

AN ACT

RELATING TO PUBLIC RECORDS; ALLOWING FOR ELECTRONIC REQUEST OF PUBLIC RECORDS; REQUIRING A PUBLIC RECORDS CUSTODIAN TO MAKE PUBLIC RECORDS AVAILABLE VIA ELECTRONIC MEDIA UPON REQUEST.

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

Section 1. Section 14-2-8 NMSA 1978 (being Laws 1993, Chapter 258, Section 5) is amended to read:

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

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

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

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. No person requesting records shall be required to state the reason for inspecting the records.

D. A custodian receiving a written request shall permit the inspection immediately or as soon as is practicable

under the circumstances, but not later than fifteen days after receiving a written request. If the inspection is not permitted within three business days, the custodian shall explain in writing when the records will be available for inspection or when the public body will respond to the request. The three-day period shall not begin until the written request is delivered to the office of the custodian.

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

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

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

A. Requested public records containing information that is exempt and nonexempt from disclosure shall be separated by the custodian prior to inspection, and the nonexempt information shall be made available for inspection. If necessary to preserve the integrity of computer data or the confidentiality of exempt information contained in a database,

a partial printout of data containing public records or information may be furnished in lieu of an entire database.

B. A custodian:

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

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

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

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

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

Section 3. Section 14-2-11 NMSA 1978 (being Laws 1993, Chapter 258, Section 8) is amended to read:

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

A. Unless a written request has been determined to be excessively burdensome or broad, a written request for inspection of public records that has not been permitted within fifteen days of receipt by the office of the custodian may be deemed denied. The person requesting the public records may pursue the remedies provided in the Inspection of Public Records Act.

B. If a written request has been denied, the custodian shall provide the requester with a written explanation of the denial. The written denial shall:

- (1) describe the records sought;
- (2) set forth the names and titles or positions of each person responsible for the denial; and
- (3) be delivered or mailed to the person requesting the records within fifteen days after the request for inspection was received.

C. A custodian who does not deliver or mail a written explanation of denial within fifteen days after receipt of a written request for inspection is subject to an action to enforce the provisions of the Inspection of Public Records Act and the requester may be awarded damages. Damages shall:

- (1) be awarded if the failure to provide a timely explanation of denial is determined to be unreasonable;
- (2) not exceed one hundred dollars (\$100) per day;
- (3) accrue from the day the public body is in noncompliance until a written denial is issued; and
- (4) be payable from the funds of the public body."