

## INSPECTION OF PUBLIC 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. 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 College is committed to fully complying with IPRA, and to making certain that pertinent College 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 College is not required to create a public record that does not otherwise exist. Exceptions to the right to inspect public records that are specifically listed in IPRA include, but are not limited to, medical 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 College 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. If a document contains both exempt and non-exempt information, the College must separate the non-exempt material and make it available for inspection.

### 3. Custodian

The College Custodian of Public Records (the "Custodian"), is the official custodian of public records for the College. The (President of the College) shall provide information on the College's website concerning how to contact the Custodian. The 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 College's legal counsel 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 College or for STC. NORTHERN regarding any requests that might involve disclosure of trade secrets or attorney-client privileged information related to intellectual property; 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 Custodian, or a designee of the Custodian, may respond to requests for public records.

#### **4. Procedure for Requesting Public Records**

Public copies of certain College 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 Ben Lujan Library. Other College 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 College Archives, also located in Ben Lujan Library, the requester should contact the College Custodian of Public Records.

Individuals who want to inspect public records of the College other than medical or student records, or documents that are available in the Ben Lujan Library must submit a 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 College employee who receives a request for inspection of public records shall promptly forward the request to the 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 custodian will strive to provide an opportunity to inspect the requested records within three (3) business days. 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 College 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 College does not respond to the requester within fifteen (15) calendar days, the request will be deemed to have been denied and the requester may seek judicial remedies under IPRA. For this reason, it is critical that written requests for public records be forwarded to the Custodian immediately.

#### **4.3. Cost of Providing Hard Copy Records**

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

### **5. Denial of Request**

If a written request is denied, in whole or in part, the Custodian must deliver or mail to the requester a written explanation no later than fifteen (15) calendar days after the Custodian received the written request. 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. When a request is denied, the requested records must be retained until remedies under IPRA have been exhausted. Before a determination is made to deny a request, the Custodian shall consult with the Vice President for Finance and Administration and, if necessary, legal counsel, to determine whether denial of the request is permissible under IPRA and other College policies, including without limitation. All Denial of Requests must be reported to the Board Regents at their next scheduled