2011 Update to NM Sunshine Law

Furnished by the NM Attorney General's Office

SUMMARY OF IPRA CHANGES

During the regular 2011 session, the New Mexico Legislature passed important changes to the Inspection of Public Records Act ("IPRA"), NMSA 1978, §§ 14-2-1 to -12 (as amended through 2011), many of which go into effect on June 17, 2011. Some amendments will go into effect on July 1, 2011 as noted below. Public entities subject to IPRA should be aware of these changes to ensure their compliance. The Office of Attorney General Gary King has summarized the major changes to the IPRA to help public bodies and the public at large become familiar with the new law. The summary below deals with the significant changes to the IPRA that will affect most public entities. Guidance on the entire IPRA can be found in the Attorney General's *Inspection of Public Records Act Compliance Guide*, available on the Attorney General's web site.

How Public Bodies Respond to IPRA Requests

Records custodians must now respond to a public records request in the same medium—electronic or paper—in which they received the request. Custodians can also choose to respond in any other medium they deem appropriate but still must respond via the same medium in which the request was received. Section 14-2-7(B).

Duty to Provide Electronic Copies when Requested

If a public record is available in electronic format and a requester specifically requests an electronic copy, the public body must provide the record in electronic format. The public body does not have to change or convert the "file format" of the record (for example, from paper to digital or from WordPerfect to Word). The public body need only provide the record in the file format in which the record exists. Section 14-2-9(B). "File format" is defined as "the internal structure of an electronic file that defines the way it is stored and used." Section 14-2-6(B).

When producing documents in electronic format, public bodies may charge a requester the actual costs associated with downloading copies of public records to a storage device and the actual cost of the storage device. The actual cost of transmitting the public records may also be charged. Section 14-2-9(C)(3), (4).

Removing Metadata from Electronic Information

When providing records in electronic format, public bodies must continue to separate exempt information from non-exempt information and produce the non-exempt

information. Additionally, all metadata associated with the exempt information must be removed from the electronic document by "utilizing methods or redaction tools that prevent the recovery of exempt information from a redacted electronic document." Section 14-2-9(A).

Public Notice of IPRA Rights and Procedures Must Be on Web Site

Public bodies covered by IPRA have always been required to post, in a conspicuous location at their administrative offices, a notice informing the public of the right to inspect records and the procedures for copying and inspecting records. Now, that notice must also appear on the publicly accessible web site of the public body and must contain contact information for the public records custodian. Section 14-2-7(E).

Redaction of "Protected Personal Identifier Information"

Effective July 1, 2011, exceptions 7, 9, 10 and 11 in Section 14-2-1(A) of the IPRA will be deleted and moved to different statutes. Also effective July 1, IPRA will include a new section on "protected personal identifier information." Section 14-2-1(B). The new law makes it clear that public bodies may redact "protected personal identifier information" before providing a public record. "Protected personal identifier information" is defined as: (1) a social security number; (2) all but the year of a person's birth date; and (3) all but the last four digits of a taxpayer identification number, financial account number or driver license number. Section 14-2-6(E). (Depending on how the 2011 amendments are compiled or codified into law, the definition of "protected personal identifier information" may be set out only in the annotations to the compiled statutes because other legislation that amended the same section of the IPRA was signed by the Governor on a later date.) A document containing protected personal identifier information shall not be placed on a publicly accessible web site without being redacted. As with any exempt information in a public record, the presence of protected personal identifier information in a document does not exempt the remainder of the document from inspection.