



Legislation Text

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CITY of ALBUQUERQUE
TWENTY FIFTH COUNCIL

COUNCIL BILL NO. O-22-46 ENACTMENT NO. _____

SPONSORED BY: Tammy Fiebelkorn, by request

ORDINANCE

Repealing The City Of Albuquerque Code Of Ordinance Sections 2-6-4-1 Through 2-6-4-6, The "Records Analysis And Disposition Committee" Ordinance And Replacing It With A New Ordinance; Amending The Existing Open Records Ordinance Sections 2-7-6-1 Through Section 2-7-6-7, The "Open Records Ordinance;" Repealing Sections 2-7-7-1 To 3 (Fiebelkorn, by request)

WHEREAS, the City is generating more and more records each year; and

WHEREAS, the City's ordinance governing retention and disposition of records - the Records Retention and Disposition Committee Ordinance - has not been reviewed or amended since 1976; and

WHEREAS, the City of Albuquerque is a public body subject to the Inspection of Public Records Act; and

WHEREAS, the City of Albuquerque receives an increasing number of requests each year; and

WHEREAS, in 2018, the City received approximately seven-thousand (7,000) requests for public records and since then the volume of requests for public records has increased by ten to thirty percent (10-30%) each year; and

WHEREAS, in 2022, the City of Albuquerque appears to be on track to receive eleven-thousand (11,000) requests for public records, which may be more than any other public body in New Mexico; and

WHEREAS, a growing majority of these requests appear to be submitted by commercial

entities; and

WHEREAS, as of 2022, the City of Albuquerque employed at least twelve people who worked on a full or part time basis on processing requests for public records under IPRA; and

WHEREAS, as of 2022, the City will benefit from streamlining responsibilities regarding records management; and

WHEREAS, as of 2022, there are conflicting definitions of common public records terms in our ordinances.

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

SECTION 1. ROA 1994, Chapter 2, Article 6, Part 4 is repealed in its entirety.

SECTION 2. ROA 1994, Chapter 2, Article 7, Part 6 is hereby amended as follows and its sections and subsections are to be renumbered accordingly:

§ 2-7-6-2 FINDINGS.

The New Mexico Inspection of Public Records Act, Section 14-2-1 et seq., NMSA 1978, provides that some classes of records are not subject to public inspection "as otherwise provided by law." Federal law expresses a policy in favor of protecting the privacy of individuals in their social security numbers. 5 U.S.C. § 522a(b). City department heads, other employees and officials have a legitimate and reasonable expectation of privacy in their social security numbers. The legitimate and reasonable expectation of privacy that City employees have in their social security numbers, outweighs the interest in the public in the disclosure of such information. City employees other than department heads and officials have a legitimate expectation of privacy in their home addresses and home telephone numbers in order to protect such information from use for illegal purposes. The legitimate and reasonable expectation of privacy that City employees have in their social security numbers, home addresses and home telephone numbers outweighs the interest in the public in the disclosure of such information. In light of the Congressional policy favoring nondisclosure of social security numbers and the constitutional right to privacy in one's home address and home telephone numbers, the City is justified in enacting legislation codifying such protections for its public employees and officials. [New Mexico state law expresses a policy in favor of protecting individuals from non-consensual distribution of sensitive images of their person. See NMSA 1978, § 30-37A-1. Individuals have a legitimate and reasonable expectation that to the extent sensitive images are evidence in a criminal case or otherwise in the possession of the City, those images will be exempt from disclosure in response to public records requests

from the general public. New Mexico state law expresses a policy in favor of government bodies protecting sensitive information technology infrastructure and cybercrime is becoming a growing concern. See NMSA 1978, § 30-45-4. The City has a legitimate need to protect its information technology infrastructure and systems from intrusion and compromise.]

§ 2-7-6-3 PROCESSING PUBLIC RECORDS REQUESTS

[(A)]The Office of the City Clerk shall be the records custodian for the purpose of processing of requests for public records and shall establish a program for the application of efficient and economical management methods to the processing of requests for public records under the New Mexico Inspection of Public Records Act.]

[(B)]The City Clerk shall ~~[coordinate the receipt of]~~ [receive and process] requests to inspect public records, and oversee compliance with the Act by the agency records custodian to assure that the public is provided proper and reasonable opportunities to inspect public records and reasonable facilities to make or furnish copies of the public records during usual city business hours.

~~[(A) For purposes of §§ 2-7-6-1 et seq., the definition of "public record" shall be the definition of "public record" found in [the Inspection of Public Records Act] [§ 2-6-4-3 ROA 1994.]~~

~~[(B)]~~ [(C)] All city employees, elected officials and any person who is a party under a contract with the city or a subcontractor under a subcontract with a party under a contract with the city shall provide public records to the agency records custodian and the City Clerk in response to any request to inspect public records.

[(D) The City Clerk shall establish a fee schedule for public records annually as provided by law. The fee schedule shall include procedures and guidelines for determining when such fees should be waived or reduced.]

§ 2-7-6-4 AGENCY RECORDS CUSTODIAN AND PROCEDURES.

Each department of the city, the City Council, and each board, commission, committee subject to the Public Boards, Commissions and Committees Ordinance (the "Agencies") shall designate at least one person to be the agency records custodian for said agency who shall cooperate and coordinate with the City Clerk to respond to requests to inspect public records. Each agency shall provide the City Clerk with the names, telephone, e-mail and mailing addresses for the agency records custodian or custodians. Boards, commissions and committees may designate city staff assigned to the board, commission or committee as their agency records custodian. The City Clerk shall post the information about each agency record custodian on the City Clerk's web site

to assure accessibility to the agency records custodian by the public and the press. ~~[(A) If an agency does not have possession of the records requested, or cannot respond to the written request without consultation with another agency, the agency records custodian shall promptly forward the request to the appropriate agency and notify the City Clerk that the agency does not have all or part of the requested records and whether or not it has located the records at another agency. Agencies receiving request to inspect records for records for which the agency is not the custodian shall not require the requesting party to write a new request to another agency of the city. Rather, that request shall be forwarded to any known custodian and the City Clerk, and the time to respond shall begin to run upon receipt of such request by such other agency. Upon forwarding the request to another agency, the agency records custodian shall so notify the requestor in writing and state the reason for the absence of the records sought and the location where the custodian believes the records may be found.]~~

~~(B) The City Clerk or agency records custodian shall respond to oral requests for non-exempt city records immediately, if such records are determined to be public records and are readily available, or as soon as practicable under the circumstances, provided that if the City Clerk or agency records custodian is uncertain of the nature or scope of the request, he/she may require that the requesting party reduce the request to writing. The City Clerk and/or agency records custodian may ask the requesting party to clarify any oral or written request.~~

~~(C) If a written request seeks an unusually voluminous amount of public records, is excessively burdensome or broad, or where other unusual circumstances exist, the records custodian shall notify the requestor in writing within 15 days of receipt of a request that additional time will be necessary to respond. The custodian shall then respond to the request within a reasonable period of time under the circumstances and may schedule multiple inspection sessions, when appropriate. When possible, the agency records custodian shall obtain a written agreement from the requesting party as to the schedule for inspection.~~

~~(D) After a review of a public records inspection request, should the agency records custodian find that disclosure of the city records should be denied in whole or part, the records custodian shall submit that finding to the City Attorney, who will make an independent determination whether the disclosure of the city records should be denied in whole or in part. If the City Attorney determines that the city records sought are exempt from disclosure, the City Attorney shall notify the agency records custodian of the determination and the records custodian shall provide the requestor with a written explanation of the denial. The written denial shall: (a) describe the~~

~~records sought; (b) set forth the names and titles or positions of each person responsible for the denial; and (c) be delivered or mailed to the person requesting the records within 15 days after the request for inspection was received. In the instance of requests for voluminous records resulting in multiple inspections, the denial may be as to each increment of records being produced for inspection.~~

~~(E) No inspection of records shall be allowed that, if disclosed, would facilitate unauthorized access to an agency's electronic information systems or clearly jeopardize or compromise information security. Record inspection and copying shall be accomplished in a manner that does not allow the requesting party to access the computer system where the integrity of the information of the computer would be jeopardized.]~~

§ 2-7-6-5 PROCESS.

The City Clerk shall establish a procedure for responding to requests to inspect public records which complies with the requirements of state law as set forth in the Inspection of Public Records Act, Section 14-2-1 et seq. NMSA 1978 as currently enacted or hereinafter amended.

[(A)] The social security numbers, home addresses and home telephone numbers of city employees are ~~[not public records within the meaning of the New Mexico Inspection of Public Records Act]~~ [confidential and exempt from inspection], and shall not be disclosed to any person, except with the express, written consent of the employee or official. The social security numbers of City department heads and officials are ~~[not public record]~~ [confidential and exempt from inspection] and shall not be disclosed to any person except with the express written consent of that person. Home addresses and home telephone numbers of city officials and department heads are public record.

[(B) No inspection of records shall be allowed that, if disclosed, would facilitate unauthorized access to an agency's electronic information systems or clearly jeopardize or compromise information security. Record inspection and copying shall be accomplished in a manner that does not allow the requesting party to access the computer system where the integrity of the information of the computer would be jeopardized.]

[(C) "images, photographs, videos or other likenesses depicting or simulating an intimate act or depicting any portion of a person's genitals, or of a woman's breast below the top of the areola, that is either uncovered or visible through less-than-fully opaque clothing, which images may reasonably be considered to be private, intimate or inappropriate for distribution are exempt from disclosure.]

~~§ 2-7-6-6 ARCHIVES.~~

~~There shall be established an archiving system which shall be accessible to the public through requests to the City Clerk who shall be responsible for the office of the archives.]~~

SECTION 3. ROA 1994, Chapter 2, Article 7, Part 7 is repealed in its entirety and subsequent chapters parts should be renumbered accordingly.

SECTION 4. A new Part is added to ROA 1994, Chapter 2, Article 7:

[PART 9: CITY CLERK

§ 2-7-9-1 Policy

The City Council recognizes its responsibility to encourage the modernization and development of business methods in City government which result in efficiency and improvement of service. The Council also recognizes its responsibility to create policies for the retention of records and orderly maintenance of records to mitigate against the harms disaster may inflict on records and procedures processes.

§ 2-7-9-2 DEFINITIONS

(A) Agency: Any City department, board, commission, independent agency, or entity.

(B) Public Record: “public records” means all documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, regardless of physical form or characteristics, 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.

(C) City Record: all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government or because of the informational and historical value of data contained therein. Library or museum material of the state library, state institutions and state museums, extra copies of documents preserved only for convenience of reference and stocks of publications and processed documents are not included.

§ 2-7-9-3 PROCESS.

The Clerk is hereby authorized and directed to study the retention and disposal of City government records, papers and instruments of every kind and nature.

§ 2-7-6-4 CORRELATION.

In the performance of this duty, the Clerk is directed to correlate this program where possible with

that of the State Commission of Public Records.

§ 2-7-6-5 INSPECTION AND SURVEY OF RECORDS.

The City Clerk is authorized to inspect or survey the records of any agency, and to make surveys of records management and records disposal practices in the various agencies, and the Clerk shall be given the full cooperation of officials and employees of the agencies in such inspections and surveys. Records, the use of which is restricted by or pursuant to law or for reasons of security or the public interest, may be inspected or surveyed by the City Clerk, subject to the same restrictions imposed upon employees of the agency holding the records.

§ 2-7-6-6 ARCHIVES.

There shall be established an Office of the Archives which shall exist within the Office of the City Clerk and the City Clerk shall be responsible for it. The Office of the Archives shall create an archiving system to store and preserve City records.]

SECTION 5. SEVERABILITY CLAUSE. If any section, paragraph, word or phrase of this ordinance is for any reason held to be invalid, or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

SECTION 6. COMPILATION. Section 2 through 4 of this ordinance shall amend, be incorporated in, and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

SECTION 7. EFFECTIVE DATE. This ordinance shall take effect five (5) days after publication by title and general summary.