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PUBLIC COMMENT

New Mexico IPRA Task Force

Submitted on Behalf of the Board of County Commissioners for the County of Santa Fe

I. Introduction and Summary of Recommendations

On behalf of the Board of County Commissioners for the County of Santa Fe, I am writing to respectfully submit comments to the New Mexico IPRA Task Force concerning the County's experience implementing the Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 to -12 (1947, as amended through 2025) ("IPRA"). The purpose of this submission is to inform the Task Force's determination, under House Joint Memorial 2 (2026), whether administrative solutions or legislative amendments should be recommended to the Legislature.

Each year Santa Fe County receives, processes, and responds to thousands of requests to inspect public records. Those requests encompass the full range of County operations: land use permitting files, procurement records, public meeting materials, election records maintained by the County Clerk, and dashboard and lapel camera recordings made by Sheriff's deputies on patrol. Nearly everything the County does is the product of a legal mandate, whether that is the construction and maintenance of public rights of way, the operation of a fire and emergency medical service, or the safe and secure detention of persons charged with criminal offenses. IPRA is no different. So long as the mandate exists, the County will commit the resources necessary to comply with it, and the County does not question the purposes the Act serves.

The County's object in submitting this comment is to describe, from the ground level, three problems that the current framework does not resolve.

First, IPRA does not adequately protect the privacy of private individuals whose homes and personal effects are depicted in law enforcement recordings, and the assumptions in current law about who requests such recordings and how those recordings are used no longer hold.

Second, a substantial and growing portion of requests is submitted by commercial data vendors and by requesters located outside New Mexico, and IPRA obliges County taxpayers to underwrite that activity.

Third, the New Mexico Supreme Court's recent decision in *Albuquerque Journal v. Board of Education of Albuquerque Public Schools* has left records custodians with a standard for personnel records that cannot be applied consistently, and which will result in severe and lasting reputational and other harms to rank and file public employees.

The County recommends seven amendments, developed in the sections that follow and collected in Section VI:

(1) Authorize redaction of law enforcement recordings depicting the interior of a private residence or the contents of a personal electronic device, subject to carve-outs for officer misconduct and for the consent of the person whose privacy is affected (Section II);

(2) Prohibit requests submitted by persons who are not residents of New Mexico, (Section III). Alternatively, if non-resident requests are allowed, permit public bodies to recover the reasonable cost of responding to requests of non-residents;

(3) Establish an objective threshold and a defined extension for requests requiring review of substantial volumes of records (Section IV);

(4) Authorize public bodies to sequence, rather than deny, large numbers of concurrent requests from a single requester (Section IV);

(5) Add an exception to Section 14-2-1 for personnel investigation records, keyed to whether the investigation resulted in a sustained finding and protecting the identity of persons who report misconduct and participate as witnesses (Section V);

(6) Provide that a public body is not liable in damages where a custodian's determination that information constituting a matter of opinion was objectively reasonable (Section V); and

(7) Impose a reasonable limitations period on claims under IPRA, and require prospective claimants to give notice of their intent to bring claims (Section VI).

The County has sought throughout to identify amendments that address operational problems without reducing the public's access to information about what its government has actually done. Each proposal below preserves access by New Mexico Residents to final actions, to public expenditures, and to allegations of misconduct by public officials and employees.

II. IPRA Does Not Adequately Protect the Privacy of Private Individuals Depicted in Law Enforcement Records.

Only limited categories of information may be redacted from a law enforcement record. Section 14-2-1(D) exempts "portions of law enforcement records as provided in Section 14-2-1.2 NMSA 1978," and Section 14-2-1.2(A) in turn permits a public body to redact or digitally

obscure eight enumerated categories of nonpublic information. Those categories reach the identifying information of victims and of persons accused but not charged (and then only before charges are filed and only as to enumerated offenses); visual depictions of a dead body, of great bodily harm, and of an individual's intimate body parts; depictions of the notification of a family member's death; confidential sources, methods, and information; and records of physical or mental examination and medical treatment. § 14-2-1.2(A)(1)-(8). Nothing in the section addresses the setting in which a recording was made. A recording of the interior of a private home is therefore public record unless it happens to contain one of the eight categories.

As the use of lapel and dashboard cameras has become standard, requests for recordings have increased, particularly where a requester has reason to believe that a recording will attract a large online audience. That dynamic reached its limit in Santa Fe County in early 2025. Following the deaths of Gene Hackman and Betsy Arakawa Hackman at their home outside Santa Fe, initial indications led the Sheriff's Office to obtain a search warrant for the residence. Deputies executing the warrant wore lapel-mounted cameras, as standard practice requires, and in doing so created an extensive record of the interior of the Hackmans' home. It was later established that no crime had occurred. Over the following year the County received forty-six requests for that footage across its NextRequest portal and the Sheriff's Office. Many in the Santa Fe community questioned how the material could be newsworthy once the causes of death were known. But the County had no discretion in the matter. Apart from limited redactions of depictions of the decedents themselves, IPRA required the County to release recordings of the most private areas of a private residence, and the County did so. The concern is not confined to prominent individuals. Recordings showing ordinary members of the public in moments of injury, distress, or humiliation can now be monetized by any person with an account on a video platform.[1]

Until recently, newspapers and broadcast stations were the only entities capable of disseminating such material widely. When crime victims or their families objected on privacy grounds, those organizations could credibly answer that they exercised editorial judgment and would publish only what they believed the public needed to see. Current law embeds that assumption. Section 14-2-1.2(A)(3) and (4) permit redaction of depictions of a dead body or of great bodily harm, but require release where a law enforcement officer caused or is reasonably alleged or suspected to have caused the death or the harm. Section 14-2-1.2(A)(8) permits redaction of medical information, but not where the information may be relevant to an investigation of misfeasance, malfeasance, or other suspected violation of law by a person elected to or employed by a public body. Those provisions are sensible in a world in which the persons seeking such recordings are professional news organizations weighing the public interest

[1] *See, e.g.,* Law&Crime Network, *9 Craziest New Mexico Police Incidents That Nearly Turned Deadly*, YouTube (July 12, 2025), https://www.youtube.com/watch?v=MQlAcirc28M; Law&Crime Network, *Giddy Woman Laughs with Cops After Murdering Ex-Lover with a Sword*, YouTube (Oct. 10, 2025), https://www.youtube.com/watch?v=z_aZInAa7aI; Police Insider, *What Happens When You Kidnap in a U-Haul*, YouTube (June 20, 2025), https://www.youtube.com/watch?v=6Ne687jmvHc.

against the dignity of the people depicted. They are considerably harder to justify when the requester is an anonymous channel whose only goal is to make money from YouTube views.

The Legislature has already recognized that not every use of a law enforcement record warrants the same treatment. NMSA 1978, Section 14-2A-1, prohibits the use of police reports to solicit victims of crimes and accidents for commercial purposes. The principle underlying that prohibition, which is that the right of access exists to inform the electorate about the operations of government rather than to allow the commercial exploitation of sensitive information gathered by law enforcement, applies with at least equal force to recordings made inside a person's home.

IPRA could be amended to restrict access to accredited news organizations. The County does not recommend that approach. Any definition of a qualifying requester will be over-inclusive, under-inclusive, or both, and it would require public bodies to decide who counts as a journalist, a judgment they are poorly positioned and ill advised to make. The better line is drawn by reference to the place recorded rather than the identity of the requester. Recordings made inside a private residence, or extracted from a personal electronic device, depict spaces in which the occupant holds a constitutionally protected expectation of privacy, and the government's access to them is ordinarily conditioned on a judicial warrant.[2] The County proposes that IPRA recognize the same interest, and offers the following addition to Subsection A of Section 14-2-1.2:

> (9) visual depiction of the interior of a private residence, or of the contents of a personal electronic device, obtained during the execution of a search warrant or during an entry onto private property, unless: (a) a law enforcement officer, acting in that capacity, caused or is reasonably alleged or suspected to have caused death or great bodily harm, or to have engaged in misconduct, during the entry or search; (b) the depiction is relevant to a pending criminal prosecution arising from the entry or search; or (c) a person having a lawful possessory interest in the residence or device, or the personal representative of such a person, consents in writing to inspection.

This proposal preserves without qualification the public's access to recordings bearing on the conduct of officers, which is the accountability interest that animates the carve-outs already found throughout Section 14-2-1.2. And it leaves the decision to the person whose privacy is at stake. A homeowner who wishes to publicize a search, including one who believes the search was unlawful, may consent to release.

The County raises one related matter on which it proposes no amendment to IPRA. Under Section 14-2-1.2(A)(2), once an individual has been charged with a crime, booking photos are ordinary public records subject to inspection. The County, as operator of an adult detention

[2] *See State v. Crane*, 2014-NMSC-026, ¶¶ 16, 30 (discussing New Mexico constitutional requirement that police obtain a warrant before searching a home or other domicile, where there is a "heightened expectation of privacy"); *Riley v. California*, 573 U.S. 373 (2014) (holding that the Fourth Amendment's warrant requirement applies to searches of a cell phone).

facility, produces those images on request. Once released, they cannot be recalled: they propagate to aggregation sites that solicit payment for removal and to social media accounts that assemble arrest photographs for audiences with no interest in the disposition of the case. The Legislature has already recognized the harm, entitling a person released without conviction to an order expunging arrest records and barring law enforcement agencies and courts from releasing them. *See* NMSA 1978, § 29-3A-4 (2019). But an expungement order reaches only what remains in government custody. A person who obtains an order of expungement will still find the photograph on social media, with no accompanying information as to the disposition of the charges they faced. The County recognizes that the remedy for this problem lies outside both IPRA and the Task Force's charge under House Joint Memorial 2, because the difficulty is not what a public body must disclose but what happens after disclosure. The County nonetheless asks that the Task Force note the problem in its report and identify it as a subject warranting separate legislative attention. Several states have addressed it without disturbing their public records statutes. California, for example, restricts the posting of booking photographs by law enforcement agencies to social media, requires an agency to remove a photograph it has posted upon request where charges were never filed, the person was acquitted, or the record was sealed or expunged, and separately prohibits commercial websites from conditioning removal of a booking photograph on payment. *See* Cal. Penal Code § 13665. Measures of that kind operate on publication and republication rather than on the right of inspection, leave the fact of the arrest, the charge, and the disposition fully public, and would give practical effect to relief the Legislature has already determined that persons released without conviction should receive.

III. A Substantial Share of Requests Is Submitted for Commercial Resale by Persons Outside New Mexico, and IPRA Requires County Taxpayers to Subsidize That Activity.

A. The requests.

The County regularly receives requests from national data brokers. LexisNexis, which collects public records and resells them to private customers, has submitted twenty-one requests through the County's NextRequest portal and sixty-nine requests directly to the Sheriff's Office. Thirty-three of those were submitted in February 2025 alone. LexisNexis requests fire reports and arrest records almost exclusively, and makes the resulting information available to its customers for insurance underwriting and background investigation. Ohm Analytics has submitted fifty-five requests for solar use permits issued to County residents and businesses, each covering a month of data and together spanning January 2022 to the present. That data is sold to solar energy companies for use in marketing their products.

These are not isolated requesters. Data from NextRequest shows that approximately forty percent of the requests the County receives originate with individuals or organizations located outside New Mexico.

B. IPRA forecloses both of the ordinary responses.

IPRA prohibits a public body from inquiring into the purpose of a request. § 14-2-8(C). It separately prohibits a public body from charging for the cost of determining whether a record is subject to disclosure. § 14-2-9(C)(6). A custodian may therefore neither distinguish the resale requester from the resident seeking information about County government nor recover any part of the cost of serving the former. Because custodians have finite time, requests submitted for resale displace requests submitted by members of the public. The County does not suggest that the records sought are, or should be, exempt. They are public and they should remain public. The question the County asks the Task Force to consider is who pays to locate and produce them.

The Legislature has already declined to treat the commercial exploitation of public records as an interest equivalent to public oversight. Section 14-2A-1 forbids the use of police reports to solicit victims of crimes and accidents commercially. IPRA's own statement of policy ties the right of access to an informed electorate, declaring the Act's purpose to be ensuring "that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees." § 14-2-5. A vendor assembling a marketing list of solar permit holders is not informing an electorate.

C. A residency distinction is constitutionally permissible.

In *McBurney v. Young*, 569 U.S. 221 (2013), the United States Supreme Court rejected Privileges and Immunities and dormant Commerce Clause challenges to a provision of Virginia's freedom of information act limiting its use to Virginia citizens. The Court recognized a state's interest in ensuring that its public records law serves its own citizens rather than subsidizing out-of-state commercial interests:

> By its own terms, Virginia's FOIA was enacted to "ensur[e] the people of the Commonwealth ready access to public records in the custody of a public body or its officers and employees, and free entry to meetings of public bodies wherein the business of the people is being conducted." [The plaintiff] does not allege—and has offered no proof—that the challenged provision of the Virginia FOIA was enacted in order to provide a competitive economic advantage for Virginia citizens. Rather, it seems clear that the distinction that the statute makes between citizens and noncitizens has a distinctly nonprotectionist aim. The state FOIA essentially represents a mechanism by which those who ultimately hold sovereign power (*i.e.,* the citizens of the Commonwealth) may obtain an accounting from the public officials to whom they delegate the exercise of that power. In addition, the provision limiting the use of the state FOIA to Virginia citizens recognizes that Virginia taxpayers foot the bill for the fixed costs underlying recordkeeping in the Commonwealth.

McBurney, 569 U.S. at 228 (citations omitted).

The County understands that members of the Task Force have discussed amendments that would either bar requests from non-residents outright or permit a public body to shift some or all of the cost of responding to them. The County prefers the first approach, as it would materially reduce the volume of requests. Alternatively, a cost recovery regime would allow public bodies to recover some of the significant costs dedicated to IPRA.

Whichever approach is taken, the Task Force should account for a circumvention problem. The New Mexico Supreme Court has held that IPRA permits an agent to submit a request on behalf of an undisclosed principal. *See San Juan Agricultural Water Users Association v. KNME-TV*, 2011-NMSC-011, ¶¶ 29-36, 150 N.M. 64, 257 P.3d 884. Absent a disclosure requirement, a non-resident could retain a New Mexico resident to submit requests on its behalf for a nominal fee and defeat any effort to curtail requests from out-of-state parties. Any residency provision should therefore require a requester to disclose whether the request is made on another's behalf. The County offers the following language:

> 14-2-8(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. A public body may require a person requesting records to state whether the person is a resident of New Mexico and whether the person submits the request on behalf of another person and, if so, whether that other person is a resident of New Mexico. No person requesting records shall be required to state the reason for inspecting the records.
>
> 14-2-9(C)(6): shall not charge a fee for the cost of determining whether any public record is subject to disclosure; provided that a public body may charge a requester who is not a resident of New Mexico, or who submits a request on behalf of a person who is not a resident of New Mexico, the reasonable direct cost of determining whether the requested records are subject to disclosure and of preparing those records for inspection, including, but not limited to, staff time;

This formulation preserves the existing rule for New Mexico residents, who would continue to inspect public records without charge and who need only answer a question about residency and agency. It does not authorize a charge for the act of inspection itself, and it does not permit a public body to inquire into the purpose of any request.

IV. Excessively Broad and Repetitive Requests Cannot Be Accommodated Within the Existing Statutory Timeframes.

The County regularly receives requests seeking every record of a given type over an extended period rather than identified records. These commonly seek law enforcement material, including booking photographs, body-worn camera recordings, and arrest reports, as well as property and permitting records. A related pattern is the submission of many separate requests on a single day, each directed at a different subject.

In June 2026 the County received ten requests on the same day from a single individual located outside New Mexico. Each referenced a different local newspaper article and sought all "body worn camera footage, dashcam footage, 911 recordings, radio communications, CAD logs, K-9 deployment records, drone footage, arrest reports, and incident reports" associated with the incident reported.

A single request of that scope can consume a substantial share of a custodian's available time. Law enforcement records routinely contain material that must be located and redacted before release, and a failure to do so risks the privacy of victims, witnesses, and juveniles and exposes the County to liability. The burden is greatest for audio and video, which must be reviewed in real time from beginning to end before redactions can be applied. Ten such requests submitted in one day cannot be completed within fifteen days without displacing every other request in the queue.

Section 14-2-10 permits a custodian who determines that a request is excessively burdensome or broad to respond within fifteen days with a written explanation and a reasonable estimate of when the records will be available. In practice the provision supplies no workable standard. It does not define the threshold at which it applies, and the estimate it authorizes is frequently treated by requesters as an invitation to litigate rather than as a response. The County proposes two amendments.

First, Section 14-2-10 should establish an objective threshold and a defined extension. The County suggests language along the following lines, with the numerical thresholds to be set by the Legislature on the basis of data that the County and other public bodies can supply:

> If a written request requires the review of more than [___] individual records or more than [___] hours of audio or video recording, the custodian shall, within fifteen days, notify the requester in writing of the volume of responsive material identified and of the date by which the records will be produced. The custodian shall produce responsive records on a rolling basis as the review of each record is completed.

Second, IPRA should permit a public body to sequence concurrent requests from a single requester. The County does not propose that any request be denied or that any category of record be withheld:

> A public body may adopt a written policy providing that it will process no more than a specified number of requests concurrently from the same requester or from persons acting in concert. A policy adopted pursuant to this subsection shall be published, shall be applied uniformly, shall not result in the denial of any request, and shall provide for the processing of a requester's remaining requests in the order received.

Both proposals preserve every requester's right to every record. They govern the order and the pace of production, which is the only variable a custodian actually controls.

V. The Task Force Should Recommend Amending Section 14-2-1 to Address the Consequences of *Albuquerque Journal v. Board of Education of Albuquerque Public Schools*.

On May 28, 2026, the New Mexico Supreme Court decided *Albuquerque Journal v. Board of Education of Albuquerque Public Schools*, No. S-1-SC-40671, 2026 WL 1492129 (N.M. May 28, 2026). The decision holds that records in a public employee's personnel file may no longer be withheld as "letters or memoranda that are matters of opinion . . . ." NMSA 1978, § 14-2-1(C) (2025). The Court held that a records custodian must make those records available for public inspection, redacting only statements contained in those records that constitute statements of opinion.

The County does not ask the Task Force to recommend the wholesale restoration of the prior rule, and the County does not quarrel with the result in that case. A $350,000 publicly funded buyout of an agency head is a paradigm of legitimate public interest, and public bodies should not be able to bury such matters by stamping a report as a personnel record. What the County asks the Task Force to recognize is that the broad rule the Court announced cannot be administered consistently by records custodians, and the Legislature, which has never defined "matters of opinion," is the only institution that can supply a workable line.

A. The development of the case law.

Section 14-2-1(C) exempts "letters or memoranda that are matters of opinion in personnel files or students' cumulative files." That language has stood in substantially its present form since 1947 and survived the 1993 recodification unchanged. The Supreme Court first construed it in *State ex rel. Newsome v. Alarid*, 1977-NMSC-076, ¶ 12, 90 N.M. 790, which read the exception to reach "documents concerning disciplinary action and promotions" and identified the legislative purpose as protecting employees from material that "might have no foundation in fact but, if released for public view, could be seriously damaging."

For nearly fifty years, public bodies applied the exception categorically. *Cox v. New Mexico Department of Public Safety*, 2010-NMCA-096, ¶¶ 21-22, 148 N.M. 934, 242 P.3d 501, held that it covers documents "regarding the employer/employee relationship, such as internal evaluations; disciplinary reports or documentation; promotion, demotion, or termination information; or performance assessments," while holding that a citizen complaint about an officer's on-duty conduct is not exempt. *Id.* ¶ 24. *Hall v. City of Carlsbad*, 2023-NMCA-042, ¶ 10, 531 P.3d 642, held that materials related to an internal affairs investigation fall "squarely within this exemption." And *Henry v. Gauman*, 2023-NMCA-078, ¶¶ 13, 20, 536 P.3d 498, *cert. denied*, 2023-NMCERT-010, 547 P.3d 102, squarely rejected the argument that a custodian must separate fact from opinion within a single document, reasoning that the grammatical subject of the exception is "letters or memoranda" and that Section 14-2-9(A) therefore obliges the custodian only to separate exempt documents from nonexempt documents. *Energy Policy Advocates v. Balderas*, 2024-NMCA-081, ¶ 16, 560 P.3d 37, restated that rule.

In *Albuquerque Journal*, the Supreme Court abrogated this line of case law, holding "the Legislature designated only matters of opinion within a personnel file as exempt from inspection, as opposed to factual matters or other kinds of information within a personnel file, which may be inspected." *Albuquerque Journal v. Board of Education of Albuquerque Public Schools*, No. S-1-SC-40671, 2026 WL 1492129 (N.M. May 28, 2026), slip op. ¶ 22. Extending *Jones v. City of Albuquerque Police Department*, 2020-NMSC-013, ¶ 39, 470 P.3d 252, the Court held that records in personnel files "containing both exempt and nonexempt information cannot be withheld in toto," and that Section 14-2-9(A) requires custodians to "review the requested records, separate information that is a matter of opinion from that which is not, and provide the nonopinion information for inspection." *Id.* ¶ 28. It abrogated *Henry* and *Energy Policy Advocates* expressly, *id.* ¶ 28 n.7, and held that to the extent *Newsome* and *Cox* had identified categories of presumptively exempt personnel records, those categories "have proven unreliable, if not downright misleading" and "should no longer be followed." *Id.* ¶ 22 n.4.

Two features of the Court's decision deserve emphasis. First, the Court did not hold that personnel investigations are categorically outside the exception. It abrogated categorical reasoning in both directions and remanded for the district court to determine, following review *in camera*, whether the report at issue contains matters of opinion at all. *Id.* ¶ 24. Second, and more consequentially for the County and other public bodies trying to comply with the law, the Court did not furnish a workable definition of "matters of opinion." It observed that the Legislature has not done so, *id.* ¶ 23, and assembled guidance as to the possible meaning of that phrase from federal securities decisions distinguishing "soft information" that is "not objectively verifiable" from "hard information" consisting of "statements concerning objectively verifiable historical facts," and from the law of defamation. *Id.* (citing *Lane v. Page*, 649 F. Supp. 2d 1256, 1272 (D.N.M. 2009); *Kushner v. Beverly Enterprises*, 317 F.3d 820, 830-31 (8th Cir. 2003); *Young v. Wilham*, 2017-NMCA-087, ¶ 22, 406 P.3d 988). The Court then declined to apply that framework itself, remanding to the district court instead with instructions that it consider "any other criteria the district court deems relevant." *Id.* ¶ 24.

B. <u>The line between fact and opinion cannot be drawn consistently, and least of all by non-lawyer records custodians working under a fifteen-day deadline.</u>

Setting aside the policy concerns that inform the exception, the lack of any workable definition makes it difficult for the County to treat requests consistently. This is a recipe for dissatisfaction and litigation that the task force should address in its recommendations.

The distinction between fact and opinion is among the least stable in the law. The United States Supreme Court has rejected the premise that the two can be cleanly separated, holding that expressions of opinion "may often imply an assertion of objective fact." *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 18 (1990). Elsewhere, the Court has observed that a statement of opinion necessarily asserts embedded facts about the speaker's beliefs. *See Omnicare, Inc. v. Laborers District Council Construction Industry Pension Fund*, 575 U.S. 175, 192-193 (2015) (holding that an issuer could not avoid liability for making misleading statements of fact in violation of Section 11 of the Securities Act of 1933 by prefacing statements of fact with phrases like "we believe" or "we think"). New Mexico evidence law reflects the same understanding:

under Rule 11-701 NMRA, lay opinion testimony is admissible precisely because a witness cannot testify in unmixed fact, and the ordinary shorthand rendition of observed events is fact and opinion at once.

The material commonly contained within records related to personnel investigations frequently lies in the nebulous middle between statements of fact and statements of opinion, because such records frequently consist of witness statements regarding what they believe to be true. "The employee clocked in at 9:47 a.m." is a fact. "The employee was habitually late" is a statement of opinion that necessarily implies the same (or similar) fact. "The complainant stated that the supervisor shouted at her" is a fact about an assertion. "The investigator found the complainant credible" is an opinion, but "the investigator found the complainant's account consistent with the timekeeping records" carries the same freight in the guise of a fact. Whether any of these is a "matter of opinion" is a question on which two competent lawyers may differ, and the answer usually turns on the surrounding context.

The Supreme Court's own handling of the Padilla Report in *Albuquerque Journal* underscores the problem. The Court had the twelve-page report before it in camera, with briefing from experienced counsel and four amici, and it nonetheless declined to decide "whether the Padilla Report contains matters of opinion in the first instance," remanding to the district court and inviting reliance on unspecified additional criteria. *Albuquerque Journal*, ¶ 24. The Court also emphasized that in camera judicial review is the mechanism best suited to these determinations. *Id.* ¶ 17.

The problem is that unlike the Supreme Court, the County's records custodian does not have the authority to request an advisory opinion from a district court judge when it is unclear whether a statement within a personnel record is a matter of opinion. Indeed, IPRA requires the custodian to permit inspection or issue a written denial within fifteen days. *See* §§ 14-2-8(D), -11(B). In Santa Fe County, as in most counties, the individuals who perform that work are clerks and administrative staff rather than attorneys, and the request volume described in Sections III and IV of this comment makes attorney review of every personnel record economically impossible. As a result, the custodian must now apply, unaided and against a statutory deadline, a standard that the Supreme Court itself declined to apply even though it had the benefit of a complete record and full briefing on the issues.

The consequences of error are asymmetric, and they push in one direction only. If its custodian withholds too much, the County faces penalties under Section 14-2-11(C) and damages, costs, and attorney fees under Section 14-2-12(D). If the custodian releases too much, the employee is harmed irreparably, but the County incurs no corresponding exposure under IPRA. A custodian responding rationally to that asymmetry will err against redacting statements of opinion. The practical effect of the decision will therefore be broader than its holding: the "matters of opinion" exception to inspection will be under-applied, not because the Legislature or the Court narrowed it, but because no one can apply it consistently, and the cost of guessing wrong runs only one way.

C. Releasing statements of fact from personnel files exposes public employees who are not public figures to reputational harm that IPRA no longer mitigates.

One structural feature of IPRA makes this problem the Legislature's to solve rather than the courts'. In *Republican Party of New Mexico v. New Mexico Taxation & Revenue Department*, 2012-NMSC-026, ¶¶ 15-16, 283 P.3d 853, the Supreme Court abolished the judicially created rule of reason, which had allowed courts to weigh the public interest in disclosure against countervailing privacy interests. A court may now withhold a record only under an enumerated exception, a statute, a regulation, or a privilege adopted by the Supreme Court or grounded in the constitution. New Mexico thus has no residual privacy balancing test, and it has no analogue to the federal exemptions for personnel files and law enforcement records whose disclosure "would constitute a clearly unwarranted invasion of personal privacy." *See* 5 U.S.C. § 552(b)(6), (b)(7)(C). Whatever protection public employees are to have must come from the text of an exception. If the Legislature does not supply it, no court can.

The harm falls most heavily where the public interest is weakest. *Newsome* identified the purpose of Section 14-2-1(C) as protecting employees from material that "might have no foundation in fact but, if released for public view, could be seriously damaging," 1977-NMSC-076, ¶ 12, and *Albuquerque Journal* expressly reaffirmed that purpose as "the touchstone" for the exception. *See Albuquerque Journal v. Board of Education of Albuquerque Public Schools*, No. S-1-SC-40671, 2026 WL 1492129 (N.M. May 28, 2026), slip op. ¶ 22. The remedy the Court adopted, however, inverts that purpose. Consider a complaint that the County investigates and does not sustain. The factual narrative of the allegation, including what the complainant said, who was interviewed, and what was reviewed, is likely subject to disclosure. The investigator's conclusion that the allegation was unfounded is a matter of opinion and likely to be redacted. The accusation becomes public; the exoneration does not.

The employees affected are, with rare exception, not public figures. They are detention officers, road crews, community service workers, dispatchers, and clerical staff. They lack the platform that a public school superintendent has to answer a public account of allegations against them, and they have no defamation remedy, because an accurate recitation of what a complainant alleged is not actionable. The Supreme Court has previously recognized that the privacy of a disciplinary proceeding may warrant nondisclosure even of the names of the employees involved. *See State ex rel. Barber v. McCotter*, 1987-NMSC-046, 106 N.M. 1. No one can claim that those privacy interests are any less important, especially after social media has made it possible for anyone to distribute these allegations to hundreds or thousands of people.

Aggregation and social media compound the injury. As Sections III and IV of this comment describe, and as the Task Force's own materials document, a substantial and growing share of records requests are made by commercial data brokers and individuals seeking to monetize the publication of salacious information on social media. An unsustained allegation against a public employee is no longer a document in a file drawer. It becomes an indexed, searchable, and resold record that is practically impossible to remove from the internet. It can be republished across social media and viewed by hundreds or thousands of people. The County notes the corresponding consequence for recruitment and retention: local governments compete

for a limited workforce, and a regime in which any complaint becomes public irrespective of its merit is a material disadvantage relative to private employers and the federal government.

D. Releasing the factual content of internal reports exposes employees who report misconduct to retaliation and will suppress reporting.

The second harm runs to the people the County most needs to hear from. Under *Cox*, a complaint concerning an employee's on-duty conduct is not exempt from public inspection. 2010-NMCA-096, ¶ 24. Under *Albuquerque Journal*, the factual content of an internal report is likewise subject to inspection. The combined effect is that the subject of an internal complaint may submit an IPRA request and receive the factual account of the complaint made against him.

Redacting the reporter's name does not solve this. Section 14-2-1.1 permits redaction of enumerated protected personal identifiers, but the identifying force of an internal complaint lies in its content rather than in the name: who was present, what was said, on which shift, in which office, on which date. Even assuming the names of complaining employees may be redacted, the subject of the complaint will readily infer the complainant's identity from the factual information set out in the complaint. IPRA thus requires the County to enable retaliation against complainants and whistleblowers.

New Mexico law elsewhere recognizes the State's legitimate interest in keeping complaints confidential. The Whistleblower Protection Act, NMSA 1978, §§ 10-16C-1 to -6 (2010), creates a cause of action for retaliation. But after *Albuquerque Journal*, the County is under a legal duty to furnish information about whistleblowers to would-be retaliators. Reporting obligations elsewhere in New Mexico law, from child abuse reporting under NMSA 1978, Section 32A-4-3, to the harassment and discrimination complaint procedures every public employer maintains, all presuppose that a report will not be handed to its subject. Labor law reflects the same premise. In the private sector, the National Labor Relations Board has long held that an employer need not furnish witness statements even to a union processing a grievance, precisely because disclosure invites intimidation of witnesses, *Anheuser-Busch, Inc.*, 237 NLRB 982, 984-85 (1978), and the Supreme Court has recognized that the duty to furnish information yields to legitimate confidentiality interests, *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 318-20 (1979). The National Labor Relations Act does not reach New Mexico's political subdivisions, *see* 29 U.S.C. § 152(2), and the County's labor relations are governed instead by the Public Employee Bargaining Act, NMSA 1978, §§ 10-7E-1 to -26 (2003, as amended). The point is not that federal labor law controls. It is that the confidentiality of investigative witness statements is a settled premise of employment law generally, and that IPRA is now an outlier.

If employees understand that their complaints may be produced to the persons they report, they will not make them, or will make them so guardedly that they cannot be investigated. The misconduct is then neither detected nor documented, and no public record of it is ever created for anyone to request. A rule justified by the public's right to know will, in this application, reduce what the public is able to learn about the operations of government.

E. Recommended amendments.

The County does not ask the Task Force to recommend restoring whole-document withholding under *Henry v. Gauman*. That approach arguably permitted the abuse the Supreme Court identified, because a public body could shield an entire record on the strength of "trace matters of opinion." *Albuquerque Journal*, ¶ 32. The County asks instead that the Legislature draw the line the Court found missing from the statute, and that it draw the line around the interest that actually warrants protection. The County offers the following language, which would be added to Section 14-2-1, for the Task Force's consideration:

O. personnel investigation records, as follows:

(1) as used in this subsection, "personnel investigation record" means a record created by or at the direction of a public body for the purpose of determining whether an employee of that public body violated a term or condition of employment, a policy of the public body or a provision of law;

(2) a personnel investigation record is not subject to inspection in its entirety if the investigation has not been concluded or did not result in a finding that a violation occurred;

(3) if the investigation resulted in a finding that a violation occurred, the personnel investigation record shall be made available for inspection, except that the public body shall redact matters of opinion and the information described in Paragraph (4) of this subsection;

(4) in any personnel investigation record made available for inspection, a public body shall redact the identity of a person who reported the suspected violation or who participated in the investigation as a witness, and may redact information that would tend to identify such a person; and

(5) nothing in this subsection exempts from inspection a final disciplinary action, non-privileged information relied upon by a public body in deciding to enter a settlement or separation agreement, information concerning the compensation of a public employee, or a law enforcement record governed by Section 14-2-1.2 NMSA 1978.

These amendments ensure disclosure is tied to the outcome of the investigation rather than to the fact-or-opinion character of individual sentences, which is the classification no custodian can perform reliably. The public's interest is in what its government did, and a sustained finding of misconduct is the point at which that interest attaches; there is less public

interest in disclosure of allegations the government examined and rejected. To the extent there is a public interest in the government's handling of complaints that it found to lack merit, that interest can be served by the complainant, who can choose to release information about their allegations to the public or news media. Second, the proposal makes redaction of a reporter's or witness's identity mandatory, because a discretionary protection is one on which no employee can rely, while leaving the public body discretion as to contextual information that merely tends to identify. Third, it states its carve-outs expressly, so that the proposal cannot be mistaken for an effort to conceal settlements, separation payments, salaries, or law enforcement records. The County notes that the report at issue in *Albuquerque Journal* would not have been shielded by this language.

The County separately proposes a safe harbor, which is severable from the foregoing and which the County urges the Task Force to recommend even if it declines to recommend a substantive amendment:

> A public body shall not be subject to a penalty under Subsection C of Section 14-2-11 NMSA 1978, and a court shall not award damages under Subsection D of Section 14-2-12 NMSA 1978, on account of the withholding or redaction of information pursuant to Subsection C of Section 14-2-1 NMSA 1978, where the custodian's determination that the information constituted a matter of opinion was objectively reasonable; provided that nothing in this subsection limits the authority of a court to order the production of the information or to award costs and attorney fees to a successful requester.

The safe harbor does not restrict public access to anything. A requester who prevails still obtains the record, the costs of obtaining it, and attorney fees. It provides only that a public body is not assessed damages for failing to resolve correctly, in fifteen days and without judicial assistance, a question the Supreme Court has declined to resolve. It allocates the risk of an admittedly indeterminate standard away from the party that did not create it.

VI. Require requesters to give notice of a claimed violation and intent to bring suit

It is generally understood that the four-year catch all statute of limitations applies to an action seeking to enforce IPRA. *See* NMSA 1978, § 37-1-4 (1880). This is an outlier when it comes to causes of action against the government; the limitations periods for claims under the Tort Claims Act and Civil Rights Act are both shorter. *See* NMSA 1978, §§ 41-4-15 (1977) (Tort Claims Act claims must be brought within two years of accrual), 41-4A-7 (2021) (Civil Rights Act claims must be brought within three years of accrual). In addition, the Tort Claims Act and Civil Rights Act require prospective claimants to give notice of their claim and intent to sue to the public body. *See* §§ 41-4-16 (1977) (requiring that a claimant give notice of their claim to a public body within ninety days after an occurrence giving rise to a claim), 41-4A-13 (2021) (requiring notice within one year after an occurrence).

The policy arguments that are marshalled in support of shortened limitations periods for claims against government entities in the tort and civil rights context apply with equal or greater

force to claims seeking enforcement under IPRA. Those rationales are familiar to the Task Force: a public body must be able to investigate a claim while the relevant evidence remains available, correct conduct complained of before it recurs, reserve funds and obtain coverage against an exposure that is known and reasonably bounded, and eventually close its files and order its affairs. Each of those interests is implicated more acutely by a stale IPRA claim than by a stale tort claim.

First, the evidence that is relevant to an IPRA claim is uniquely perishable, and much of it may be destroyed lawfully long before the expiration of the four-year statute of limitations. Whether a public body has violated IPRA turns on what was requested, what search was undertaken, which employees and departments were consulted, what was produced and when, and what justification was given for any withholding or redaction. That record consists largely of electronic mail, search logs, and internal correspondence, all of which are subject to retention schedules promulgated under the Public Records Act that permit destruction well within four years. A public body may therefore be called upon to defend its compliance with IPRA afer it has disposed, in full accordance with law, of the very documents that would establish that compliance. It is also frequently the case that records custodians and other employees involved in a search no longer work for a public body when a claim is finally made.

Second, an IPRA claimant is on notice of the alleged violation immediately. Unlike a tort claimant, whose injury may be latent, or a civil rights claimant, who may not initially appreciate the constitutional dimension of the conduct complained of, a requester knows the date of the request, the statutory deadline for a response, and the inspection (if any) that was permitted. Unlike the Tort Claims Act or Civil Rights Act, there is no countervailing concern about discovery and accrual supporting a longer statute of limitations.

Third, IPRA imposes no notice-of-claim requirement analogous to Sections 41-4-16 and 41-4A-13. A public body that has responded to a request and heard nothing further has no occasion to suspect that litigation is contemplated, no trigger to preserve materials outside its ordinary retention schedules, and no basis on which to reserve against the exposure.

Fourth, exposure under IPRA is not fixed at the moment of the occurrence. Statutory damages accrue for each day of noncompliance, and an award of costs and reasonable attorney fees is mandatory for a successful claimant. *See* §§ 14-2-11(C), -12(D). A limitations period twice the length of that governing tort claims permits an unasserted claim to compound into a liability that the public body cannot anticipate, cannot budget for within the annual appropriation cycle, and cannot present accurately to its risk pool or insurer for actuarial pricing.

Finally, the four-year period is difficult to reconcile with IPRA's own architecture. The Act obligates a custodian to permit inspection immediately or as soon as practicable, to explain within three business days if inspection is not permitted, and to complete production within fifteen days. See § 14-2-8(D). Those deadlines reflect a legislative judgment that access delayed is access denied. A four-year enforcement window is discordant with that judgment and serves no requester's interest in obtaining records while they remain useful.

Given these considerations, the County respectfully asks the Task Force to recommend that the Legislature adopt a notice requirement for IPRA claims, as well as a statute of limitations period that is no longer than the limitations period that applies to claims under the Tort Claims Act and Civil Rights Act.

VII. Summary of Recommended Amendments

For the reasons set out above, Santa Fe County respectfully requests that the Task Force recommend the following amendments to IPRA:

1. *Protect private spaces depicted in law enforcement recordings.* Amend Section 14-2-1.2(A) to permit redaction of visual depictions of the interior of a private residence and of the contents of a personal electronic device, subject to carve-outs for officer misconduct, for relevance to a pending prosecution, and for the written consent of the person affected. *See* Section II.

2. *Forbid non-resident requests or provide cost recovery.* Amend Sections 14-2-8(C) and 14-2-9(C)(6) to either prohibit requests for inspection by non-residents, or in the alternative permit recovery of the reasonable direct cost of responding to requests. *See* Section III.

3. *Mitigate the burdens of high-volume requests.* Amend Section 14-2-10 to establish an objective volume threshold, to require written notice of the volume identified and the date of production, and to require rolling production as review is completed. *See* Section IV.

4. *Permit sequencing of concurrent requests.* Amend Section 14-2-10 to permit a public body to adopt a published, uniformly applied policy limiting the number of requests it processes concurrently from a single requester, without denying any request. *See* Section IV.

5. *Impose reasonable limitations on the disclosure of personnel investigation records.* Amend Section 14-2-1 to add an exception for personnel investigation records, keyed to whether the investigation resulted in a sustained finding, requiring redaction of the identity of persons who report misconduct or serve as witnesses, and expressly preserving access to final disciplinary actions, settlement and separation agreements, compensation information, and law enforcement records. *See* Section V.

6. *Create a good-faith safe harbor.* Amend Sections 14-2-11 and 14-2-12 to provide that a public body is not subject to penalties or damages where a custodian's determination that information constituted a matter of opinion under Section 14-2-1(C) was objectively reasonable, while preserving the requester's right to the record, costs, and attorney fees. *See* Section V.

7. *Statute of limitations*. Adopt a reasonable statute of limitations and require prospective IPRA claims to give notice of their intent to bring a claim.

The County notes that Recommendations 3, 4, and 6 address the administration of IPRA without restricting the public's access to any record, and that Recommendations 1, 2, and 5 preserve access to all information bearing on the conduct of public officials and employees.

VIII. Conclusion

The recommendations set out above would preserve the fundamental purpose of the Inspection of Public Records Act, improve the efficiency of its administration, reduce unnecessary demands on public resources, and better protect the privacy interests of New Mexicans who have no voice in the process by which their records are released.

The County thanks the Task Force for its consideration and for the extensive public input it has solicited and considered.

Respectfully submitted,

Walker Boyd
Santa Fe County Attorney