

2300

INSPECTION OF PUBLIC RECORDS

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Authorized by UNM Regents' Policy 2.17 "Public Access to University Records"

1. Introduction

Citizens in a democracy have a fundamental right to have access to public records. This right is recognized by the New Mexico Legislature through the New Mexico Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 et seq. ("IPRA"), and by the New Mexico Supreme Court, which stated in 1977 that a citizen's right to know is the rule and secrecy is the exception. This Policy and other related policies, including "Recruitment and Hiring," Policy 3210, UBP and "Disclosure of Personnel Information," Policy 3710, UBP deal in whole or in part with the legal obligations of the University under IPRA. IPRA provides that every person has a right to inspect the public records of this state, subject to certain exceptions. "Public records" are defined by IPRA as all documents and records, regardless of physical form, that are used, created, received, maintained or held by or on behalf of any public body and relate to public business, whether or not the records are required by law to be created or maintained.

2. General

The University is committed to fully complying with IPRA, and to making certain that pertinent University policies conform to existing IPRA requirements. Nevertheless, the right of public inspection under IPRA is subject to certain exceptions. The right of public inspection is limited to existing public records, and the University is not required to create a public record that does not otherwise exist. This policy sets forth the University's procedures for compliance with the New Mexico Inspection of Public Records Act (Chapter 14, Article 2, NMSA 1978). Public records are defined in the Act as all documents, papers, letters, books, maps, tapes, photographs, recordings, and other materials, regardless of physical form or characteristics that are used, created, received, maintained, or held by or on behalf of any public body or relate to public business, whether or not the records are required by law to be created or maintained. Access is limited to existing public records; the University is not required to create new documents or provide records in any specific format except in accordance with the American with Disabilities Act (ADA) requirements. Exceptions to the right to inspect public records that are specifically listed in IPRA include, but are not limited to, medical or student records, letters of reference concerning employment, licensing or permits, matters of opinion in personnel or student files, confidential law enforcement records, documents covered by the Confidential Materials Act, trade secrets, attorney-client privileged information, and records that are considered non-public "as otherwise provided by law." Listing every kind of record that is exempt from IPRA disclosure requirements is not practical, and no attempt has been made in this and the related policies to interpret the application of IPRA to every kind of record that may become the subject of an IPRA request. However, some examples of records that the University considers exempt from public disclosure under IPRA include employee Social Security numbers, personnel evaluations, opinions regarding whether a person would be re-hired or regarding why an applicant was not hired, proprietary and protected information provided by a third

party, and data relating to intellectual property or research that may result in patentable inventions, significant discoveries, or publications. ~~When a document~~ If a document contains both exempt and non-exempt information, the University must separate the non-exempt material and make it available for inspection.

Medical records are exempt from public inspection under IPRA. ~~are not covered by this policy, and~~ Individuals requesting copies of medical records should contact the specific hospital, center, or clinic that rendered care, such as UNM Hospital, Cancer Research and Treatment Center, Family Practice Clinic, Children's Psychiatric Center, or Carrie Tingley Hospital for procedures and the applicable fee schedule. Medical records are covered by the Health Insurance Portability and Accountability Act (HIPAA) as described on the University Health Sciences Center HIPAA web page. Student records are exempt from public inspection as provided under the Family Educational Rights and Privacy Act ("FERPA"). ~~also not covered by this policy.~~ Students requesting their records should contact the University Registrar or the Student Health Center as appropriate. If student records are requested, the University will comply with ~~the Family Educational Rights and Privacy Act~~ FERPA which pertains to all student records.

3. Custodian

The University Custodian of Public Records (the "Custodian"), in the Office of University Counsel, is the official custodian of public records for the University, including the Health Sciences Center and the branch campuses. The President of the University shall provide information on the University's website concerning how to contact the Custodian. The Custodian is responsible for: ~~The University Director of Communications is the custodian of public records for the University, including branch campuses, and the Director of Health Sciences Center (HSC) Public Affairs Office serves as custodian of public records for the Health Sciences Center. The designated custodian is responsible for:~~

- responding to all requests to inspect public records;
- determining whether requested records exist and where they are located, and working with the Office of University Counsel Office about any apparent legal issues related to producing records for inspection and possible denials of requests;
- providing proper and reasonable opportunities to inspect public records, including assembling the records as appropriate;
- providing reasonable facilities to make copies or furnish copies of the public records during usual business hours;
- consulting with intellectual property counsel for the University or for STC.UNM regarding any requests that might involve disclosure of trade secrets or attorney-client privileged information related to intellectual property; and
- ~~notifying appropriate third parties if a request involves their proprietary information or if otherwise required by law; and~~
- maintaining a log of all requests that include the date and nature of the request, a copy of the request, any correspondence relating to the request, date of the response, copies of all documents made available in the response, and any other pertinent information.

Only the ~~designated~~ Custodian, or a designee of the Custodian may respond to requests for public records, ~~other than~~ except for requests for medical records or student records as specified in **Section 2.** herein, and requests to be handled by the University Archivist as specified in Section 4. herein. ~~requests to the Department of Human Resources concerning personnel records, and oral requests made to staff in Zimmerman Library for documents routinely available in the library. The HSC Director of Public Affairs shall notify the Director of Communications of the receipt of requests for public records.~~

4. Procedure for Requesting Public Records

Public copies of certain University documents, including recent Regent agendas, the current salary book and the Detailed Operating Budget for the current and previous years are available for inspection through the Reserve Desk in the Zimmerman Library. Other University publications which are of high interest because of the subject matter are also held for brief periods of time at the Reserve Desk. To view public records held by the University Archives, also located in Zimmerman Library, the requester should contact the University Archivist.

Individuals who want to inspect public records of the University other than medical or student records, ~~personnel records~~, or documents that are available in the Zimmerman Library must submit a ~~written~~ request to *the Custodian, identifying the records sought with reasonable particularity. Oral requests are generally permissible, but the Custodian may, for good cause, ask the requester to make a formal request in writing.* A written request must include the requester's name, address and telephone number. No person requesting records shall be required to state the reason for inspecting the records. ~~Any University employee designated custodians. The written request must include the requester's name, address, telephone number, and identify the records with reasonable particularity. The requester does not need to state the reason for the request. Verbal requests will not be allowed. Faculty, staff, or students who receives a request for inspection of public records shall promptly~~ ~~must immediately~~ forward the request to the ~~designated~~ Custodian and notify the requester that the request has been forwarded.

4.1. Notification that Information has been Requested.

If an IPRA request seeks information relating specifically to a particular individual or to a small number of individuals, such as a current or former employee or student or an applicant for employment, the Custodian will promptly give notice to each such individual of the request and the name of the requester. Such notice may be given by any means (including, for example, by telephone, e-mail or postal mail) that appears under the circumstances to be reasonably calculated to impart prompt actual notice to each individual who is the subject of the request. Within five (5) days after the Custodian has given such notice, any individual so notified may provide comments to the Custodian regarding the request or the requester. No individual who has been so notified may prevent the Custodian from releasing the requested information if that information is subject to public inspection under IPRA.

4.2. Time Required for Compliance

The time requirements in this section reflect the requirements of *IPRA, and are based on the date when the written request is delivered to the office of the Custodian. If the records sought are subject to public inspection under IPRA, the Custodian shall permit inspection sought by a written request immediately or as soon as is practicable under the circumstances, but not later than fifteen (15) days after receiving such written request.* ~~The Inspection of Public Records Act. The time requirements for replying to a written inspection of public records request are based on the date when the custodian, defined in Section 2: herein, actually receives the request. The custodian will strive to provide an opportunity to inspect the requested records within three (3) business days, but normally no later than fifteen (15) calendar days after receipt of the request. In determining whether permitting the inspection within three (3) business days is reasonably practicable under the circumstances, the Custodian may consider whether notice of the request has been given to any individual as provided in Section 4.1, above, and if so, any comments that any such individual has provided to the Custodian. If the inspection is not permitted within three (3)~~

business days, the Custodian shall explain to the requester in writing when the records will be available for inspection or when the University will respond to the request. Excessively burdensome or broad requests where compiling or copying documents may be unduly time consuming or difficult may require more than fifteen (15) calendar days. In such cases, the Custodian shall notify the requester within fifteen (15) calendar days of the need for additional time, the reason for the delay, and the date the records will be available for inspection. If the University does not respond to the requester within fifteen (15) calendar days, the request will be deemed to have been denied and the requester ~~may will have the right to~~ seek judicial remedies under ~~IPRA Inspection of Public Records Act~~. For this reason, it is critical that written requests for public records be forwarded to the ~~appropriate~~ Custodian immediately as specified in Section 4., above.

4.3. Cost of Providing Records

As permitted by IPRA, the University will normally charge for copying records in accordance with the fee schedule published by the Custodian University Office of Communication and Marketing. If the estimated cost exceeds ten dollars (\$10), the ~~Custodian University Office of Communication and Marketing.~~ should provide an estimate of the charges and may require advance payment before making copies. If the University determines the information primarily benefits the general public, the University may waive or reduce the charges. The University may require payment of overdue balances before processing additional requests from the same requester.

5. Denial of Request

~~If~~ ~~When~~ a written request is denied, in whole or in part, the ~~designated~~ Custodian must deliver or mail to the requester ~~person requesting the records~~ a written explanation no later than fifteen (15) calendar days after the ~~Custodian received the~~ written request. ~~is received by the designated custodian.~~ The explanation of denial must describe the records sought, the legal reason for the denial, the names and titles or positions of each person responsible for the denial, and the requester's right to pursue the remedies provided in ~~IPRA. the Inspection of Public Records Act~~. When a request is denied, the requested records must be retained until remedies under ~~IPRA. the Inspection of Public Records Act~~ have been exhausted. Before a determination is made to deny a request, the ~~designated~~ Custodian shall consult with the Office of University Counsel to determine whether denial of the request is permissible under IPRA and other University policies, including without limitation, "Public Access to University Records" Policy 2.17 RPM. ~~University Counsel concerning the legal reasons for denial.~~

6. References and Related Information

"Confidentiality of Faculty Records," C70, Faculty Handbook
Criminal Offender Employment Act NMSA 1978 §§ 28-2-1 et seq.
Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g
Fair Credit Reporting Act 9 (FCRA) 15 U.S.C. § 1681 et seq.
Federal Privacy Act of 1974 (5 U.S.C. Sec. 552a)
Financial Services Modernization Act of 1999, also known as the Gramm-Leach-Bliley Act or GLBA,
GLBA Safeguards Rule, 16 CFR Part 314
"Information Security," Policy 2550, UBP
"Personnel Information Disclosure Policy," Policy 3710, UBP
Public Records Act 14-3-1 et seq., NMSA 1978
"Recruitment and Hiring," Policy 3210, UBP
"Social Security Numbers," Policy 2030, UBP

Comments may be sent to UBPPM@UNM.edu
<http://www.unm.edu/~ubppm>

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