NMAC
Transmittal Form

Volume: XXX  Issue: 18  Publication date: 9/24/2019  Number of pages: 1  Sequence No. 31.6

Issuing agency name and address:
Commission of Public Records, 1205 Camino Carlos Rey, Santa Fe NM 87505

Contact person's name: Georgette Chavez  Phone number: 505-476-7926  E-mail address: georgette.chavez@state.nm.us

Type of rule action:  
New  Amendment  Repeal  Emergency  Renumber

Title number:  Title name:
1  General Government Administration

Chapter number:  Chapter name:
13  Public Records

Part number:  Part name:
11  Access to Public Records, Research in the New Mexico Archives

Amendment description (If filing an amendment):
Amending two sections

Amendment's NMAC citation (If filing an amendment):
Sections 11 and 17, 1.13.11 NMAC

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):  4/9/2019  Hearing date(s):  5/21, 8/27/2019  Rule adoption date:  9/4/2019  Rule effective date:  9/24/2019
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.
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

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.