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HOUSE BILL 160

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Eleanor Chavez

AN ACT

RELATING TO PUBLIC RECORDS; REQUIRING A PUBLIC RECORDS
CUSTODIAN TO MAKE PUBLIC RECORDS AVAILABLE VIA ELECTRONIC
MEDIA; REQUIRING A PUBLIC BODY TO DISPLAY PROCEDURES FOR
REQUESTING PUBLIC RECORDS FROM AND CONTACT INFORMATION FOR THE
PUBLIC RECORDS CUSTODIAN ON A WEB SITE.

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, as amended) is amended to read:

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

A. A public body holding public records shall
display on a publicly accessible web site the procedure for
requesting records from and contact information for the
custodian from whom any person may request to inspect public
records.

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1 ~~[A-]~~ B. Any person wishing to inspect public
2 records may submit an oral or written request to the custodian.
3 However, the procedures set forth in this section shall be in
4 response to a written request. The failure to respond to an
5 oral request shall not subject the custodian to any penalty.

6 ~~[B-]~~ C. Nothing in the Inspection of Public Records
7 Act shall be construed to require a public body to create a
8 public record.

9 ~~[G-]~~ D. A written request shall provide the name,
10 address and telephone number of the person seeking access to
11 the records and shall identify the records sought with
12 reasonable particularity. No person requesting records shall
13 be required to state the reason for inspecting the records.

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

23 ~~[E-]~~ F. In the event that a written request is not
24 made to the custodian having possession of or responsibility
25 for the public records requested, the person receiving the

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

7 ~~[F-]~~ G. For the purposes of this section, "written
8 request" includes an electronic communication, including email
9 or facsimile; provided that the request complies with the
10 requirements of Subsection ~~[G]~~ D of this section."

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

13 "14-2-9. PROCEDURE FOR INSPECTION.--

14 A. Requested public records containing information
15 that is exempt and nonexempt from disclosure shall be separated
16 by the custodian prior to inspection, and the nonexempt
17 information shall be made available for inspection. If
18 necessary to preserve the integrity of computer data or the
19 confidentiality of exempt information contained in a database,
20 a partial printout of data containing public records or
21 information may be furnished in lieu of an entire database.

22 B. 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 page for documents eleven inches by
3 seventeen inches in size or smaller;

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

6 (4) shall not charge a fee for the cost of
7 determining whether any public record is subject to disclosure;
8 [~~and~~]

9 (5) shall provide a receipt, upon request; and

10 (6) shall make public records available in
11 electronic form accessible from a remote location, upon
12 request, for a fee of twenty-five cents (\$.25) or less per
13 page."

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

16 "14-2-11. PROCEDURE FOR DENIED REQUESTS.--

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

24 B. If a written request has been denied, the
25 custodian shall provide the requester with a written

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1 explanation of the denial. The written denial shall:

- 2 (1) describe the records sought;
- 3 (2) set forth the names and titles or
- 4 positions of each person responsible for the denial; ~~and~~
- 5 (3) be made in the same medium, electronic or
- 6 paper, in which the written request was made; and
- 7 ~~(3)~~ (4) be delivered or mailed to the person
- 8 requesting the records within fifteen days after the request
- 9 for inspection was received.

10 C. A custodian who does not deliver or mail a

11 written explanation of denial within fifteen days after receipt

12 of a written request for inspection is subject to an action to

13 enforce the provisions of the Inspection of Public Records Act

14 and the requester may be awarded damages. Damages shall:

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