrity of computer data or the  
8 confidentiality of exempt information contained in a database,  
9 a partial printout of data containing public records or  
10 information may be furnished in lieu of an entire database.  
11 Exempt information in an electronic document shall be removed  
12 along with the corresponding metadata prior to disclosure by  
13 utilizing methods or redaction tools that prevent the recovery  
14 of exempt information from a redacted electronic document.

15 B. A custodian shall provide a copy of a public  
16 record in electronic format if the public record is available  
17 in electronic format and an electronic copy is specifically  
18 requested. ~~[However]~~ A custodian ~~[is only required to]~~ may  
19 provide ~~[the]~~ an electronic record in the file format in which  
20 it exists at the time of the request or convert the electronic  
21 record to an open format to fulfill a specific request.

22 C. A custodian:  
23 (1) may charge reasonable fees for copying the  
24 public records, unless a different fee is otherwise prescribed  
25 by law;

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

4 (3) may charge the actual costs associated  
5 with downloading copies of public records to a computer disk or  
6 storage device, including the actual cost of the computer disk  
7 or storage device;

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

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

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

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

17 D. Nothing in this section regarding the provision  
18 of public data in electronic format shall limit the ability of  
19 the custodian to engage in the sale of data as authorized by  
20 Sections 14-3-15.1 and 14-3-18 NMSA 1978, including imposing  
21 reasonable restrictions on the use of the database and the  
22 payment of a royalty or other consideration."