

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 232

**56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

AN ACT

RELATING TO PUBLIC RECORDS; AMENDING THE INSPECTION OF PUBLIC RECORDS ACT; ENACTING A NEW SECTION OF THE INSPECTION OF PUBLIC RECORDS ACT REGARDING DISCLOSURE OF LAW ENFORCEMENT RECORDS; EXCEPTING FROM DISCLOSURE CERTAIN INFORMATION CONCERNING INFORMATION TECHNOLOGY SYSTEMS, SUBMISSIONS TO GRANT PROGRAMS, LAND LEASES AND SCHOLARSHIP PROGRAMS AND PROPRIETARY TECHNICAL OR BUSINESS INFORMATION; DECLARING AN EMERGENCY.

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

SECTION 1. A new section of the Tourism Department Act, Section 9-15A-7.2 NMSA 1978, is enacted to read:

"9-15A-7.2. [NEW MATERIAL] INFORMATION NOT SUBJECT TO INSPECTION.--The following information created, obtained or maintained by the department is not subject to inspection pursuant to the Inspection of Public Records Act:

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underscored material = new  
[bracketed material] = delete

1           A. proprietary technical or business information  
2 related to the development of specific marketing or advertising  
3 campaigns for the state; and

4           B. a consumer's individually identifiable  
5 information provided during an online, tourism-related  
6 transaction related to a product or service provided by the  
7 department or its contractors."

8           SECTION 2. Section 14-2-1 NMSA 1978 (being Laws 1947,  
9 Chapter 130, Section 1, as amended) is amended to read:

10           "14-2-1. RIGHT TO INSPECT PUBLIC RECORDS--EXCEPTIONS.--  
11 Every person has a right to inspect public records of this  
12 state except:

13           A. records pertaining to physical or mental  
14 examinations and medical treatment of persons confined to an  
15 institution;

16           B. letters of reference concerning employment,  
17 licensing or permits;

18           C. letters or memoranda that are matters of opinion  
19 in personnel files or students' cumulative files;

20           D. portions of law enforcement records [~~that~~  
21 ~~reveal:~~

22                   ~~(1) confidential sources, methods or~~  
23 ~~information; or~~

24                   ~~(2) before charges are filed, names, address,~~  
25 ~~contact information or protected personal identifier~~

1 ~~information as defined in this act of individuals who are:~~

2 ~~(a) accused but not charged with a~~  
3 ~~crime; or~~

4 ~~(b) victims of or non-law-enforcement~~  
5 ~~witnesses to an alleged crime of: 1) assault with intent to~~  
6 ~~commit a violent felony pursuant to Section 30-3-3 NMSA 1978~~  
7 ~~when the violent felony is criminal sexual penetration; 2)~~  
8 ~~assault against a household member with intent to commit a~~  
9 ~~violent felony pursuant to Section 30-3-14 NMSA 1978 when the~~  
10 ~~violent felony is criminal sexual penetration; 3) stalking~~  
11 ~~pursuant to Section 30-3A-3 NMSA 1978; 4) aggravated stalking~~  
12 ~~pursuant to Section 30-3A-3.1 NMSA 1978; 5) criminal sexual~~  
13 ~~penetration pursuant to Section 30-9-11 NMSA 1978; or 6)~~  
14 ~~criminal sexual contact pursuant to Section 30-9-12 NMSA 1978.~~

15 ~~Law enforcement records include evidence in any form~~  
16 ~~received or compiled in connection with a criminal~~  
17 ~~investigation or prosecution by a law enforcement or~~  
18 ~~prosecuting agency, including inactive matters or closed~~  
19 ~~investigations to the extent that they contain the information~~  
20 ~~listed in this subsection; provided that the presence of such~~  
21 ~~information on a law enforcement record does not exempt the~~  
22 ~~record from inspection] as provided in Section 14-2-1.2 NMSA~~  
23 ~~1978;~~

24 E. as provided by the Confidential Materials Act;

25 F. trade secrets;

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1           G. attorney-client privileged information; ~~and~~

2           H. long-range or strategic business plans of public  
3 hospitals discussed in a properly closed meeting;

4           ~~[G.]~~ I. tactical response plans or procedures  
5 prepared for or by the state or a political subdivision of the  
6 state, the publication of which could reveal specific  
7 vulnerabilities, risk assessments or tactical emergency  
8 security procedures that could be used to facilitate the  
9 planning or execution of a terrorist attack; ~~and~~

10           J. information concerning information technology  
11 systems, the publication of which would reveal specific  
12 vulnerabilities that compromise or allow unlawful access to  
13 such systems; provided that this subsection shall not be used  
14 to restrict requests for:

15                   (1) records stored or transmitted using  
16 information technology systems;

17                   (2) internal and external audits of  
18 information technology systems, except for those portions that  
19 would reveal ongoing vulnerabilities that compromise or allow  
20 unlawful access to such systems; or

21                   (3) information to authenticate or validate  
22 records received pursuant to a request fulfilled pursuant to  
23 the Inspection of Public Records Act;

24           K. submissions in response to a competitive grant,  
25 land lease or scholarship and related scoring materials and

1 evaluation reports until finalists are publicly named or the  
2 award is announced; and

3 [H.] L. as otherwise provided by law."

4 SECTION 3. A new Section 14-2-1.2 NMSA 1978 is enacted to  
5 read:

6 "14-2-1.2. [NEW MATERIAL] LAW ENFORCEMENT RECORDS.--

7 A. Law enforcement records are public records,  
8 except as provided by law and this subsection, and provided  
9 that the presence of nonpublic information may be redacted from  
10 a written record or digitally obscured in a visual or audio  
11 record, including:

12 (1) before charges are filed, names,  
13 addresses, contact information or protected personal identifier  
14 information of individuals who are victims of or non-law-  
15 enforcement witnesses to an alleged crime of:

16 (a) assault with intent to commit a  
17 violent felony pursuant to Section 30-3-3 NMSA 1978 when the  
18 violent felony is criminal sexual penetration;

19 (b) assault against a household member  
20 with intent to commit a violent felony pursuant to Section  
21 30-3-14 NMSA 1978 when the violent felony is criminal sexual  
22 penetration;

23 (c) stalking pursuant to Section 30-3A-3  
24 NMSA 1978;

25 (d) aggravated stalking pursuant to

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1 Section 30-3A-3.1 NMSA 1978;

2 (e) criminal sexual penetration pursuant  
3 to Section 30-9-11 NMSA 1978;

4 (f) criminal sexual contact pursuant to  
5 Section 30-9-12 NMSA 1978; or

6 (g) sexual exploitation of children  
7 pursuant to Section 30-6A-3 NMSA 1978;

8 (2) before charges are filed, names,  
9 addresses, contact information or protected personal identifier  
10 information of individuals who are accused but not charged with  
11 a crime;

12 (3) visual depiction of a dead body, unless a  
13 law enforcement officer, acting in that capacity, caused or is  
14 reasonably alleged or suspected to have caused the death;

15 (4) visual depiction of great bodily harm, as  
16 defined in Section 30-1-12 NMSA 1978, or acts of severe  
17 violence resulting in great bodily harm, unless a law  
18 enforcement officer, acting in that capacity, caused or is  
19 reasonably alleged or suspected to have caused the great bodily  
20 harm or act of severe violence;

21 (5) visual depiction of an individual's  
22 intimate body parts, including the genitals, pubic area, anus  
23 or postpubescent female nipple, whether nude or visible through  
24 less than opaque clothing;

25 (6) visual or audio depiction of the

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1 notification to a member of the public of a family member's  
2 death;

3 (7) confidential sources, methods or  
4 information; or

5 (8) records pertaining to physical or mental  
6 examination and medical treatment of persons unless the  
7 information could be relevant to a criminal investigation or an  
8 investigation of misfeasance, malfeasance or other suspected  
9 violation of law conducted by a person elected to or employed  
10 by a public body.

11 B. A request for release of video or audio shall  
12 specify at least one of the following:

13 (1) the computer-aided dispatch record number;

14 (2) the police report number;

15 (3) the date or date range with reasonable  
16 specificity and at least one of the following:

17 (a) the name of a law enforcement  
18 officer or first responder;

19 (b) the approximate time; or

20 (c) the approximate location; or

21 (4) other criteria established and published  
22 by a law enforcement agency to facilitate access to videos.

23 C. Except for confidential sources, methods or  
24 information, a request to view video or hear audio on-site of a  
25 public body is not subject to the restrictions in Subsections A

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1 and B of this section. Any recording or copying of video or  
2 audio from such viewing or listening is subject to the  
3 restrictions in this section.

4 D. As used in this section, "law enforcement  
5 records" includes evidence in any form received or compiled in  
6 connection with a criminal investigation or prosecution by a  
7 law enforcement or prosecuting agency, including inactive  
8 matters or closed investigations to the extent that they  
9 contain the information listed in this subsection; provided  
10 that the presence of such information on a law enforcement  
11 record does not exempt the record from inspection."

12 SECTION 4. Section 14-2-6 NMSA 1978 (being Laws 1993,  
13 Chapter 258, Section 3, as amended) is amended to read:

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

16 A. "custodian" means any person responsible for the  
17 maintenance, care or keeping of a public body's public records,  
18 regardless of whether the records are in that person's actual  
19 physical custody and control;

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

22 C. "information technology systems" means computer  
23 hardware, storage media, networking equipment, physical  
24 devices, infrastructure, processes and code, firmware, software  
25 and ancillary products and services, including:

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- 1                   (1) systems design and analysis;
- 2                   (2) development or modification of hardware or
- 3 solutions used to create, process, store, secure or exchange
- 4 electronic data;
- 5                   (3) information storage and retrieval systems;
- 6                   (4) voice, radio, video and data communication
- 7 systems;
- 8                   (5) network, hosting and cloud-based systems;
- 9                   (6) simulation and testing;
- 10                  (7) interactions between a user and an
- 11 information system; and
- 12                  (8) user and system credentials;

13                  [~~G.~~] D. "inspect" means to review all public  
 14 records that are not excluded in Section 14-2-1 NMSA 1978;

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

17                  [~~E.~~] F. "protected personal identifier information"  
 18 means:

- 19                   (1) all but the last four digits of a:
  - 20                   (a) taxpayer identification number;
  - 21                   (b) financial account number; [~~or~~]
  - 22                   (c) credit or debit card number; or
  - 23                   [~~(e)~~] (d) driver's license number;
- 24                   (2) all but the year of a person's date of

25 birth; [~~and~~]

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1 (3) a social security number; and  
2 (4) with regard to a nonelected employee of a  
3 public body in the context of the person's employment, the  
4 employee's nonbusiness home street address, but not the city,  
5 state or zip code;

6 [~~F.~~] G. "public body" means the executive,  
7 legislative and judicial branches of state and local  
8 governments and all advisory boards, commissions, committees,  
9 agencies or entities created by the constitution or any branch  
10 of government that receives any public funding, including  
11 political subdivisions, special taxing districts, school  
12 districts and institutions of higher education;

13 [~~G.~~] H. "public records" means all documents,  
14 papers, letters, books, maps, tapes, photographs, recordings  
15 and other materials, regardless of physical form or  
16 characteristics, that are used, created, received, maintained  
17 or held by or on behalf of any public body and relate to public  
18 business, whether or not the records are required by law to be  
19 created or maintained; and

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

22 SECTION 5. EMERGENCY.--It is necessary for the public  
23 peace, health and safety that this act take effect immediately.