

LFC Requester:

Helen Gaussoin 1051

## AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

### **SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

**Date Prepared:** 1/30/25

*Check all that apply:*

**Bill Number:** HB 139

Original        Correction         
Amendment X Substitute       

**Sponsor:** Rep. Kathleen Cates

**Agency Name and Code Number:** 305 – New Mexico  
Department of Justice

**Person Writing**

**Analysis:** Carrie Cook

**Short Title:** Inspection of Public Records  
Act

**Phone:** 505-537-7676

**Email:** legisfir@nmag.gov

### **SECTION II: FISCAL IMPACT**

#### **APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
N/A	N/A		

(Parenthesis ( ) indicate expenditure decreases)

#### **REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
N/A	N/A	N/A		

(Parenthesis ( ) indicate revenue decreases)

#### **ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 Duplicates/Relates to Appropriation in the General Appropriation Act

### **SECTION III: NARRATIVE**

*This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator's request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

### **BILL SUMMARY**

**Synopsis:** House Bill 139 ("HB139" or the "Bill") seeks to amend the Inspection of Public Records Act ("IPRA") found in NMSA 1978, Sections 14-2-1 to -12.

Section 1: Revised definitions

Section 2: Duties of a records custodian; no substantive changes from Section 14-2-7.

Section 3: Procedure for requesting records; appears to remove the three-day notice period notifying requestors when records will be available. Requires requestors to provide an email address in addition to their name and address. Also creates a sixty-day period for "archival records", records older than one year, or audio or visual records. Also changes the procedure for excessively burdensome responses so instead of the custodian of records notifying the requestor within fifteen days that their request is excessively burdensome and more time is needed, the custodian may discuss the large volume with the requestor and clarify or how it may be narrowed.

Section 4: Requesting electronic records; disallows a public body to enter into a contract for the creation or maintenance of a database that would impair the ability of the public to inspect public records. May require public bodies to provide nonexempt data in stored databases but appears to allow for protected information to be excluded or redacted.

Section 5: Wrong custodian; requires custodian to send request promptly to the correct custodian.

Section 6: Procedure for inspection; the records custodian shall separate the exempt and nonexempt records prior to providing to the requestor; no substantive changes from Section 14-2-9.

Section 7: Cost recovery; allows records custodians to charge a reasonable fee not exceeding \$30.00/hour, excluding the first hour, for locating records, and allows custodians to combine five or more requests from one person within a forty-five day period into a single request for billing. Slightly increases the costs for paper copies and allows fees for electronic transmission and authentication. Allows fees to be required in advance for locating, redacting, and making copies of records. Public bodies can refuse requestors who wish to inspect records in person repeatedly or who are disruptive.

Section 8: Creating and maintaining records; expands on Section 14-2-8 setting limitations of duties of records custodian regarding creation of records, maintenance of records, answering questions or giving legal advice.

Section 9: Attorney-client privilege – Litigation records; significant expansion on Section 14-2-1(G). Includes exceptions for privilege as defined by the New Mexico Rules of Professional Conduct and also contains provisions for attorney work product, damages claims, settlement agreements prior to execution, sealed records, or records subject to any type of confidentiality or court order.

Section 10: Economic development records – Communication Provider Records; creates exemption for records pertaining to prospective business or industry prior to public disclosure.

Section 11: Education records; creates exemption for records of educational records of students within IPRA.

Section 12: Election records; creates a temporary exemption for election records from the fifty-sixth day prior to an election until the election has been certified by either the county or state canvassing board, whichever is later.

Section 13: Law enforcement records; creates a tolling period until forty-five days after law enforcement becomes aware of the crime. Expands on Section 14-2-1.2. Proposes to protect victims of a wider range of crimes, including assault against a household member, abandonment of a child, incest, human trafficking, voyeurism, or abuse pursuant to the Resident Abuse and Neglect Act. Exempts juveniles who are witnesses or victims. Exempts undercover officers. Exempts audio or video unless they depict an alleged crime, record an encounter between an officer and person that results in death or bodily injury or includes the officer discharging a weapon, or record an encounter that is the subject of a legal proceeding against a law enforcement officer or agency. Exempts correctional facility records regarding inmate's medical condition, personal property, commissary, financial accounts or communications.

Section 14: Infrastructure records – cybersecurity; Expands Section 14-2-1(J). Exempts cybersecurity information or critical infrastructure from inspection.

Section 15: Library records; exempts information of patrons of libraries, including information requested or borrowed and the use of services, databases, and computers.

Section 16: Medical records; Exempts all medical records containing medical information. Exempts autopsy photographs, video, or audio recordings.

Section 17: Procurement records; Exempts records submitted to a body by a bidder on a public contract that relate to the financial stability of the bidder. Exempts requests for proposals and materials submitted for sealed bids prior to the award of a contract. Exempts property appraisals until an offer is accepted.

Section 18: Public employee records; Expands Section 14-2-1(B). Adds exemptions for “personal information” in an employee's personnel record. Exempts records for medical treatment or use of assistance programs.

Section 19: Security records; Expands Section 14-2-1(I). Exempts tactical response plans that could be used to facilitate a terrorist attack. Specifically exempts recording the security system of publicly accessible facility of a public body.

Section 20: Social services records; exempts records for applicants or recipients of unemployment or economic assistance.

Section 21: Utility records; exempts customer records for utility services.

Section 22: Victims of Crimes Reports; exempts the personal information of the victims and their family where the defendant has been convicted of an indictable offense. Personal information includes addresses, phone numbers, or any other identifying information, and a public body may deny inspection of all such information. Confidential records shared between authorized public bodies would remain confidential.

Section 23: General exceptions; Expands Section 14-2-1. Exempts personal email addresses or phone numbers provided to public entities for the purposes of communicating or applying for a license. Exempts real estate records or other real property records recorded with a county clerk. Creates exemption for records required to be kept confidential by law or regulation.

Section 24: Vexatious requesters; allows public bodies to file a petition with the state commission seeking relief from a person they claim is a vexatious requester. The petition must include the name, contact information, and a description of the vexatious conduct, including conduct toward other public bodies. The petition must be served on the respondent contemporaneously. Within fourteen days of receipt, the state records administrator must set a hearing, to be held between twenty-eight and seventy days after the filing of the petition. The respondent may file a response up to seven business days prior to the hearing. No discovery is allowed. Both parties shall be allowed to testify and present evidence. Within twenty-eight days of the hearing, the state commissioner shall issue a signed order. If the requester is found to be vexatious, no public body is required to respond to their requests for three years after the finding. Either side can appeal the decision within sixty days of service of the decision to the district court in the county where petition maintains its principal office. The state commission shall keep a list of vexatious requesters and all decisions of petitions.

Section 25: Enforcement; Expands Section 14-2-12. Expressly limits the suit to the public body, and states that no records custodian, employee or official can be named as a defendant. Requires that public bodies be given an opportunity to cure alleged violations of IPRA prior to filing suit. Requesters would be required to give notice of intent to sue in writing to the records custodian sixty days prior to filing suit. The notice of intent to sue would have to state the unfulfilled request and the records they believe were not provided. A district court can issue a writ of mandamus or injunction or other remedy after the public body has been served and been found by the court to have not produced records in violation of IPRA. The court shall award damages only in cases where the public body did not act in good faith or failed to provide a reasonable denial. The public body may file a complaint seeking declaratory judgment to receive a determination whether a request made under IPRA seeks information exempt from disclosure or otherwise does not comply with IPRA.

Section 26 proposes the repeal of NMSA 1978, Sections 14-2-1 to -1.2, 14-2-6 to -12.

Section 27 proposes an effective date of July 1, 2025.

## **FISCAL IMPLICATIONS**

The New Mexico Department of Justice (the “NMDOJ”) would likely incur additional costs of the proposed legislation of SB139. As proposed SB139 states that the NMDOJ is required to enforce IPRA, and such requirements will affect the budget of the agency.

## **SIGNIFICANT ISSUES**

The apparent removal of the three-day notice and the changes regarding the fifteen and sixty-day deadlines in the statute may affect the entity’s ability to provide public records timely.

Section 24 of SB139 would create new claims for public bodies to assert against vexatious requesters and would require administrative hearings and possible litigation. Such claims which have been allowable in some states for litigation matters, have not been historically allowed for request of information. Furthermore, the proposed language of SB139 does not definitively state what standard a public body will use to determine that a requestor is vexatious. As proposed the language would likely go against the legislative intent of the IPRA, which in itself is a transparency law providing the public to opportunity to understand what its government is doing. By adding such language to IPRA, it could effectively deter the public from making valid requests. Additionally, Section 24 would require that when someone is determined to be vexatious, they are barred from making another request for records for three (3) years. SB139 as proposed could violate the public’s access to otherwise public records that they have a right to under the public records act (NMSA 1978, Section 14-3-1 to -24).

Section 25 modifies enforcement to limit liability to public body only, not records custodians or other public employees. Also limits damages for public bodies to cases where they are found to have been acting in bad faith or where they failed to provide a reasonable denial. Such modification could prevent the public from seeking recourse.

Section 7 changes fee structure to include costs for research, including a \$30.00/hour research fee that can be requested in advance. The cost may be outside what individuals are able or willing to pay and might make prevent New Mexicans from accessing records. As proposed SB139’s increase to a per hour rate could require tens of thousands of dollars for the production of documents that the public otherwise would have a right to under this statute. Such a requirement could hinder the people’s rights to access of information. Additionally, the fee as proposed does not necessarily equal the compensation that is likely provided to the Records Custodian for fulfilling their duties, which could likely create a stream of revenue for every public body. SB139 also creates a requirement of emailing documents when available, which may limit the ability of incarcerated or other individuals in rural or smaller communities to request records.

As proposed SB139 significantly expands the exemptions for records included within the IPRA statute itself.

## **PERFORMANCE IMPLICATIONS**

The NMDOJ is called to enforce the IPRA and its requirements. Enforcement of the IPRA would require additional attorneys, staff, and resources to conduct thorough investigations, discovery, interviews, and bring potential litigation matters. It is not clear whether the NMDOJ would be required to bring vexatious suits or work on administrative hearings for vexatious requestors.

## **ADMINISTRATIVE IMPLICATIONS**

The NMDOJ is called to enforce the IPRA and its requirements. Enforcement of the IPRA would require additional attorneys, staff, and resources to conduct thorough investigations, discovery, interviews, and bring potential litigation matters. It is not clear whether the NMDOJ would be required to bring vexatious suits or work on administrative hearings for vexatious requestors.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

### **Conflict:**

House Bill 497: Revising the Inspection of Public Records Act, providing exemptions from inspections, revising deadlines, designating additional records as law enforcement records, providing additional definitions, revising procedures for requesting and denying requests for public records, and revising provisions related to enforcement.

Senate Bill 171: Providing for redaction of certain information.

## **TECHNICAL ISSUES**

As a public policy, the Inspection of Public Records Act provides the people the greatest transparency of their government to instill trust and accountability. Limiting or effectively discouraging the public from participating in this level of transparency would be contrary to original legislative intent of IPRA.

## **OTHER SUBSTANTIVE ISSUES**

N/A

## **ALTERNATIVES**

N/A

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status Quo

## **AMENDMENTS**

N/A