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HOUSE BILL 507

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

W. Ken Martinez

AN ACT

RELATING TO INSPECTION OF PUBLIC RECORDS; ALLOWING EMAIL AND
FACSIMILE REQUESTS TO INSPECT PUBLIC RECORDS; SHORTENING AGENCY
RESPONSE TIMES; REQUIRING A RECORD CUSTODIAN'S SUPERVISOR TO
REVIEW DECISIONS ABOUT WHAT RECORDS ARE EXEMPT FROM INSPECTION;
REQUIRING A WRITTEN DESCRIPTION OF EXEMPT RECORDS.

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

Section 1. Section 14-2-7 NMSA 1978 (being Laws 1993,
Chapter 258, Section 4, as amended) is amended to read:

"14-2-7. DESIGNATION OF CUSTODIAN--DUTIES.--Each public
body shall designate at least one custodian of public records
who shall:

A. receive and respond, subject to the provisions
of Subsection A of Section 14-2-9 NMSA 1978, to requests to
inspect public records;

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1 B. provide proper and reasonable opportunities to
2 inspect public records;

3 C. provide reasonable facilities to make or furnish
4 copies of the public records during usual business hours; and

5 D. post in a conspicuous location at the
6 administrative office of each public body a notice describing:

7 (1) the right of a person to inspect a public
8 body's records;

9 (2) procedures for requesting inspection of
10 public records;

11 (3) procedures for requesting copies of public
12 records;

13 (4) reasonable fees for copying public
14 records; and

15 (5) the responsibility of a public body to
16 make available public records for inspection."

17 Section 2. Section 14-2-8 NMSA 1978 (being Laws 1993,
18 Chapter 258, Section 5) is amended to read:

19 "14-2-8. PROCEDURE FOR REQUESTING RECORDS.--

20 A. Any person wishing to inspect public records may
21 submit an oral [~~or~~], hard copy written, facsimile or email
22 request to the custodian. However, the procedures set forth in
23 this section shall be in response to a hard copy written,
24 facsimile or email request. The failure to respond to an oral
25 request shall not subject the custodian to any penalty.

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1 B. Nothing in the Inspection of Public Records Act
2 shall be construed to require a public body to create a public
3 record.

4 C. A hard copy written, facsimile or email request
5 shall provide the name, address and telephone number of the
6 person seeking access to the records and shall identify the
7 records sought with reasonable particularity. No person
8 requesting records shall be required to state the reason for
9 inspecting the records.

10 D. A custodian receiving a hard copy written,
11 facsimile or email request shall permit the inspection
12 immediately or as soon as is practicable under the
13 circumstances, but not later than [~~fifteen~~] ten days after
14 receiving a written request. If the inspection is not
15 permitted within [~~three~~] two business days, the custodian shall
16 explain [~~in writing~~] in the same manner as the request was made
17 when the records will be available for inspection or when the
18 public body will respond to the request. The [~~three-day~~] two-
19 day period shall not begin until the hard copy written,
20 facsimile or email request is delivered to the office of the
21 custodian.

22 E. In the event that a hard copy written, facsimile
23 or email request is not made to the custodian having possession
24 of or responsibility for the public records requested, the
25 person receiving the request shall [~~promptly~~] immediately

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1 forward the request to the custodian of the requested public
2 records, if known, and notify the requester in the same manner
3 as the request was made. The notification to the requester
4 shall state the reason for the absence of the records from that
5 person's custody or control, the records' location and the name
6 and address of the custodian."

7 Section 3. Section 14-2-9 NMSA 1978 (being Laws 1993,
8 Chapter 258, Section 6) is amended to read:

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

10 A. Requested public records containing information
11 that is exempt and nonexempt from disclosure shall be separated
12 by the custodian prior to inspection. The custodian's
13 supervisor shall review the separation to ensure that only
14 public records properly exempt from the right to inspect are
15 not made available for inspection and the nonexempt information
16 shall then be made available for inspection. If necessary to
17 preserve the integrity of computer data or the confidentiality
18 of exempt information contained in a database, a partial
19 printout of data containing public records or information may
20 be furnished in lieu of an entire database.

21 B. When a public record is determined to be exempt
22 from public inspection, the custodian shall prepare a document
23 that expressly states that the public record is exempt and
24 describes the nature of the record in a manner that, without
25 revealing the information in the record that is exempt, will

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1 enable the person seeking inspection to assess the
2 determination.

3 ~~[B-]~~ C. A custodian:

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

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

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

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

15 (5) shall provide a receipt, upon request."

16 Section 4. Section 14-2-10 NMSA 1978 (being Laws 1993,
17 Chapter 258, Section 7) is amended to read:

18 "14-2-10. PROCEDURE FOR EXCESSIVELY BURDENSOME OR BROAD
19 REQUESTS.--If a custodian determines that a hard copy written,
20 facsimile or email request is excessively burdensome or broad,
21 an additional [~~reasonable period of time~~] five business days
22 shall be allowed to comply with the request. The custodian
23 shall provide [~~written~~] notification to the requester in the
24 same manner the request was made within [~~fifteen~~] ten days of
25 receipt of the request that additional time will be needed to

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1 respond to the [~~written~~] request. The requester may deem the
2 request denied and may pursue the remedies available pursuant
3 to the Inspection of Public Records Act if the custodian does
4 not permit the records to be inspected [~~in a reasonable period~~
5 ~~of time~~] within the additional five-business-day period."

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

8 "14-2-11. PROCEDURE FOR DENIED REQUESTS.--

9 A. Unless [~~a written~~] the request has been
10 determined to be excessively burdensome or broad, a hard copy
11 written, facsimile or email request for inspection of public
12 records that has not been permitted within [~~fifteen~~] ten days
13 of receipt by the office of the custodian may be deemed denied.
14 The person requesting the public records may pursue the
15 remedies provided in the Inspection of Public Records Act.

16 B. If a hard copy written, facsimile or email
17 request has been denied, the custodian shall provide the
18 requester with a hard copy written, facsimile or email
19 explanation of the denial. The [~~written~~] denial shall:

- 20 (1) describe the records sought;
21 (2) set forth the names and titles or
22 positions of each person responsible for the denial; and
23 (3) be delivered or mailed to the person
24 requesting the records within [~~fifteen~~] ten days after the
25 request for inspection was received.

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1 C. A custodian who does not [~~deliver or mail a~~
2 ~~written~~] provide an explanation of denial pursuant to this
3 section within [~~fifteen~~] ten days after receipt of a [~~written~~]
4 request for inspection is subject to an action to enforce the
5 provisions of the Inspection of Public Records Act and the
6 requester may be awarded damages. Damages shall:

7 (1) be awarded if the failure to provide a
8 timely explanation of denial is determined to be unreasonable;

9 (2) not exceed one hundred dollars (\$100) per
10 day;

11 (3) accrue from the day the public body is in
12 noncompliance until a [~~written~~] denial is issued; and

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

15 Section 6. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is July 1, 2009.

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