

NEW MEXICO  2019 AUG 36 AM 8: 36  
Commission of Public Records  
Your Access to Public Information

# NMAC

## Transmittal Form

Volume:  Issue:  Publication date:  Number of pages:  (ALD Use Only) Sequence No.

Issuing agency name and address:  Agency DFA code:

Contact person's name:  Phone number:  E-mail address:

Type of rule action:  New  Amendment  Repeal  Emergency  Renummer  (ALD Use Only) Most recent filing date:

Title number:  Title name:

Chapter number:  Chapter name:

Part number:  Part name:

Amendment description (If filing an amendment):   
Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference? Yes  No  Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received? Yes  No  Public domain

### Specific statutory or other authority authorizing rulemaking:

Public Records Act, Section 14-3-1, et seq. NMSA 1978;  
State Rules Act, Section 14-4-1, et seq. NMSA 1978.

Notice date(s):  Hearing date(s):  Rule adoption date:  Rule effective date:

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## Concise Explanatory Statement For Rulemaking Adoption:

### Findings required for rulemaking adoption:

#### Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

#### Reasons for Adopting Rule:

The amendments to 1.13.11 NMAC, as modified in accordance with public comment, were intended to comply with recent changes to the law enforcement records exception to the Inspection of Public Records Act ("IPRA"), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2019). See S.B. 118, 54th Leg., 1st Sess. (N.M. 2019), available at <https://www.nmlegis.gov/Sessions/19%20Regular/final/SB0118.pdf>. The amendments add language referencing IPRA directly and are designed to provide clarity as to the procedures followed by the New Mexico State Records Center and Archives in responding to requests for law enforcement records.

#### Reasons for Changes from Published Rule:

The final rule was modified to provide greater clarity and to accommodate the changes requested by way of public comment. In particular, changes were made in accordance with comments received from the New Mexico Foundation for Open Government (both in writing during the public comment period and orally during the rules hearing) and the Regulation and Licensing Department. Changes made in accordance with public comment included, but were not limited to: removing the term "certain confidential records" as vague and potentially misleading, removing proposed terms and conditions of access and streamlining the request process as required by IPRA, and clarifying that all production of records must be within the timeframes set forth by IPRA. Minor changes were also made to better clarify proposed provisions.

#### Reasons for Not Accepting Substantive Arguments from Public Comment:

The final rule accepted virtually all of the arguments made in public comment and was modified accordingly. The only substantive argument rejected was the relatively minor objection to a requestor being required to state the date of the records request. This provision was intended to facilitate the administrative processing of records requests and to ensure timely compliance with IPRA.

#### Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

Brian Colón

Check if authority has been delegated

Title:

State Auditor; Chair, Commission of Public Records

Signature: (BLACK ink only)

Date signed:

9/4/19

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This is an amendment to 1.13.11 NMAC, Sections 11 and 17, effective 9/24/2019.

**1.13.11.11 ACCESS:**

A. Under the Inspection of Public Records Act, Section 14-2-1 NMSA 1978, access to certain records is restricted.

~~[(1) — medical records;  
(2) — personnel files;  
(3) — law enforcement records that reveal confidential sources, methods, or information on individuals accused but not charged with a crime;  
(4) — confidential material, which would invade the privacy of an individual.]~~ For certain law enforcement records, see 1.13.11.17 NMAC for inspection or duplication.

B. The use of donated materials shall be subject to restrictions placed by the donor.  
C. Access to materials which are not arranged or are being processed may also be restricted.  
D. Access to fragile or very valuable materials may also be restricted.  
E. Access to permanent agency records in the custody of the NMSRCA, but not yet accessioned into the archives shall be requested by the state records administrator.  
[07/01/96; 1.13.11.11 NMAC - Rn, 1 NMAC 3.2.10.2.11, 7/15/2003; A, 6/1/2006; A, 07/1/2019; A, 9/24/2019]

**1.13.11.17 REQUIREMENTS FOR LAW ENFORCEMENT RECORDS:**

A. The inspection and reproduction of public records shall be made in accordance with the Inspection of Public Records Act and the terms and conditions prescribed within this rule and 1.13.2 NMAC.

B. The requestor shall provide the following information:

~~(1) the printed name of the requestor;  
(2) the requestor's address; and  
(3) the date of the request.~~

C. If SRCA staff determines that there may be protected personal identifier information or other information made confidential by law in any records responsive to a request for archival records, staff may request that the originating agency or court of originating jurisdiction ("originating agency") conduct a review of records prior to release.

D. For any records request made, an originating agency shall review any records sent to it by SRCA and provide a response in conformance within the time limits provided by IPRA.

E. If photocopy/duplication request is made by requestor, costs shall be paid prior to release of documents.

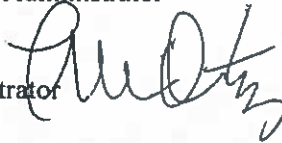
[N, 9/24/2019]

**NOTIFICATION OF MINOR, NON-SUBSTANTIVE CORRECTION**

September 17, 2019

To: Brian Colon, Chair, Commission of Public Records  
c/o Georgette Chavez, Deputy State Records Administrator

From: Matthew Ortiz, Administrative Law Division  
by designation for the State Records Administrator



Re: 1.13.11 NMAC, filed on September 5, 2019, to be published and effective on September 24, 2019

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Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule:

For all official rules and agency copies of the above rule, the file stamp incorrectly identified date of filing as 2019 AUG 36, when in fact the rule was filed on September 5, 2019. The filing machine has been corrected to reflect the correct month. The official version of the rule has been hand-corrected to identify the date of filing as 2019 SEP 5.

A copy of this *Notification* will be filed with the official version of each of the above rules.

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Hon. Hector Balderas  
*Attorney General*

Hon. Brian S. Colón  
*Chairman/State Auditor*

Hon. Maggie Toulouse Oliver  
*Secretary of State*

Debra Garcia y Griego  
*Department of Cultural Affairs*

Kenneth Ortiz  
*General Services Department*

Daniel Cordova  
*Interim Director, NM State Law Library*