

CHAPTER 14

Records, Legal Notices and Oaths

Art.

2. Inspection of Public Records, 14-2-1 to 14-2-12.

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ARTICLE 2

Inspection of Public Records

Sec.

14-2-1. Right to inspect public records; exceptions.

14-2-1. Right to inspect public records; exceptions.

A. Every person has a right to inspect any public records of this state except:

(1) records pertaining to physical or mental examinations and medical treatment of persons confined to any institution;

(2) letters of reference concerning employment, licensing or permits;

(3) letters or memorandums which are matters of opinion in personnel files or students' cumulative files;

(4) law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime. Law enforcement records include evidence in any form received or compiled in connection with any criminal investigation or prosecution by any law enforcement or prosecuting agency, including inactive matters or closed investigations to the extent that they contain the information listed above;

(5) as provided by the Confidential Materials Act [14-3A-1, 14-3A-2 NMSA 1978];

(6) trade secrets, attorney-client privileged information and long-range or strategic business plans of public hospitals discussed in a properly closed meeting;

(7) public records containing the identity of or identifying information relating to an applicant or nominee for the position of president of a public institution of higher education; and

(8) as otherwise provided by law.

B. At least twenty-one days before the date of the meeting of the governing board of a public institution of higher education at which final action is taken on selection of the person for the position of president of the institution, the governing board shall give public notice of the names of the finalists being considered for the position. The board shall consider in the final selection process at least five finalists. The required notice shall be given by publication in a newspaper of statewide circulation and in a newspaper of county-wide circulation in the county in which the institution is located. Publication shall be made once and shall occur at least twenty-one days and not more than thirty days before the described meeting.

C. Postponement of a meeting described in Subsection B of this section for which notice has been given does not relieve the governing body from the requirement of giving notice of a rescheduled meeting in accordance with the provisions of Subsection B of this section.

D. Action taken by a governing body without compliance with the notice requirements of Subsections B and C of this section is void.

E. Nothing in Subsections B through D of this section prohibits a governing body from identifying or otherwise disclosing the information described in this section.

History: 1941 Comp., § 13-501, enacted by Laws 1947, ch. 130, § 1; 1953 Comp., § 71-5-1; Laws 1973, ch. 271, § 1; 1981, ch. 47, § 3; 1993,

ch. 260, § 1; 1998 (1st S.S.), ch. 3, § 1; 1999, ch. 158, § 1.

- I. General Consideration.
- III. Exceptions.

I. GENERAL CONSIDERATION.

The 1998 amendment, effective May 11, 1998, designated the former introductory paragraph as Subsection A, redesignated the existing paragraphs thereunder as Paragraphs A(1)-(5) and (7), and added Paragraph A(6), making minor stylistic changes; and added Subsection B.

The 1999 amendment, effective April 5, 1999, in Subsection A added Paragraph (6) and redesignated the remaining paragraphs accordingly.

incorporates an administrative regulation that effectuates the legislature's intent in enacting the Public Employee Bargaining Act; any benefit to the public from inspecting the representation petition filed under that act would be significantly outweighed by a public employee's privacy interest. *City of Las Cruces v. Public Employee Labor Relations Bd.*, 1996-NMSC-024, 121 N.M. 688, 917 P.2d 451 (1996).

III. EXCEPTIONS.

Meaning of "as otherwise provided by law". — The exception in Subsection F of this section

14-2-12. Enforcement.

Remedy for denial of access to tax assessment records. — Taxpayers who believed that assessor wrongfully denied them access to public records should have pursued the remedies provided in this section. To the extent the board found that the information sought was irrelevant to the assess-

ment of taxpayers' property, there was no error in the board's refusal to sanction assessor. *Hannahs v. Anderson*, 1998-NMCA-152, 126 N.M. 1, 966 P.2d 168 (Ct. App.), cert. denied, N.M. , 972 P.2d 351 (1998).

**ARTICLE 3
Public Records**

14-3-1. Short title.

Cross references. — For the Electronic Authentication of Documents Act, see Chapter 14, Article 15 NMSA 1978.

14-3-15.2. Electronic authentication; substitution for signature.

Cross references. — For the Electronic Authentication of Documents Act, see Chapter 14, Article 15 NMSA 1978.

**ARTICLE 6
Health and Hospital Records**

Sec.

14-6-3. Access to medical records by applicants for disability benefits; violations.

14-6-3. Access to medical records by applicants for disability benefits; violations.

A. Within thirty days of receiving a request from a patient or former patient who is applying for benefits based on social security disability or who is appealing a denial of such benefits or from an authorized representative of such a patient or former patient, a health

purposes recited herein, be deemed to be a transcript, exemplification or certified copy of the original.

History: 1941 Comp., § 13-408, enacted by Laws 1947, ch. 185, § 3; 1953 Comp., § 71-4-8.

Newspapers maintained by county clerks may be microfilmed, so long as the microfilm is accessible to the public. 1979 Op. Att'y Gen. No. 79-16.

Copy did not violate best evidence rule. — A copy of the statement defendant gave to the police which was introduced into evidence did not violate the best evidence rule. *State v. Darden*, 86 N.M. 198, 521 P.2d 1039 (Ct. App. 1974).

14-1-7. Destruction of obsolete county records.

The following county records shall be deemed obsolete and may be destroyed:

- A. purchase vouchers which are six years old;
- B. chattel mortgages six years after the expiration of their term;
- C. security agreements filed under the Uniform Commercial Code [Chapter 55 NMSA 1978] six years after the expiration of their term;
- D. copies of state highway project contracts filed by the chief highway engineer three years after the date of filing;
- E. duplicate information reports filed in the offices of county officials, including but not limited to duplicate reports of the county treasurer, sheriff, county agricultural agents and county health officers, which are two years old;
- F. chattel mortgage releases six years after the date of filing; and
- G. termination statements filed under the Uniform Commercial Code six years after the date of filing.

History: 1953 Comp., § 71-4-10, enacted by Laws 1957, ch. 192, § 1; 1965, ch. 123, § 1; 1967, ch. 82, § 1.

County employee payment vouchers and county clerk receipt books. — County employee payment vouchers for the period 1920 through 1950 presumably can be considered obsolete and can be

destroyed after following the procedure set forth in 14-1-8 NMSA 1978. The same would apply to county clerk receipt books which are more than four years old. 1961-62 Op. Att'y Gen. No. 61-127.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 66 Am. Jur. 2d Records and Recording Laws § 10. 76 C.J.S. Records § 30 et seq.

14-1-8. [Obsolete county records; notice of proposed destruction; preservation desired by state records administrator; delivery of documents.]

An official charged with the custody of any records and who intends to destroy those records, shall give notice by registered or certified mail to the state records administrator, state records center, Santa Fe, New Mexico, of the date of the proposed destruction and the type and date of the records he intends to destroy. The notice shall be sent at least sixty days before the date of the proposed destruction. If the state records administrator wishes to preserve any of the records, the official shall allow the state records administrator to have the documents by calling for them at the place of storage.

History: 1953 Comp., § 71-4-11, enacted by Laws 1957, ch. 192, § 2; 1961, ch. 81, § 1.

Determination records obsolete to be made. — Prior to destroying any records under the authority of this section, a factual determination that the particular records are obsolete must be made. 1961-62 Op. Att'y Gen. No. 61-127.

Destruction of original records without action by records administrator. — If microfilmed and certified pursuant to 14-3-15 NMSA 1978, originals of records, including newspapers kept by county clerks, may be destroyed without any action on the part of the records administrator. 1979 Op. Att'y Gen. No. 79-16.

ARTICLE 2

Inspection of Public Records

Sec.

- 14-2-1. Right to inspect public records; exceptions.
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 14-2-12. Enforcement.

14-2-1. Right to inspect public records; exceptions.

Every person has a right to inspect any public records of this state except:

- A. records pertaining to physical or mental examinations and medical treatment of persons confined to any institution;
- B. letters of reference concerning employment, licensing or permits;
- C. letters or memorandums which are matters of opinion in personnel files or students' cumulative files;
- D. law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime. Law enforcement records include evidence in any form received or compiled in connection with any criminal investigation or prosecution by any law enforcement or prosecuting agency, including inactive matters or closed investigations to the extent that they contain the information listed above;
- E. as provided by the Confidential Materials Act [14-3A-1, 14-3A-2 NMSA 1978]; and
- F. as otherwise provided by law.

History: 1941 Comp., § 13-501, enacted by Laws 1947, ch. 130, § 1; 1953 Comp., § 71-5-1;

Laws 1973, ch. 271, § 1; 1981, ch. 47, § 3; 1993, ch. 260, § 1.

- I. General Consideration.
- II. Records Subject to Inspection.
- III. Exceptions.

I. GENERAL CONSIDERATION.

Cross references. — For use of police reports for commercial solicitation, see 14-2A-1 NMSA 1978. For provisions of Arrest Record Information Act, see Chapter 29, Article 10 NMSA 1978.

The 1993 amendment, effective June 18, 1993, substituted "person" for "citizen of this state" in the introductory language, substituted "institution" for "institutions" in Subsection A, added Subsection D, and redesignated former Subsections D and E as Subsections E and F.

Purpose and intent. — The legislature has clearly and unequivocally indicated that public records are to be made public with the exception of certain confidential information and except as otherwise provided by law. 1957-58 Op. Att'y Gen. No. 58-197.

Right of citizen to inspect. — A citizen has a fundamental right to have access to public records. The citizen's right to know is the rule, and secrecy is the exception. Where there is no contrary statute or countervailing public policy, the right to inspect public records must be freely allowed. State ex rel. Newsome v. Alarid, 90 N.M. 790, 568 P.2d 1236 (1977).

Common-law concept. — The right of the public to inspect records which are in custody of a public officer is a common-law concept and exists even without statute. 1953-54 Op. Att'y Gen. No. 5933.

Public's right to inspection is not absolute. 1969 Op. Att'y Gen. No. 69-89.

Dissemination of information not necessarily included. — The right to inspect public records does not necessarily include the right to disseminate the information contained in those records. 1969 Op. Att'y Gen. No. 69-89.

Limited privacy of accused. — Section 29-10-4 NMSA 1978 protects the confidentiality of information concerning the identity of a person who has been accused, but not charged, with a crime only if that information has been collected in connection with an investigation of, or otherwise relates to, another person who has been charged with committing a crime. However, information in other records which identifies a person accused but not charged with or arrested for a crime may be protected from public disclosure under this section. Finally, even if it would otherwise be protected under either statute, information about a person accused but not charged with a crime is open to public inspection if it is contained in a document listed in 29-10-7 NMSA 1978. 1994 Op. Att'y Gen. No. 94-02.

Identity of individuals arrested or charged with crime not protected. — Neither the Arrest Record Information Act nor the Inspection of Public Records Act authorizes a law enforcement agency to protect the identity of persons who have been arrested or charged with a crime. 1994 Op. Att'y Gen. No. 94-02.

No defense to invasion of privacy action. — The right of inspection is no defense to an action for invasion of privacy based upon publication of matters which an individual has the right to keep private. 1969 Op. Att'y Gen. No. 69-89.

Term "public records" is intended to include all papers or memoranda in the possession of public officers which are required by law to be kept by them. 1966 Op. Att'y Gen. No. 66-131.

Definition of "public records" in Public Records Act does not apply to section, the "right-to-know law." Such definition is so broad that no reasonable interpretation of this section could possibly include all of the records that would be subject to inspection by public under that definition. State ex rel. Newsome v. Alarid, 90 N.M. 790, 568 P.2d 1236 (1977). See 14-3-1 to 14-3-16 NMSA 1978 for Public Records Act.

Criterion for determining what information is public record is whether the information is required by law to be kept or is necessarily kept in the discharge of a duty imposed by law. 1969 Op. Att'y Gen. No. 69-89.

Elements essential to constitute a public record are that it be made by a public officer and that the officer be authorized by law to make it. 1963-64 Op. Att'y Gen. No. 63-55.

Provisions of section contemplate some exception to the Public Records Act, 14-3-1 NMSA 1978 et seq. 1963-64 Op. Att'y Gen. No. 64-19.

Custodian may make reasonable restrictions and conditions on access. — Fact that request for inspection would pose an extreme burden on personnel office of state university was not a legitimate reason, by itself, for failure to make records available for inspection or for copying, but custodian could make reasonable restrictions and conditions on access to the records. Reasonable regulations could be made as to times when and places where they may be inspected or copied, and custodian could insist upon reasonable supervision for the safekeeping of the records. State ex rel. Newsome v. Alarid, 90 N.M. 790, 568 P.2d 1236 (1977).

Citizen must follow court-ordered arrangement to inspect records. — When a citizen enforces this section through an action to compel production of documents, the citizen must comply with the court-ordered arrangements for inspection. Newsome v. Farer, 103 N.M. 415, 708 P.2d 327 (1985).

The threshold requirements for an in camera inspection are that the custodian of the records must first determine whether the person requesting disclosure is a citizen and whether the request is for a lawful purpose; second, the custodian must justify why the records should not be furnished. State ex rel. Blanchard v. City Comm'rs, 106 N.M. 769, 750 P.2d 469 (Ct. App. 1988).

Justification for refusing to release records. — Fact that information was obtained under a promise of confidentiality, standing alone, would not suffice to preclude disclosure. The promise would have to coincide with reasonable justification, based on public policy, for refusing to release the records. Furthermore, the justification would have to be articulated by the custodian for the record. State ex rel. Newsome v. Alarid, 90 N.M. 790, 568 P.2d 1236 (1977).

Duty of custodian to determine whether information can be justifiably withheld. — There may be circumstances under which the information contained in the record can be justifiably withheld. The custodian has the initial duty to make this determination as to each record requested. He must

first determine that the person requesting access is a citizen and that he is requesting the information for a lawful purpose. The burden is upon the custodian to justify why the records sought to be examined should not be furnished. It shall then be the court's duty to determine whether the explanation of the custodian is reasonable and to weigh the benefits to be derived from nondisclosure against the harm which may result if the records are not made available. State ex rel. Newsome v. Alarid, 90 N.M. 790, 568 P.2d 1236 (1977).

Nondisclosure of names of terminated employees. — Where the reason for termination of public employees is a matter of public knowledge before the individuals are terminated, the privacy of the disciplinary proceeding can only be protected by upholding the administrative decision not to disclose the names of the individuals affected. State ex rel. Barber v. McCotter, 106 N.M. 1, 738 P.2d 119 (1987).

Transferring duty as custodian prohibited. — By reason of this section, the records of the director of the department of public health (now secretary of health) are, in some instances, not open to public inspection, and the duty of the custodian of those records, to wit, the director of public health (now secretary), in the maintenance of the secrecy of those records would prohibit him, the governor or any other person from transferring the duty as custodian of the records to any other person. 1953-54 Op. Att'y Gen. No. 5943.

Imposing charge tantamount to denial of right to inspect. — A charge of \$25.00 per month may not be imposed by counties upon abstract and title companies for such facilities as lights, telephone and janitorial services to reimburse the counties therefor in connection with abstract and title companies inspecting and copying public records, because this practice amounts to a denial of the right to inspect records. 1957-58 Op. Att'y Gen. No. 57-102.

Law reviews. — For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

For survey of 1988-89 Administrative Law, see 21 N.M.L. Rev. 481 (1991).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 37A Am. Jur. 2d Freedom of Information Acts § 1 et seq. 52 Am. Jur. 2d Mandamus § 204; 66 Am. Jur. 2d Records and Recording Laws §§ 12 to 31.

Enforceability by mandamus of right to inspect public records, 60 A.L.R. 1356; 169 A.L.R. 653.

Right to inspect motor vehicle records, 84 A.L.R.2d 1261.

Confidentiality of records as to recipients of public welfare, 54 A.L.R.3d 768.

Payroll records of individual government employees as subject to disclosure to public, 100 A.L.R.3d 699.

Validity, construction, and effect of state laws requiring public officials to protect confidentiality of income tax returns or information, 1 A.L.R.4th 959.

What constitutes preliminary drafts or notes provided by or for state or local governmental agency, or intra-agency memorandums, exempt from disclosure or inspection under state freedom of information act, 26 A.L.R.4th 639.

Patient's right to disclosure of his or her own medical records under state freedom of information act, 26 A.L.R.4th 701.

What are "records" of agency which must be made available under state freedom of information act, 27 A.L.R.4th 680.

What constitutes an agency subject to application of state freedom of information act, 27 A.L.R.4th 742.

What constitutes "trade secrets" exempt from disclosure under state freedom of information act, 27 A.L.R.4th 773.

What constitutes legitimate research justifying inspection of state or local public records not open to inspection by general public, 40 A.L.R.4th 333.

State freedom of information act requests: right to receive information in particular medium or format, 86 A.L.R.4th 786.

Use of Freedom of Information Act (5 USCS § 552) as substitute for, or as means of, supplementing discovery procedures available to litigants in federal civil, criminal, or administrative proceedings, 57 A.L.R. Fed. 903.

What constitutes "confidential source" within Freedom of Information Act exemption permitting non-disclosure of identity of confidential source and, in specified instances, of confidential information furnished only by confidential source (5 USCS § 552(b)(7)(D)), 59 A.L.R. Fed. 550.

Waiver by federal government agency as affecting agency's right to claim exemption from disclosure requirements under the Freedom of Information Act (5 USCS § 552(b)), 67 A.L.R. Fed. 595.

When are government records "similar files" exempt from disclosure under Freedom of Information Act provision (5 USCS § 552(b)(6)) exempting certain personnel, medical, and "similar" files, 106 A.L.R. Fed. 94.

What constitutes "final opinion" or "order" of federal administrative agency required to be made available for public inspection and copying within meaning of 5 USCS § 552(a)(2)(A), 114 A.L.R. Fed. 287.

76 C.J.S. Records § 48 et seq.

II. RECORDS SUBJECT TO INSPECTION.

Court opinions subject to inspection or copying. — The supreme court and the court of appeals are required to make available their current and past opinions to the public for inspection or for copying. 1979 Op. Att'y Gen. No. 79-14.

Reimbursement or other consideration to courts for copying costs. — The supreme court and the court of appeals should require reasonable reimbursement for the costs incurred by them for copying opinions for the public or for retrieving their opinions for inspection. However, such a charge need not be made in those cases in which the courts receive some other form of consideration in return for supplying their opinions to private individuals or enterprises. 1979 Op. Att'y Gen. No. 79-14.

Jury lists. — A jury list is a public record and the media are entitled to inspect and publish it. State ex rel. New Mexico Press Ass'n v. Kaufman, 98 N.M. 261, 648 P.2d 300 (1982).

All records which do not deal with physical or mental examinations or medical treatment of patients are public records. This type of record would include payrolls, receipts and disbursements, etc. Any record which might fairly be called a record of examination of a patient or a record of medical treatment of a patient of any institution is not a public record and need not be submitted to public scrutiny. 1959-60 Op. Att'y Gen. No. 60-155.

Data compiled from case histories. — Case histories furnished by attending physicians on individual patients from which mortality data is to be taken are confidential records, but the data compiled from such case histories where the individual identity is lost are not confidential. 1959-60 Op. Att'y Gen. No. 59-158.

Workers' compensation claim files. — The

workers' compensation division maintains workers' compensation claim files in the course of its statutory function of adjudicating claims filed by workers, which makes them public records within the meaning of state freedom of information laws. 1988 Op. Att'y Gen. 88-16.

For a discussion of whether certain specific documents found in workers' compensation claim files should be made available for public inspection, see 1988 Op. Att'y Gen. No. 88-16.

Medical records introduced into evidence. — To the extent any medical records that otherwise are exempt from disclosure are introduced into evidence during the course of a formal workers' compensation hearing which is open to the public, such records lose their exempt status and may be inspected by the public. 1988 Op. Att'y Gen. No. 88-16.

Records of state penitentiary are public records and should be made available for public inspection in accordance with the provisions of this section. 1951-52 Op. Att'y Gen. No. 5342.

Voter registration records. — A county chairman of a political party is entitled to have the working master record of the voter registration records of the county copied, or duplicated at his expense under the county clerk's supervision, as these records are public records. Ortiz v. Jaramillo, 82 N.M. 445, 483 P.2d 500 (1971).

Public school records. — Business records, expenditures, daily attendance records and permanent records of an individual student's grades kept by the public schools are public records. 1961-62 Op. Att'y Gen. No. 61-137.

Any citizen of this state has a right to examine the public records of a school district when such records have been made a part of central records of such school district. This right to inspection is spelled out by statute, and the legislature has specified that the denial of such right of access is punishable as a misdemeanor. 1961-62 Op. Att'y Gen. No. 61-137.

Instructional material used in public school. — Local school boards have no authority to prohibit citizens of the state from inspecting instructional material used in a public school within the district. 1988 Op. Att'y Gen. No. 88-37.

Immunization records of school children are available to the public. 1959-60 Op. Att'y Gen. No. 59-158.

Names and addresses of teachers employed in New Mexico school systems which are contained in lists compiled by the department of education are public records. 1969 Op. Att'y Gen. No. 69-89.

Employee's file held by state personnel office. — Personnel actions, supervisor's ratings, arrest records, letters of commendation or condemnation from the employing agency, present employment history, the job application itself and educational history in an employee's file held by the state personnel office is a matter of public record. 1968 Op. Att'y Gen. No. 68-110.

Supreme court declined to hold that all information in employment records of state university regarding military discharges or arrest records should be exempted from disclosure. State ex rel. Newsome v. Alarid, 90 N.M. 790, 568 P.2d 1236 (1977).

Salary information pertaining to state employee which is possessed by the state personnel office is a matter of public record. 1968 Op. Att'y Gen. No. 68-110.

Because the state personnel director is required by law to establish and maintain a roster for all state employees showing the employee's pay rate, 10-9-12

NMSA 1978, the salary of a state employee is a matter of public record. 1968 Op. Att'y Gen. No. 68-110.

Job applicant's test score and position on eligibility list under 10-9-13 NMSA 1978, possessed by the state personnel office, is a public record. 1968 Op. Att'y Gen. No. 68-110.

Minutes of board of bar examiners meet the requirements of the definition of public records, and, as such, are required under the common law adopted by this state and also by this section, as amended, to be public records and, as such, are subject to the inspection of the public. 1953-54 Op. Att'y Gen. No. 5933.

Interstate stream commission. — Under the provisions of this section, any public records reflecting the work or action of the interstate stream commission are subject to public inspection. 1961-62 Op. Att'y Gen. No. 62-80.

County fair board. — Since the legislature has specifically granted counties the authority to conduct county fairs, a county fair board is an arm of the county and its records are county records which are subject to inspection as provided in this section and former 14-2-2 NMSA 1978. 1964 Op. Att'y Gen. No. 64-109.

III. EXCEPTIONS.

Data of personal nature used in educating pupils not subject. — Such records or memoranda as may be kept by a teacher, or other school official, for informational purposes on individual students, and which may contain data of a personal nature for use in assisting teachers or school personnel in educating pupils, do not fall within the classification of public records entitled to be scrutinized by the public. 1961-62 Op. Att'y Gen. No. 61-137.

Temporary or partial grades or records kept by individual teachers are not public records. 1961-62 Op. Att'y Gen. No. 61-137.

Records of non-mandated university employment office. — Student complaints against man who utilized the services of university employment office to obtain domestic help by means of job postings were not "public records," since there was no legal mandate for the operation of the employment office, nor was there an obligation of the office to make or keep records of the complaints. Spadaro v. University of N.M. Bd. of Regents, 107 N.M. 402, 759 P.2d 189 (1988).

Portions of applicant's file may be classified as confidential by state personnel board. — Not all records kept by a public officer are public records. The state personnel board has, within statutory limits, a limited and restricted right to classify certain portions of an applicant's file as confidential. Any portion which would be made available to the state only on a confidential and restricted basis may be

treated by the state personnel board as confidential. This right, however, should be narrowly and restrictively applied. 1968 Op. Att'y Gen. No. 68-110.

Under the rule-making authority of 10-9-10 and 10-9-13 NMSA 1978, the state personnel board has a limited and restricted right to classify as confidential certain portions of an individual's personnel file which would not otherwise be made available to the state unless on a confidential or restricted basis. 1963-64 Op. Att'y Gen. No. 64-19.

Personnel records of state university employees pertaining to illness may be confidential. — Personnel records of employees of state university which pertain to illness, injury, disability, inability to perform a job task and sick leave are considered confidential under this section and not subject to release to the public, except by the consent or waiver of the particular employee. State ex rel. Newsome v. Alarid, 90 N.M. 790, 568 P.2d 1236 (1977).

Medical history and employment history solicited from applicant's previous employer for 10-9-13 NMSA 1978 are not public records. 1968 Op. Att'y Gen. No. 68-110.

Privilege of inquiry as to faculty salary matters must be suspended until the board of regents reaches its final conclusion, i.e., the culmination of the contract between the board and the individual. Sanchez v. Board of Regents, 82 N.M. 672, 486 P.2d 608 (1971).

Thought processes, or the offer of a contract, are not such a public record as would require public inspection. Sanchez v. Board of Regents, 82 N.M. 672, 486 P.2d 608 (1971).

Right to inspect records of the board of regents of a state university on the subject of salary contract negotiations before the task was completed should be denied. Sanchez v. Board of Regents, 82 N.M. 672, 486 P.2d 608 (1971).

Criminal complaints. — Complaints filed in J. P. (now magistrate) court by district attorney and sheriff's office do not constitute public records when the person complained against has not been arrested and is not subject to public inspection. 1947-48 Op. Att'y Gen. No. 5074.

Information obtained under Mental Health and Developmental Disabilities Code. — A district court clerk may not release the information identified in 43-1-19A NMSA 1978, governing disclosure under the Mental Health and Developmental Disabilities Code, without obtaining the consent of the person to whom that information pertains. 1988 Op. Att'y Gen. No. 88-75.

Records of human services department. — Since other statutory provisions are made for inspection of records of the welfare department (now human services department), they are open for inspection only in accordance with 27-2-35. 1947-48 Op. Att'y Gen. No. 5032.

14-2-2. Repealed.

Repeals. — Laws 1993, ch. 258, § 10 repeals 14-2-2 NMSA 1978, as enacted by Laws 1947, ch. 130, § 2, requiring officers having custody of certain

records to provide opportunity and facilities for inspection, effective June 18, 1993. For provisions of former section, see 1988 Replacement Pamphlet.

14-2-2.1. Copies of public records furnished.

When a copy of any public record is required by the veterans' administration to be used in determining the eligibility of any person to participate in benefits made available by the veterans' administration, the official custodian of such public record shall, without charge,

provide the applicant for such benefits, or any person acting on his behalf, or the authorized representative of the veterans' administration, with a certified copy of such record.

History: Laws 1979, ch. 23, § 1.
Am. Jur. 2d, A.L.R. and C.J.S. references. — 37A Am. Jur. 2d Freedom of Information Acts § 1 et seq. 66 Am. Jur. 2d Records and Recording Laws §§ 10, 12 to 15, 19.

Enforceability by mandamus of right to inspect public records, 60 A.L.R. 1356; 169 A.L.R. 653.
 76 C.J.S. Records § 48 et seq.

14-2-3. Repealed.

Repeals. — Laws 1993, ch. 258, § 10 repeals 14-2-3 NMSA 1978, as amended by Laws 1983, ch. 141, § 1, providing a remedy for citizens who have been refused the right to inspect any public record,

effective June 18, 1993. For provisions of former section, see 1988 Replacement Pamphlet. For present comparable provisions, see 14-2-11 NMSA 1978.

14-2-4. Short title.

Chapter 14, Article 2 NMSA 1978 may be cited as the "Inspection of Public Records Act".

History: Laws 1993, ch. 258, § 1.

14-2-5. Purpose of act; declaration of public policy.

Recognizing that a representative government is dependent upon an informed electorate, the intent of the legislature in enacting the Inspection of Public Records Act [this article] is to ensure, and it is declared to be the public policy of this state, that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees. It is the further intent of the legislature, and it is declared to be the public policy of this state, that to provide persons with such information is an essential function of a representative government and an integral part of the routine duties of public officers and employees.

History: Laws 1993, ch. 258, § 2.
Bracketed material. — The bracketed material in this section was inserted by the compiler. It was

not enacted by the legislature and is not a part of the law.

14-2-6. Definitions.

As used in the Inspection of Public Records Act [this article]:

A. "custodian" means any person responsible for the maintenance, care or keeping of a public body's public records, regardless of whether the records are in that person's actual physical custody and control;

B. "inspect" means to review all public records that are not excluded in Section 14-2-1 NMSA 1978;

C. "person" means any individual, corporation, partnership, firm, association or entity;

D. "public body" means the executive, legislative and judicial branches of state and local governments and all advisory boards, commissions, committees, agencies or entities created by the constitution or any branch of government that receives any public funding, including political subdivisions, special taxing districts, school districts and institutions of higher education; and

E. "public records" means 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 and relate to public business, whether or not the records are required by law to be created or maintained.

History: Laws 1993, ch. 258, § 3.

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 to requests to inspect public records;
- B. provide proper and reasonable opportunities to inspect public records; and
- C. provide reasonable facilities to make or furnish copies of the public records during usual business hours.

History: Laws 1993, ch. 258, § 4.
Am. Jur. 2d, A.L.R. and C.J.S. references. —

37A Am. Jur. 2d Freedom of Information Acts § 1 et seq.

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. 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 [this article] 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.

History: Laws 1993, ch. 258, § 5.
Am. Jur. 2d, A.L.R. and C.J.S. references. —

37A Am. Jur. 2d Freedom of Information Acts § 414 et seq.

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

History: Laws 1993, ch. 258, § 6.

Right to make copies. — The right to inspect or examine public records commonly includes the right of making copies thereof as the right to inspect would be valueless without this correlative right. 1959-60 Op. Att'y Gen. No. 59-170.

It is permissible for an individual or a company such as an abstractor to photocopy voter registrations in the offices of the county clerks so long as adequate precautions are taken to insure the integrity of the records and to preserve their availability for inspection by others. 1959-60 Op. Att'y Gen. No. 59-170.

Right subject to reasonable restrictions and conditions. — The right to inspect public records commonly carries with it the right to make copies thereof, subject, however, to reasonable restrictions and conditions imposed as to their use, reasonable regulations as to appropriate times when and places where they may be inspected and copied and such reasonable supervision by the custodian thereof as may be necessary for their safety and as will secure

equal opportunity for all to inspect and copy them. *Ortiz v. Jaramillo*, 82 N.M. 445, 483 P.2d 500 (1971).

Charges not to be imposed. — A charge of \$25.00 per month may not be imposed by counties upon abstract and title companies for such facilities as lights, telephone and janitorial services to reimburse the counties therefor in connection with abstract and title companies inspecting and copying public records, because this practice amounts to a denial of the right to inspect records. 1957-58 Op. Att'y Gen. No. 57-102.

Public's right to inspection is not absolute. 1969 Op. Att'y Gen. No. 69-89.

Court opinions subject to inspection or copying. — The supreme court and the court of appeals are required to make available their current and past opinions to the public for inspection or for copying. 1979 Op. Att'y Gen. No. 79-14.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 37A Am. Jur. 2d Freedom of Information Acts § 434 et seq.

14-2-10. Procedure for excessively burdensome or broad requests.

If a custodian determines that a written request is excessively burdensome or broad, an additional reasonable period of time shall be allowed to comply with the request. The custodian shall provide written notification to the requester within fifteen days of receipt of the request that additional time will be needed to respond to the written request. The requester may deem the request denied and may pursue the remedies available pursuant to the Inspection of Public Records Act [this article] if the custodian does not permit the records to be inspected in a reasonable period of time.

History: Laws 1993, ch. 258, § 7.

Am. Jur. 2d, A.L.R. and C.J.S. references. —

37A Am. Jur. 2d Freedom of Information Acts § 425 et seq.

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 [this article].

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.

History: Laws 1993, ch. 258, § 8.

Am. Jur. 2d, A.L.R. and C.J.S. references. —

37A Am. Jur. 2d Freedom of Information Acts § 443 et seq.

14-2-12. Enforcement.

A. An action to enforce the Inspection of Public Records Act [this article] may be brought by:

- (1) the attorney general or the district attorney in the county of jurisdiction; or
- (2) a person whose written request has been denied.

B. A district court may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of the Inspection of Public Records Act.

C. The exhaustion of administrative remedies shall not be required prior to bringing any action to enforce the procedures of the Inspection of Public Records Act.

D. The court shall award damages, costs and reasonable attorneys' fees to any person whose written request has been denied and is successful in a court action to enforce the provisions of the Inspection of Public Records Act.

History: Laws 1993, ch. 258, § 9.

ARTICLE 2A**Use of Police Reports**

Sec.

14-2A-1. Protection of victims of crimes or accidents; police reports; commercial solicitation prohibited.

14-2A-1. Protection of victims of crimes or accidents; police reports; commercial solicitation prohibited.

No attorney, health care provider or their agents shall inspect, copy or use police reports or information obtained from police reports for the purpose of the solicitation of victims or the solicitation of the relatives of victims of reported crimes or accidents.

History: Laws 1993, ch. 123, § 1.

Cross references. — For right to inspect public records and exceptions, see 14-2-1 NMSA 1978.

ARTICLE 3**Public Records**

Sec.

14-3-1. Short title.
 14-3-2. Definitions.
 14-3-3. State commission of public records; creation.
 14-3-4. Duties and powers of commission.
 14-3-5. Gifts, donations and loans.
 14-3-6. Administrator; duties.
 14-3-7. Inspection and survey of public records.
 14-3-8. Records center.
 14-3-9. Disposition of public records.
 14-3-10. Disagreement as to value of records.
 14-3-11. Destruction of records.
 14-3-12. Transfer of records upon termination of state agencies.
 14-3-13. Protection of records.
 14-3-14. Advisory groups.
 14-3-15. Reproduction on film; evidence; review, inventory and approval of systems.
 14-3-15.1. Records of state agencies; public records; copy fees; computer databases; criminal penalty.

Sec.

14-3-15.2. Electronic authentication; substitution for signature.
 14-3-16. Attorney general may replevin state records.
 14-3-17. Approval of existing state agency systems.
 14-3-18. County and municipal records.
 14-3-19. Storage equipment, supplies and materials; microfilm services and supplies; purchase by state records commission state commission of public records for resale.
 14-3-20. Interstate compacts; filing; index.
 14-3-21. State publications; manuals of procedure; rules; reports; uniform style and form.
 14-3-22. Public policy on certain publications; state commission of public records duties.
 14-3-23. Manuals of procedure; preparation by state agencies; review by state records administrator; publication.
 14-3-24, 14-3-25. Recompiled.

14-3-1. Short title.

Chapter 14, Article 3 NMSA 1978 may be cited as the "Public Records Act".

History: 1953 Comp., § 71-6-1, enacted by Laws 1959, ch. 245, § 1; 1995, ch. 110, § 7.

Cross references. — For Public Health Act records being confidential, see 24-1-20 NMSA 1978.

The 1995 amendment, effective July 1, 1995, substituted "Chapter 14, Article 3 NMSA 1978" for "This act".

Names and charges of juvenile arrestees. — A law enforcement agency is not prohibited by the

Children's Code, 32A-1-1 NMSA 1978 et seq., the Arrest Record Information Act, 29-10-1 NMSA 1978 et seq., or any other law of New Mexico from releasing to the public the names of juveniles who have been arrested for criminal acts, and the charges for which they were arrested. 1987 Op. Att'y Gen. No. 87-29.

Law reviews. — For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

14-3-2. Definitions.

As used in the Public Records Act [this article]:

- A. "commission" means the state commission of public records;
- B. "administrator" means the state records administrator;
- C. "public records" means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government or because of the informational and historical value of data contained therein. Library or museum material of the state library, state institutions and state museums, extra copies of documents preserved only for convenience of reference and stocks of publications and processed documents are not included;
- D. "agency" means any state agency, department, bureau, board, commission, institution or other organization of the state government, the territorial government and the Spanish and Mexican governments in New Mexico;
- E. "records center" means the central records depository which is the principal state facility for the storage, disposal, allocation or use of noncurrent records of agencies or materials obtained from other sources;
- F. "microphotography system" means all microphotography equipment, services and supplies; and
- G. "microphotography" means the transfer of images onto film and electronic imaging or other information storage techniques that meet the performance guidelines for legal acceptance of public records produced by information system technologies pursuant to regulations adopted by the commission.

History: 1953 Comp., § 71-6-2, enacted by Laws 1959, ch. 245, § 2; 1963, ch. 186, § 1; 1977, ch. 301, § 1; 1995, ch. 27, § 2.

The 1995 amendment, effective June 16, 1995, added Subsection G.

Term "public records" in this section includes the records of various public officials as that term is used in the inspection of public records provisions, former 14-2-1 to 14-2-3 NMSA 1978, being those "public records" which are necessary or incidental to fulfilling the public officer's duties imposed upon his office by operation of law. 1969 Op. Att'y Gen. No. 69-139.

In order to be considered a "public record," an item must have some continuing significance or importance. There must be some purpose or reason for its preservation. Therefore, general correspondence files are not public records per se. Certainly there are many items in such a file which should be treated as public records because their contents bring them within the statutory definition. However, there are many items which should be classified as transitory in value and interest. To treat such items as public

records and to require their retention for at least three years (as formerly required under 14-3-11 NMSA 1978) would be burdensome, wasteful and unnecessary. 1959-60 Op. Att'y Gen. No. 60-72.

"Public records" not applicable to "right-to-know law". — Definition of "public records" in Public Records Act, 14-3-1 NMSA 1978 et seq., does not apply to 14-2-1 NMSA 1978, the "right-to-know law." Such definition is so broad that no reasonable interpretation of 14-2-1 NMSA 1978 could possibly include all of the records that would be subject to inspection by public under that definition. State ex rel. Newsome v. Alarid, 90 N.M. 790, 568 P.2d 1236 (1977).

Confidential data not public record. — Data concerning the reliability, honesty, capability and personality traits of an individual which had been solicited with the understanding that they would be kept confidential are not public records. 1967 Op. Att'y Gen. No. 67-57.

County and municipal records are not included in the term "public records" as that term is