

FAQ'S re: Inspection of Public Records at New Mexico State University

Q1: What is the university's policy relating to answering requests to inspect university records?

A1: It is the same as the state law (New Mexico Inspection of Public Records Act), which provides that public records are open to inspection, unless an exemption applies. ¹ The university's policy regarding compliance with the NMIPRA is found at Policy 2.90.40 of the NMSU Policy Manual. The state law is found at NMSA 1978, §§ 14-2-1 et seq. Official state guidance is available in the NM Attorney General's Inspection of Public Records Act Compliance Guide linked from the website of the Office of General Counsel. You may also contact the NMSU Office of General Counsel with questions relating to the Act's application to NMSU.

Q2: Am I allowed to ask why the requester wants the records?

A2: No. To do so is a violation of the law/policy.

Q3: Who is the responsible party to respond to requests for public inspection made to NMSU?

A3: The appropriate records custodian. At NMSU, several records custodians are identified in the Operational/Procedural Guidelines for various categories of records. The records custodian is responsible for compliance with the NMIPRA and may coordinate with the Office of General Counsel if it is not clear whether or not an exemption applies; ignoring a request is considered a denial and a wrongful denial of access to a public record will expose the institution to potential liability.

Q4: If a request comes in via email, do I have to respond via email?

A4: Yes.

Q5: How long does the university have to respond to a request?

A5: Three (3) days. If the records cannot be produced for inspection within three days, a response or acknowledgement of the request is required, with some indication about when the records will be made available or when another response will be sent, which response must be sent within 15 days from the date of receipt of the request. The law contemplates that the records will be produced for inspection within fifteen (15) days, unless the request is unduly burdensome or overly broad.

Q6: Are the deadlines business days or calendar days?

A6: Both. The three (3) day deadline is counted by business days, and the fifteen (15) day deadline is counted by calendar days.

Q7: What about emails--are they subject to public inspection?

A7: Yes, email correspondence that relates to public business is subject to disclosure, unless one of the exceptions from disclosure recognized by the NMIPRA applies. The definition of public record" is very broad: It 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."

¹ Exemptions must be based on laws or privileges recognized by the NM Supreme Court. Two laws that frequently apply to requests made for university records are FERPA, the federal Family Educational Rights and Privacy Act, which protects students' educational records from public disclosure, and HIPAA, the federal Health Insurance Portability and Accountability Act, which protects students' and employees' medical records from public disclosure. If a student or employee waives their right to privacy and consents to such release, then the records must be produced in accordance with the terms of the release.

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- Q8: Are my personal emails (on any computer, email, cell phone, text, other forms of messaging etc) subject to being produced for inspection, if requested?
- A8: If your personal emails do not discuss, comment on, or otherwise “relate to public business”, the answer is no, they should not be. However, this answer based on clear language in the NMIPRA is not a guarantee that an answer by a judge will be the same. The officials with the authority to interpret and enforce the NMIPRA are the local District Attorney, the NM Attorney General, and the NM courts. It is possible that personal messages might need to be produced to allow the Office of General Counsel and the judge to view them, in order to assess whether or not the records relate to public business.
- Q9: What happens if a written request (includes email) for inspection is ignored or otherwise not acted upon?
- A9: After fifteen (15) days from the date the records custodian received the request, it is deemed by law to have been denied, and the requester may seek assistance from the district attorney, state attorney general or file a private cause of action in court to seek enforcement of the NMIPRA. The court may award damages at the rate of \$100 per day, plus costs and attorney fees, plus appropriate injunctive relief mandating compliance. NOTE: even if a denial would have been proper, the court may award damages at \$100 per day from the date that the public body was in noncompliance to the date that a written denial is issued.
- Q10: What if the records requested do not exist, or do not exist in the form they are requested?
- A10: If they do not exist at all, then in coordination with the Office of General Counsel, the requestor will be informed of that. If they exist, but in a different form or format, then you may produce them for inspection in the form/format they are maintained for business purposes by the university. The law does not require the independent creation of a record nor conversion to a different form or format than that used by the university.
- Q11: What if there is no way that our office can produce the requested records for inspection with three (3) days, but we plan to comply with the request?
- A11: You should communicate within the 3 day period to explain the reason that you need more time (e.g. you only have one staff member to tend to this and that person is on jury duty that week); if it is not possible to produce the records within 15 days from the date the request came in, you should communicate again. It may also be that the request creates an undue burden and/or is overly broad, in which case, please coordinate with the Office of General Counsel to facilitate a resolution.
- Q12: What do I do if the record requested is confidential or I think it should be kept confidential?
- A12: Check with the records custodian, who will check with the Office of General Counsel. If you are not the official records custodian, you should immediately forward the request to the designated records custodian. If it is not clear to you who the records custodian is, forward to the Office of General Counsel for designation of a custodian.
- Q13: How does one go about denying a request?
- A13: Only the records custodian, in consultation with the Office of General Counsel, should deny a request. The subject of the request must be exempt from disclosure by an exception identified or recognized under the NMIPRA. The denial letter/response must be issued within fifteen (15) days from receipt of the request by the records custodian, and must provide the requestor with an explanation for the denial, including: a description of the records sought and the names and job titles for each person responsible for the denial.