

# Commission of Public Records

at the State Records Center and Archives

Record of  
Rulemaking  
May 21, 2019



*The Tram approaches Sandia Crest*

Image #33977, 2002-031, Tram Approaches Sandia Crest ca.1960s  
State Records Center & Archives Photograph Collection

1205 Camino Carlos Rey, Santa Fe, New Mexico 87507

NEW MEXICO  
State Records Center and Archives

COMMISSION OF PUBLIC RECORDS  
Your Access to Public Information

IN RE: THE MATTER CONCERNING )  
A PUBLIC HEARING REGARDING )  
PROPOSED CHANGES TO CERTAIN )  
RULES BY THE COMMISSION OF )  
PUBLIC RECORDS )

**MAY 21, 2019 RULE HEARING EXHIBIT LIST**

COMES NOW, the Rule Hearing Officer and hereby identifies the following exhibits to be introduced and considered.

<i>Exhibit</i>	<i>Description</i>	<i>Accepted</i>	<i>Denied</i>
A.	Notice of Hearing, published on April 9, 2019 in Volume XXX, Issue 7 of the NM REGISTER	x	
B.	Notice of Rule Hearing, as posted on <a href="http://www.nmcpr.state.nm.us/">http://www.nmcpr.state.nm.us/</a> website (screen shot paper copy)	x	
C.	Revised agenda, as posted on <a href="http://www.nmcpr.state.nm.us/">http://www.nmcpr.state.nm.us/</a> website and as posted outside rule hearing room	x	
D.	Email to Legislative Council Services with Notice of Regular Meeting and Rulemaking	x	
E.	Posting to Sunshine Portal with Notice of Regular Meeting and Rulemaking	x	
F.	Email to agency heads, CROs and RLOs, dated April 9, 2019	x	
G.	Proposed Amendment to 1.21.2 NMAC Retention and Disposition of Public Records (CPR Rule)	x	
H.	Proposed amendment to 1.13.11 NMAC Access to Public Records, Research in the New Mexico Archives (CPR Rule)	x	
I.	Senate Bill 118 : An Act Relating to Pulic Records; Protecting the Confidentiality of Certain Victims of and Witnesses to Certain Crimes	x	
J.	Comment from Rodey, Dickason, Sloan, Akin & Robb, P.A. on Behalf of the New Mexico Foundation for Open Government (CPR Rule)	x	
K.	Sign-In Sheets	x	

1205 Camino Carlos Rey | Santa Fe, NM 87507 | [nmcpr.state.nm.us](http://nmcpr.state.nm.us)

**Hon. Hector Balderas**  
*Attorney General*

**Hon. Brian S. Colón**  
*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*

New Mexico Register / Volume XXX, Issue 7 / April 9, 2019

### NOTICE OF REGULAR MEETING AND OF RULEMAKING

The New Mexico Commission of Public Records ("CPR") has scheduled a regular meeting and rule hearing for Tuesday, May 21, 2019, at 10:00 A.M. at the New Mexico State Records Center and Archives, which is an accessible facility, at 1209 Camino Carlos Rey, Santa Fe, NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the meeting, please contact Georgette Chavez at 476-7926 by May 8, 2019, or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats.

The CPR may consider the following items of rulemaking at the meeting:

**Amend:**

**1.21.2 NMAC Retention and Disposition of Public Records**

**Synopsis:**

The proposed amendment of 1.21.2 NMAC consists of the following modifications:

Section 844 is being amended to add toxicology to the title and description.

**Amend:**

**1.13.11 NMAC Access to Public Records, Research in the New Mexico Archives**

**Synopsis:**

The proposed amendment of 1.13.11 NMAC is to comply with changes to the Inspection of Public Records Act ("IPRA") as a result of Senate Bill 118 and consists of the following modifications:

Section 11 is being amended to remove definitional language and to add language that references IPRA definitions instead;

A new Section 17 is being added to provide parameters for requesting, redacting and releasing law enforcement records in conformance with IPRA.

A summary of the proposed revisions and copies of the full text of the proposed rules may be accessed at the Commission's website ([www.nmcpr.state.nm.us](http://www.nmcpr.state.nm.us)), or by contacting Rick Hendricks at [Rick.Hendricks@state.nm.us](mailto:Rick.Hendricks@state.nm.us), or via regular mail at 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505 or 476-7911.

At the hearing the CPR and Administrator will take oral and written comments related to the rulemaking actions listed below and during the meeting consider approving these rulemaking actions. The Commission may vote on the proposed rules during the meeting on May 21, 2019. The State Records Administrator may take action on those rules at the close of the public rulemaking hearing.

Interested persons may submit comments on the proposed rules at the rule hearing or may submit written comments via email at [rmd.cpr@state.nm.us](mailto:rmd.cpr@state.nm.us). Written comments must be received no later than 5 p.m. on May 10, 2019. If submitting written comments by email, please indicate in the subject line the number of each rule(s) for which you are providing comments. Persons offering written comments at the hearing must have eight (8) copies for the Commission and Administrator to review. Oral comments will also be accepted at the rule hearing, subject to time limitations.

A copy of the agenda for the combined regular meeting and rule hearing is also available on the Commission website and at the office of the State Records Administrator located at the State Records Center and Archives at 1209 Camino Carlos Rey, Santa Fe, NM. The agenda is subject to change up to 72 hours prior to the meeting. Legal authority for this rulemaking can be found in the Public Records Act, Section 14-3-1, et seq. and in the State Rules Act, Section 14-4-1, et seq. NMSA 1978.

Exhibit A



**NEW MEXICO**  
**State Records Center and Archives**  
COMMISSION OF PUBLIC RECORDS

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### Notice of Regular Meeting and Rule Hearing

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If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the meeting, please contact Georgette Chavez at 476-7926 by May 8, 2019, or as soon as possible.

Public documents, including the agenda and minutes, can be provided in various accessible formats.

**The Commission of Public Records (“CPR”) and State Records Administrator (“SRA”) may consider the following items of rulemaking at the meeting:**

Exhibit B

Amend:

**1.21.2 NMAC** Retention and Disposition of Public Records (CPR Rule)

Synopsis:

The proposed amendment of 1.21.2 NMAC consists of the following modifications: Section 844 is being amended to add toxicology to the title and description.

Amend:

**1.13.11 NMAC** Access to Public Records, Research in the New Mexico Archives

Synopsis:

The proposed amendment of 1.13.11 NMAC is to comply with changes to the Inspection of Public Records Act ("IPRA") as a result of Senate Bill 118 and consists of the following modifications: A new Section 17 is being added to provide parameters for requesting, redacting and releasing law enforcement records in conformance with IPRA.

A summary of the proposed revisions may be accessed here **1.21.2 NMAC amendment** and **1.13.11 NMAC amendment** or by contacting Rick Hendricks at [Rick.Hendricks@state.nm.us](mailto:Rick.Hendricks@state.nm.us), or via regular mail at 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505 or (505) 476-7911.

At the hearing the CPR and Administrator will take oral and written comments related to the rulemaking actions listed below and during the meeting consider approving these rulemaking actions. The Commission may vote on the proposed rules during the meeting on May 21, 2019. The State Records Administrator may take action on those rules at the close of the public rulemaking hearing.

Interested persons may submit comments on the proposed rules at the rule hearing or may submit written comments via email at [rmc.cpr@state.nm.us](mailto:rmc.cpr@state.nm.us). Written comments must be received no later than 5 p.m. on May 10, 2019. If submitting written comments by email, please indicate in the subject line the number of each rule(s) for which you are providing comments. Persons offering written comments at the hearing must have eight (8) copies for the Commission and Administrator to review. Oral comments will also be accepted at the rule hearing, subject to time limitations.

A copy of the agenda for the combined regular meeting and rule hearing is available **HERE** and at the office of the State Records Administrator located at the State Records Center and Archives at 1209 Camino Carlos Rey, Santa Fe, NM.

The agenda is subject to change up to 72 hours prior to the meeting. Legal authority for this rulemaking can be found in the Public Records Act, Section 14-3-1, et seq. and in the State Rules Act, Section 14-4-1, et seq. NMSA 1978.

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Exhibit B

**COMMISSION OF PUBLIC RECORDS  
REGULAR MEETING AND RULE HEARING  
REVISED AGENDA**

1209 Camino Carlos Rey, Santa Fe, NM  
Tuesday, May 21, 2019 - 10:00 a.m.

- I. OPENING ACTIVITIES**
  - A. Call to Order
  - B. Approval of Agenda
  - C. Approval of Minutes of the February 19, 2019, Regular Commission Meeting
- II. RULE HEARING**
  - A. Amend
    - 1.21.2 NMAC Retention and Disposition of Public Records (CPR Rule)
    - 1.13.11 NMAC Access to Public Records, Research in the New Mexico Archives (CPR Rule)
- III. ACTION ITEMS**
  - A. Vote on Proposed Commission Rules
    - 1. 1.21.2 NMAC Retention and Disposition of Public Records (CPR Rule)
    - 2. 1.13.11 NMAC Access to Public Records, Research in the New Mexico Archives (CPR Rule)
  - B. Election of Chair and Secretary
  - C. Adoption of Fiscal Year 2020 Commission of Public Records Reasonable Meeting Notice Resolution pursuant to the Open Meeting Act, Section 10-15-1 (D) NMSA 1978.
  - D. Acceptance of Deed of Gift
    - 1. Robert John Stahl Collection
- IV. NEW BUSINESS**
  - A. Report of New Mexico Historical Records Advisory Board Regrant Approvals
  - B. Radon Report from Jay Stimmel, New Mexico Environment Department
- V. DIRECTOR'S REPORT**
- VI. SCHEDULING OF NEXT MEETING**
- VII. ADJOURNMENT**

Exhibit C

1205 Camino Carlos Rey | Santa Fe, NM 87507 | [nmcpr.state.nm.us](http://nmcpr.state.nm.us)

**Hon. Hector Balderas**  
*Attorney General*

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

**Hon. Maggie Toulouse Oliver**  
*Secretary of State*

**Debra García y Griego**  
*Department of Cultural Affairs*

**Kenneth Ortiz**  
*General Services Department*

**Daniel Cordova**  
*Interim Director, NM State Law Library*

## Chavez, Georgette, SRCA

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**From:** Chavez, Georgette, SRCA  
**Sent:** Tuesday, April 09, 2019 2:00 PM  
**To:** lcs@nmlegis.gov  
**Cc:** Hendricks, Rick, SRCA  
**Subject:** AMENDED Regular Meeting and Rule Hearing Notice - May 21, 2019  
**Attachments:** 04\_Agenda May 21, 2019.pdf; 2019\_04\_04\_1.21.2.Amendment.pdf; CPR 1.13.11amend\_meo REVISED DFT.pdf; Notice\_May 21, 2019.pdf

Dear Legislative Council Service Representative:

The State Commission of Public Records has a rule hearing on Tuesday, May 21, 2019. Below is our rulemaking information as required under the newly amended State Rules Act under section 2.E.7.

E. "provide to the public" means for an agency to distribute rulemaking information by:

(7) providing it to the New Mexico legislative council for distribution to appropriate interim and standing legislative committees;

Here is a link to our notice of rulemaking and the proposed amendments on our website: <http://www.nmcpr.state.nm.us/notice-of-regular-meeting-and-rule-hearing>

Also attached is a PDF of the notice and proposed amendments.

Here is a link to our notice of rulemaking which appears today in the *New Mexico Register*: <http://164.64.110.134/nmac/xxx07>

Please let me know if there is anything else that you require to fulfill this requirement.

Sincerely,

**Georgette L. Chávez**  
**Deputy State Records Administrator**  
**505-476-7926**

NEW MEXICO   
State Records Center and Archives

COMMISSION OF PUBLIC RECORDS

Your Access to Public Information

1205 Camino Carlos Rey, Santa Fe, New Mexico 87507



Exhibit D

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**From:** Chavez, Georgette, SRCA  
**Sent:** Tuesday, April 09, 2019 10:54 AM  
**To:** [lcs@nmlegis.gov](mailto:lcs@nmlegis.gov)



SUNSHINE

NM.COM



## Rule Hearing Search

Hearing Date: 
 Comments Deadline Date: 
 Agency:

[Return to Search Results](#)**Proposed Rule Name:**

CPR\_SRCA\_NOTICE OF RULEMAKING AND RULEMAKING RECORD

**Agency:**

State Records Center/Archives

**Purpose:**

The CPR and Administrator will take oral and written comments related to the rulemaking actions listed below and during the meeting consider approving these rulemaking actions

**Summary:****Synopsis**

The proposed amendment of 1.21.2 NMAC consists of the following modifications:

Section 844 is being amended to add toxicology to the title and description.

**Synopsis:**

The proposed amendment of 1.13.11 NMAC is to comply with changes to the Inspection of Public Records Act ("IPRA") as a result of Senate Bill 118 and consists of the following modifications.

A new Section 17 is being added to provide parameters for requesting, redacting and releasing law enforcement records in conformance with IPRA.

**Rule Complete Copy :**

A summary of the proposed revisions and copies of the full text of the proposed rules may be accessed at the Commission's website (<http://www.nmcpr.state.nm.us> (<http://www.nmcpr.state.nm.us>)), or by contacting Rick Hendricks at [Rick.Hendricks@state.nm.us](mailto:Rick.Hendricks@state.nm.us) (<mailto:Rick.Hendricks@state.nm.us>), or via regular mail at 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505 or 476-7955

**Corrections:**

Not available

**Rule Explanatory Statement:**

Not available

**Related New Mexico Register Publications:**

[Click Here to access Related New Mexico Publications](#)

(<https://184.84.110.134/nmac/xx07/>)

For any additional information or questions concerning this rule making or posting please contact:

Rick Hendricks

[rick.hendricks@state.nm.us](mailto:rick.hendricks@state.nm.us)

(505) 476-7955

**Last Updated Date**

4/9/2019 3:09 PM

**How to submit Comments:**

Interested persons may submit comments on the proposed rules at the rule hearing or may submit written comments via email at [rmc.cpr@state.nm.us](mailto:rmc.cpr@state.nm.us) (<mailto:rmc.cpr@state.nm.us>). Written comments must be received no later than 5 p.m. on May 10, 2019. If submitting written comments by email, please indicate in the subject line the number of each rule(s) for which you are providing comments.

**When are comments due:**

5/10/2019 2:05 PM

**Hearing Date:**

5/21/2019 2:05 PM

**Public Hearing Location:**

NM Records Center and Archives

1205 Camino Carlos Rey

Santa Fe, New Mexico 87505 5/21/2019 (2:05 PM - )

**How to participate:**

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the meeting, please contact Georgette Chavez at 476-7928 by May 8, 2019, or as soon as possible.

① If the document is not visible on the previewer, please download the file

File	File Name	File Type
<a href="#">View Document</a> ( <a href="https://statenm.my.salesforce.com/sfch/4100000137C2/a/2M000000xxcb/W/NMxBaR5t81KdskwoOQoP4dhXd_155skWPD0PEBhu08">https://statenm.my.salesforce.com/sfch/4100000137C2/a/2M000000xxcb/W/NMxBaR5t81KdskwoOQoP4dhXd_155skWPD0PEBhu08</a> )	Notice_May 21, 2019	PDF
<a href="#">View Document</a> ( <a href="https://statenm.my.salesforce.com/sfch/4100000137C2/a/2M000000xxcb/Endc26szFIOlwCEIC.d4vq4Cw5HeB4R6sh2rhE95Wq">https://statenm.my.salesforce.com/sfch/4100000137C2/a/2M000000xxcb/Endc26szFIOlwCEIC.d4vq4Cw5HeB4R6sh2rhE95Wq</a> )	2019_04_04_1.21.2 Amendment	PDF
<a href="#">View Document</a> ( <a href="https://statenm.my.salesforce.com/sfch/4100000137C2/a/2M000000xxcb/5ba15EKdwhOnAlcQlaQh93JHe5W1wovvYNayKIA">https://statenm.my.salesforce.com/sfch/4100000137C2/a/2M000000xxcb/5ba15EKdwhOnAlcQlaQh93JHe5W1wovvYNayKIA</a> )	CPR 1.13.11amend_mso REVISED DFT	PDF

Exhibit E

## **Chavez, Georgette, SRCA**

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**From:** Vigil, Tanya, SRCA  
**Sent:** Tuesday, April 09, 2019 8:36 AM  
**To:** Chavez, Georgette, SRCA  
**Subject:** FW: Notice of Rule Hearing and of Rulemaking to RLO's and CRO's  
**Attachments:** 04\_Agenda May 21, 2019.pdf; Notice\_May 21, 2019.pdf

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**From:** Vigil, Tanya, SRCA  
**Sent:** Tuesday, April 09, 2019 8:30 AM  
**Cc:** Chavez, Georgette, SRCA <[GeorgetteL.Chavez@state.nm.us](mailto:GeorgetteL.Chavez@state.nm.us)>; Hendricks, Rick, SRCA <[Rick.Hendricks@state.nm.us](mailto:Rick.Hendricks@state.nm.us)>; Lucero, Leo, SRCA <[leo.lucero@state.nm.us](mailto:leo.lucero@state.nm.us)>  
**Subject:** Notice of Rule Hearing and of Rulemaking

### **NOTICE OF REGULAR MEETING AND OF RULEMAKING**

The New Mexico Commission of Public Records (CPR) has scheduled a regular meeting and rule hearing for Tuesday, May 21, 2019, at 10:00 A.M. at the New Mexico State Records Center and Archives, which is an accessible facility, at 1209 Camino Carlos Rey, Santa Fe, NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the meeting, please contact Georgette Chavez at 476-7926 by May 8, 2019, or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats.

The Commission of Public Records ("CPR") and State Records Administrator ("SRA") may consider the following items of rulemaking at the meeting:

**Amend:**

**1.21.2 NMAC Retention and Disposition of Public Records (CPR Rule)**

**Synopsis:**

The proposed amendment of 1.21.2 NMAC consists of the following modifications:  
Section 844 is being amended to add toxicology to the title and description.

**Amend:**

**1.13.11 NMAC Access to Public Records, Research in the New Mexico Archives**

**Synopsis:**

The proposed amendment of 1.13.11 NMAC is to comply with changes to the Inspection of Public Records Act ("IPRA") as a result of Senate Bill 118 and consists of the following modifications:

A new Section 17 is being added to provide parameters for requesting, redacting and releasing law enforcement records in conformance with IPRA.

A summary of the proposed revisions and copies of the full text of the proposed rules may be accessed at the Commission's website ([www.nmcpr.state.nm.us](http://www.nmcpr.state.nm.us)), or by contacting Rick Hendricks at [Rick.Hendricks@state.nm.us](mailto:Rick.Hendricks@state.nm.us), or via regular mail at 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505 or 476-7911.

At the hearing the CPR and Administrator will take oral and written comments related to the rulemaking actions listed below and during the meeting consider approving these rulemaking actions. The Commission may vote on the proposed rules during the meeting on May 21, 2019. The State Records Administrator may take action on those rules at the close of the public rulemaking hearing.

Interested persons may submit comments on the proposed rules at the rule hearing or may submit written comments via email at [rmd.cpr@state.nm.us](mailto:rmd.cpr@state.nm.us). Written comments must be received no later than 5 p.m. on May 13, 2019. If submitting written comments by email, please indicate in the subject line the number of each rule(s) for which you are providing comments. Persons offering written comments at the hearing must have eight (8) copies for the Commission and Administrator to review. Oral comments will also be accepted at the rule hearing, subject to time limitations.

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The agenda is subject to change up to 72 hours prior to the meeting. Legal authority for this rulemaking can be found in the Public Records Act, Section 14-3-1, et seq. and in the State Rules Act, Section 14-4-1, et seq. NMSA 1978.

Thank you,

*Tanya Vigil, Agency Analysis Bureau Chief*  
*Records Management Division*  
*1205 Camino Carlos Rey*  
*Santa Fe, NM 87507*  
*Telephone: 505-476-7921*  
*[www.nmcpr.state.nm.us](http://www.nmcpr.state.nm.us)*  
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NEW MEXICO  
State Records Center and Archives  
Supporting the State of New Mexico  
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Exhibit F

**1.21.2 NMAC**  
**Retention and Disposition of Public Records**  
**(CPR Rule)**

**Proposed Amendment**

**This is an amendment to 1.21.2 NMAC, Section 844, effective XX/XX/2019**

**1.21.2.844      FORENSIC AND TOXICOLOGY ANALYSIS:**

- A.      Category:** Public health and social services - laboratory management
- B.      Description:** Records related to forensic or toxicology analysis.
- C.      Retention:** destroy 10 years from date of final disposition of corresponding case

**[1.21.2.844 NMAC - N, 10/1/2015, A, XX/XX/2019]**

**1.21.2 NMAC**  
**Retention and Disposition of Public Records**  
**(CPR Rule)**

**No Comments Received**

**1.13.11 NMAC Access to Public Records, Research  
in the New Mexico Archives (CPR  
Rule)**

**Proposed Amendment**

This is an amendment to Section 11 and adding a new section 17 to 1.13.11 NMAC, effective July 1, 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, I NMAC 3.2.10.2.11, 07/15/03; A, 06/01/06; A, 07/01/2019]

**1.13.11.17 REQUIREMENTS FOR CONFIDENTIAL RECORDS**

A. The inspection and reproduction of certain confidential records shall only be made with full agreement of the requestor to the terms and conditions prescribed within this rule and 1.13.2 NMAC.

B. The requestor shall provide, but not be limited to, the following information:

(1) a valid form of photographic government identification card for the person or a valid government-issued badge, commission, or identification card for government staff making records request;  
(2) the printed name of the requestor;  
(3) a valid physical and email address of the requestor;  
(4) a statement of intended use of records by the requestor; and  
(5) the date of the request.

C. If SRCA staff determines that there may be protected personal identifier information in any 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 has an obligation to review any records sent to it by SRCA and provide a response as soon as possible and in conformance with time limits set out in IPRA.

E. SRCA may delay access to any requestor due to a failure of originating agency to respond to SRCA request.

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

[N, 07/01/2019]

## **Senate Bill 118**

**An act relating to Public Records; Protecting the confidentiality of certain victims of and witnesses to certain crimes.**

1 AN ACT  
2 RELATING TO PUBLIC RECORDS; PROTECTING THE CONFIDENTIALITY OF  
3 CERTAIN VICTIMS OF AND WITNESSES TO CERTAIN CRIMES.  
4

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

6 SECTION 1. Section 14-2-1 NMSA 1978 (being Laws 1947,  
7 Chapter 130, Section 1, as amended) is amended to read:

8 "14-2-1. RIGHT TO INSPECT PUBLIC RECORDS--EXCEPTIONS.--

9 Every person has a right to inspect public records of this  
10 state except:

11 A. records pertaining to physical or mental  
12 examinations and medical treatment of persons confined to an  
13 institution;

14 B. letters of reference concerning employment,  
15 licensing or permits;

16 C. letters or memoranda that are matters of  
17 opinion in personnel files or students' cumulative files;

18 D. portions of law enforcement records that  
19 reveal:

20 (1) confidential sources, methods or  
21 information; or

22 (2) before charges are filed, names,  
23 address, contact information, or protected personal  
24 identifier information as defined in this Act of individuals  
25 who are:

SB 118  
Page 1

1 (a) accused but not charged with a  
2 crime; or

3 (b) victims of or non-law-enforcement  
4 witnesses to an alleged crime of: 1) assault with intent to  
5 commit a violent felony pursuant to Section 30-3-3 NMSA 1978  
6 when the violent felony is criminal sexual penetration;  
7 2) assault against a household member with intent to commit a  
8 violent felony pursuant to Section 30-3-14 NMSA 1978 when the  
9 violent felony is criminal sexual penetration; 3) stalking  
10 pursuant to Section 30-3A-3 NMSA 1978; 4) aggravated stalking  
11 pursuant to Section 30-3A-3.1 NMSA 1978; 5) criminal sexual  
12 penetration pursuant to Section 30-9-11 NMSA 1978; or  
13 6) criminal sexual contact pursuant to Section 30-9-12  
14 NMSA 1978.

15 Law enforcement records include evidence in any form  
16 received or compiled in connection with a criminal  
17 investigation or prosecution by a law enforcement or  
18 prosecuting agency, including inactive matters or closed  
19 investigations to the extent that they contain the  
20 information listed in this subsection; provided that the  
21 presence of such information on a law enforcement record does  
22 not exempt the record from inspection;

23 E. as provided by the Confidential Materials Act;

24 F. trade secrets, attorney-client privileged  
25 information and long-range or strategic business plans of

1 public hospitals discussed in a properly closed meeting;

2 G. tactical response plans or procedures prepared  
3 for or by the state or a political subdivision of the state,  
4 the publication of which could reveal specific  
5 vulnerabilities, risk assessments or tactical emergency  
6 security procedures that could be used to facilitate the  
7 planning or execution of a terrorist attack; and

8 H. as otherwise provided by law."

9 SECTION 2. A new section of the Inspection of Public  
10 Records Act, Section 14-2-1.1 NMSA 1978, is enacted to read:

11 "14-2-1.1. PERSONAL IDENTIFIER INFORMATION.--Protected  
12 personal identifier information contained in public records  
13 may be redacted by a public body before inspection or copying  
14 of a record. The presence of protected personal identifier  
15 information on a record does not exempt the record from  
16 inspection. Unredacted records that contain protected  
17 personal identifier information shall not be made available on  
18 publicly accessible websites operated by or managed on behalf  
19 of a public body."

SB 118  
Page 3

**1.13.11 NMAC Access to Public Records,  
Research in the New Mexico Archives (CPR  
Rule)**

**Comments Received**

**Chavez, Georgette, SRCA**

---

**From:** Lucero, Leo, SRCA  
**Sent:** Friday, May 10, 2019 5:04 PM  
**To:** Chavez, Georgette, SRCA  
**Subject:** Fwd: [EXT] Proposed amendments to Rule 1.13.11.11; proposed new Rule 1.13.11.17  
**Attachments:** Comments.pdf

Sent from my T-Mobile 4G LTE Device

----- Original message -----

**From:** Kip Purcell <[KPurcell@rodey.com](mailto:KPurcell@rodey.com)>  
**Date:** 5/10/19 4:53 PM (GMT-07:00)  
**To:** "CPR, RMD, SRCA" <[RMD.CPR@state.nm.us](mailto:RMD.CPR@state.nm.us)>  
**Cc:** Kip Purcell <[KPurcell@rodey.com](mailto:KPurcell@rodey.com)>  
**Subject:** [EXT] Proposed amendments to Rule 1.13.11.11; proposed new Rule 1.13.11.17

Please see the attached letter.

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May 10, 2019

**VIA E-MAIL: [rmd.cpr@state.nm.us](mailto:rmd.cpr@state.nm.us)**

Dr. Rick Hendricks  
Administrator  
New Mexico State Records Center and Archives  
1205 Camino Carlos Rey  
Santa Fe, New Mexico 87505

Re: Proposed amendments to Rule 1.13.11.11; proposed new Rule 1.13.11.17

Dear Dr. Hendricks:

I write on behalf of the New Mexico Foundation for Open Government ("FOG") to comment on the pending proposals to amend Rule 1.13.11.11 and to promulgate a new Rule 1.13.11.17. We appreciate this opportunity to offer our perspective.

As an initial matter, FOG commends the New Mexico Commission of Public Records ("the Commission") and the New Mexico State Records Center and Archives ("the Records Center") for proposing to do away with the existing language of Rule 1.13.11.11(A), which inaccurately suggests that the Inspection of Public Records Act ("IPRA") accords confidentiality to entire "personnel files" (when in fact the statute protects only "letters or memoranda that are matters of opinion" within those files) and to "confidential material, which would invade the privacy of the individual" (when in fact the statute is much more narrowly and precisely drawn). Deleting these provisions – and substituting a citation to IPRA itself – would be a welcome and worthwhile change.

On the other hand, in addition to citing the statute, the proposed amendments would refer the reader to proposed new Rule 1.13.11.17 to learn about the inspection or duplication of "certain law enforcement records." Rule 1.13.11.17 similarly alludes to "certain confidential records." Neither rule cites a specific provision of IPRA or otherwise identifies the kinds of records about which it is speaking. Because the phrase "certain confidential records" remains

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entirely undefined, the rule threatens to give the Records Center unfettered discretion to restrict access to public records that no constitutional provision, statute, or supreme court rule makes confidential.

This prospect concerns FOG, because the right to inspect public records "is limited only by the Legislature's enumeration of certain categories of records that are excepted from inspection," and by "constitutionally mandated privileges" and supreme court rules. Republican Party of N.M. v. N.M. Taxation & Revenue Dep't, 2012-NMSC-026, ¶ 13, 283 P.3d 853. To be sure, IPRA's "catch-all exception," *id.*, for records whose confidentiality is "otherwise provided by law," NMSA 1978, § 14-2-1(A)(8) (2011), encompasses "regulatory bars to disclosure," Republican Party of N.M., 2012-NMSC-026, ¶ 13, but only to the extent that such regulations "ha[ve] the force of law," Edenburn v. N.M. Dep't of Health, 2013-NMCA-045, ¶ 26, 299 P.3d 424. "Whether a rule has the force of law depends on whether the rule was promulgated in accordance with the statutory mandate to carry out and effectuate the purpose of the applicable statute," City of Las Cruces v. Pub. Emp. Labor Relations Bd., 1996-NMSC-024, ¶ 5, 121 N.M. 688, 917 P.2d 451 – in other words, whether the rule was "statutorily authorized," *id.* ¶ 7.

A rule that purports to grant greater protection to public records than the confidentiality provided by IPRA itself, by other legislative enactments, by constitutionally mandated privileges, or by supreme court rules cannot have "the force of law." "It is well settled that an agency may not create a regulation that exceeds its statutory authority." Marbob Energy Corp. v. N.M. Oil Conservation Comm'n, 2009-NMSC-013, ¶ 5, 146 N.M. 24, 206 P.3d 135 (internal quotation marks and brackets omitted). "Separation of powers principles are violated when an administrative agency goes beyond the existing New Mexico statutes ... it is charged with administering and claims the authority to ... create new law on its own." Tri-State Generation & Transmission Ass'n, Inc. v. D'Antonio, 2012-NMSC-039, ¶ 13, 289 P.3d 1232 (internal quotation marks omitted). Consequently, "[a] regulation adopted by an administrative agency creating an exemption not contemplated by the act or included within the exemption specified therein is void." State ex rel. McCulloch v. Ashby, 1963-NMSC-217, ¶ 17, 73 N.M. 267, 387 P.2d 588.

Given these well-established principles, FOG wants to make sure that any regulation limiting public access to public records hews closely to IPRA. Unfortunately, proposed Rule 1.13.11.17 appears at odds with IPRA. FOG's reservations about the rule's vague allusion to "certain confidential records," *see supra* p. 1, is heightened by the way the rule treats such records: whereas IPRA either subjects public records to public inspection or else excepts them from that regime, *see* § 14-2-1(A), Rule 1.13.11.17 undertakes to impose certain "conditions" on the inspection of supposedly "confidential" records. That approach puzzles FOG. Either records are "confidential" – in which case the Records Center has no obligation to make them available under any conditions, except to the extent that redaction may render them disclosable in part, *see* NMSA 1978, § 14-2-9(A) (2013) – or else they are not confidential, in which case the Records Center must make them available under the conditions set forth in IPRA. I recognize that a

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separate statute makes public inspection of the Records Center's documents "subject to reasonable rules and regulations prescribed by the administrator," NMSA 1978, § 14-3-8 (1959), but that statute merely gives the Records Center rulemaking power; it does not suggest that a rule at variance with IPRA would be "reasonable."

The conditions enumerated in Rule 1.13.11.17 go beyond what IPRA requires in several respects. Under IPRA, a requester need only provide "the name, address and telephone number of the person seeking access to the records." NMSA 1978, § 14-2-8(C) (2009). But the rule demands, as the first order of business, "a valid form of photographic government identification card for the person or a valid government-issued badge, commission, or identification card for government staff making [the] records request." Rule 1.13.11.17(B)(1). To my knowledge, no statute in New Mexico – except for a statute that directs banks to take certain precautions against money laundering that are mandated by federal law, see NMSA 1978, § 58-32-606(C)(2) (2016) – requires possession or production of photographic identification for any purpose other than driving on the state's highways. And while most records requesters will presumably be able to present photo i.d., many will not. "[M]illions of American citizens do not have government-issued photo identification, such as a driver's license or passport.... [C]ertain groups – primarily poor, elderly, and minority citizens – are less likely to possess [such identification] than the general population." Frank v. Walker, 773 F.3d 783, 785 (7th Cir. 2014) (Posner, J., dissenting from denial of rehearing en banc) (internal quotation marks omitted). That's why, for example, our legislature has repeatedly rejected bills that would require New Mexicans to show photographic identification to poll workers in state elections. Inspecting a public record – a right enjoyed by "[e]very person," § 14-2-1(A) – shouldn't be more difficult than casting a ballot.<sup>1</sup>

Rule 1.13.11.17(B)(3) requires the requester to provide, in addition to photo i.d., "a valid physical and email address." But IPRA requires only one "address," see § 14-2-8(C), by which the statute presumably means a mailing address to facilitate the records custodian's communications with the requester, see, e.g., § 14-2-8(D) to (E). Of course a requester who makes a request by e-mail, see § 14-2-8(F), will disclose "a valid ... email address" in the process, but the right to inspect a public record shouldn't depend on the requester's possession of an e-mail account.

Rule 1.13.11.17(B)(5) requires the request to be dated, but IPRA imposes no such requirement. Instead, the statute pegs time limits to the date when the public body receives the request. § 14-2-8(D). The burden is therefore on the records custodian to date-stamp any

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<sup>1</sup> I realize that a supreme court rule – Rule 1-079(D)(3) of the New Mexico Rules of Civil Procedure – requires that persons seeking access to court records produce "a government-issued form of identification." Thus, it may be appropriate for the Records Center to impose an identical condition on the disclosure of court records in its custody. But not even the supreme court rule calls for photographic identification.

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request that doesn't otherwise disclose the date of receipt. I agree that IPRA requesters are well advised to date their requests, but they shouldn't be required to do so.

Most alarmingly, Rule 1.13.11.17(B)(4) requires "a statement of intended use of records by the requestor." That provision is directly contrary to IPRA, which provides that "[n]o person requesting records shall be required to state the reason for inspecting the records." § 14-2-8(C).

Regarding subsections (C) through (E) of Rule 1.13.11.17, which collectively seek to require originating agencies to take responsibility for redacting "protected personal identifier information," FOG sympathizes with the position in which the Records Center finds itself as the ultimate repository of records created by other public bodies. And FOG doesn't fault the Records Center for asking originating agencies to repossess their records for the purpose of redacting them "as soon as possible and in conformance with time limits set out in IPRA." Rule 1.13.11.17(D). But the buck, for better or worse, stops with the Records Center. If an originating agency rejects the Records Center's invitation to redact its records, or simply fails to respond to that invitation in a timely fashion, there is no statutory basis for "delay[ing] access to [the] requestor." Rule 1.13.11.17(E). To the contrary, it is the custodian of records at the time of a written request – not the records custodian of the public body that first generated the records before transferring them – who must "permit the inspection immediately or as soon as is practicable under the circumstances, but not later than fifteen days after receiving [the] request." § 14-2-8(D). It is only "[i]n the event that a written request is not made to the custodian having possession of or responsibility for the public records requested" that the custodian who receives the request may forward the request to the actual custodian, § 14-2-8(E) – at which point the actual custodian becomes responsible for complying with the statutory deadlines, and the clock starts ticking. To the extent that Rule 1.13.11.17(E) itself represents an attempt to shift to the originating agency "responsibility for the public records requested," § 14-2-8(E), the attempt reflects a misconception of IPRA. The statute makes clear that the records custodian who receives an IPRA request lacks "possession of or responsibility for the public records requested" only when the records are "absent[t] ... from that person's custody or control." § 14-2-8(E). The statute doesn't authorize the custodian to procure that absence. See also § 14-3-8 ("The center ... shall be the facility for the receipt, storage or disposition of all inactive and infrequently used records ....").

In any event, I believe that the proposed rule is an overreaction to the possibility that records transferred to the Records Center and subsequently made the subject of an IPRA request may contain "protected personal identifier information." IPRA says that such information "may be" redacted before a record is made available for public inspection. § 14-2-8(B). But the only redaction duty it imposes on public bodies is to remove the information before making the record "available on publicly accessible web sites" for which the public body is responsible. See id. Short of that kind of worldwide electronic dissemination, IPRA neither states nor even suggests that a public body could ever be held liable for disclosing personal identifier information.

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I understand from Susan Boe that the impetus for the proposed rule is the Records Center's recent acquisition of responsibility for archiving court records, coupled with the 2019 legislature's enactment of a new IPRA exception for the identities of certain crime victims. But in this context, the Records Center's concerns about inadvertent disclosure are even less substantial. In the first place, the soon-to-be-effective IPRA exception applies "before charges are filed." § 14-2-1(D)(2) (2019). That means that the documents about which the legislature was primarily concerned are police reports and investigative records and prosecutors' files – not court files, which don't come into being until after "charges are filed." And in the second place, the supreme court has already instituted measures to guard against the inclusion of protected personal identifier information in court records – measures that, at the same time, tend to absolve the courts of responsibility for litigants' violation of those policies. Consider, for example, the rules of civil procedure for the district courts:

(1) The court and the parties shall avoid including protected personal identifier information in court records unless deemed necessary for the effective operation of the court's judicial function. If the court or a party deems it necessary to include protected personal identifier information in a court record, that is a non-sanctionable decision....

(2) The court clerk is not required to review documents for compliance with this paragraph .... The court clerk is not required to screen court records released to the public to prevent disclosure of protected personal identifier information.

Rule 1-079(D)(1) to (2) NMRA; see also Rule 2-112(C)(1) to (2) (identical rule of civil procedure for magistrate courts); Rule 3-112(C)(1) to (2) (metropolitan courts); Rule 5-123(D)(1) to (2) (identical rule of criminal procedure for district courts); Rule 6-114(C)(1) to (2) (magistrate courts); Rule 7-113(C)(1) to (2) (metropolitan courts); Rule 8-112(C)(1) to (2) (municipal courts); Rule 10-166(D)(1) to (2) (identical rule of procedure for children's courts); Rule 12-314(D)(1) to (2) (identical rule of procedure for appellate courts).

What is more, to the extent that court files are confidential for reasons other than the fact that they contain protected personal identifier information, the courts themselves seal the files, see, e.g., Rule 1-079(C), (E) to (H) – but any file that isn't sealed is "subject to public access," Rule 1-079(A). Following this binary scheme – sealed records are confidential, everything else is subject to public inspection – should be one of the Records Center's easier tasks under IPRA. It shouldn't necessitate the promulgation of rules that would make documents less accessible than they were in the hands of the originating agency.

FOG therefore requests that the Commission and the Records Center rethink the proposed amendments in several respects. First, FOG asks that the proposed new sentence in Rule

Dr. Rick Hendricks

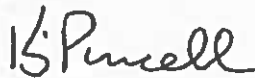
May 10, 2019

Page 6

1.13.11.11 not be added, or at least that the reference to "certain law enforcement records" be made more precise, depending on what the Commission and the Records Center decide to do about Rule 1.13.11.17. Regarding the latter rule, FOG requests (a) that the reference to "certain confidential records" in subsection (A) be made more specific, see supra pp. 1-2; (b) that subsection (B)(1) be deleted, or at least that it be limited to requests for court records and that the reference to "photographic" identification be omitted, see supra p. 3 & note 1; (c) that the words "physical and email" be deleted from subsection (B)(3), see supra p. 3; (d) that subsection (B)(4) be deleted, see supra p. 4; (e) that subsection (B)(5) be deleted, see supra pp. 3-4; and (f) that subsections (C), (D), and (E) be deleted, or at least clarified to provide that a request to the originating agency to purge protected personal identifier information from its documents shall not relieve the Records Center of its responsibility to comply with the deadlines specified in IPRA. The Commission and Records Center may also wish to add a subsection analogous to Rule 1-079(D)(2) of the Rules of Civil Procedure, to emphasize the Records Center's non-liability for disclosure of public records containing protected personal identifier information: "The SRCA is not required to screen records released to the public to prevent disclosure of protected personal identifier information." Any such rule would be a mere restatement of the permissive language of IPRA itself, see § 14-2-1(B), and would therefore "ha[ve] the force of law," Edenburn, 2013-NMCA-045, ¶ 26.

Thanks again for the opportunity to comment on the proposed rules.

Sincerely,



Charles K. Purcell

EXHIBIT K

(1)

NEW MEXICO  
State Records Center and Archives

COMMISSION OF PUBLIC RECORDS

Your Access to Public Information

State Commission of Public Records  
Regular Meeting and Rule Hearing Sign-In  
May 21, 2019

Name/Print	Signature	Representing
Willa Kunde	Willa Kunde	SLD (DOH)
Christina Peterson	C. Peterson	SLD (DOH)
Georgette L. Chavez	Georgette L. Chavez	SRCA
Rick Hendricks	Rick Hendricks	SRCA
FRAN COLON	FRAN COLON	OSA
Don Gordon	Don Gordon	NM SCLL
Pete Chacon	Pete Chacon	SRCA
Tanya Vigil	Tanya Vigil	SRCA
LEO LUCERO	Leo Lucero	SRCA
Julia Filatoff	Julia Filatoff	STO
Melanie Majors	Melanie Majors	NMFOG
Jonathan Raybal	Jonathan Raybal	SRCA
ROB MARTINEZ	Rob Martinez	OSH
Thomas Shumaker	Tom Shumaker	OSH
MATT ORTIZ	Matt Ortiz	ALD
MARCUS FLORES	Marcus Flores	SANM
Marivel Bag	Marivel Bag	CVRC
Joann Ziegler	Joann Ziegler	CVRC
ROSE MARTINEZ	Rose Martinez	CVRC
Gail Peckard	Gail Peckard	SANM

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Robert J. Tórriz  
Historian/Chair

Hon. Hector Balderas  
Attorney General

Hon. Wayne Johnson  
State Auditor

Hon. Maggie Toulouse Oliver  
Secretary of State

Veronica Gonzales  
Department of Cultural Affairs

Ned Fuller  
General Services Department

Stephanie Wilson  
Acting Supreme Court Law Librarian

**Stephanie Wilson**  
*Acting Supreme Court Law Librarian*



NEW MEXICO  
State Records Center and Archives

COMMISSION OF PUBLIC RECORDS  
Your Access to Public Information

State Commission of Public Records  
Regular Meeting and Rule Hearing Sign-In  
May 21, 2019

Statutory Member	Signature	Print Name	Designee (X)
CPR Secretary			
State Auditor		Brian Colon	
Attorney General		MATT BACA	X
General Services Department, Secretary		Ken Ortiz	
Secretary of State		Anita Tellez	
State Law Librarian		DAN CORDOVA	
Department of Cultural Affairs, Secretary		ANITA TELLEZ	X
Attorney General Counsel		John Kreienkamp	

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Veronica Gonzales  
Department of Cultural Affairs

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Acting Supreme Court Law Librarian

# NMAC

## Transmittal Form

NEW MEXICO  
Commission of Public Records  
Your Access to Public Information

FILED WITH  
STATE RECORDS CENTER  
2019 MAY 23 PM 4:19

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

Issuing agency name and address:

State Commission of Public Records, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87507

Agency DFA code:

369

Contact person's name:

Tanya Vigil

Phone number:

505-476-7921

E-mail address:

tanya.vigil@state.nm.us

Type of rule action:

New ☐ Amendment ☒ Repeal ☐ Emergency ☐ Renumber ☐

(ALD Use Only)

Most recent filing date:

8/28/2015

Title number:

1

Title name:

General Government Administration

Chapter number:

21

Chapter name:

Functional Records Retention and Disposition Schedules (FRRDS)

Part number:

2

Part name:

Retention and Disposition of Public Records

Amendment description (If filing an amendment):

Amending (1) Section

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

Section 844 of 1.21.2 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 ☐

### Concise Explanatory Statement For Rulemaking Adoption:

Specific statutory or other authority authorizing rulemaking:

Public Records Act, Section 14-3-1 et. seq. NMSA 1978

Notice date(s):

4/9/2019

Hearing date(s):

5/21/2019

Rule adoption date:

5/21/2019

Rule effective date:

6/11/2019

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.

See page 2 for findings

Continued on next page

7/1/2018

**Findings required for rulemaking adoption:**  
continuedNEW MEXICO  
Commission of Public Records  
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2019 MAY 23 PM 4:19

~~2019 MAY 21 PM 3:56~~

Section 14-3-4(F) NMSA 1978 authorizes the commission to adopt regulations to carry out the purpose of the Public Records Act. Section 14-3-6 NMSA 1978 authorizes the state records administrator to establish a records management program for the application of efficient and economical management methods to the creation, utilization, maintenance, retention, preservation and disposal of official records.

1. Section 844 is be amended to add toxicology to the title and description

These rule amendments were made to include public comments received at the public hearing held on Tuesday, May 22, 2019.

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

Name:

Check if authority has been delegated

Title:

Chair, State Commission of Public Records

Signature: (BLACK Ink only)

Date signed:



5.21.2019

This is an amendment to 1.21.2 NMAC, Section 844, effective 6/11/2019. 2019 MAY 23 PM 4: 19

- 1.21.2.844      **FORENSIC AND TOXICOLOGY ANALYSIS:**
- A.      **Category:** Public health and social services - laboratory management
  - B.      **Description:** Records related to forensic or toxicology analysis.
  - C.      **Retention:** destroy 10 years from date of final disposition of corresponding case
- [1.21.2.844 NMAC - N, 10/1/2015, A, 6/11/2019]