



January 22, 2025

Dear Colleague,

The New Mexico Municipal League (NMML) is pleased to share with you a report evaluating the state's Inspection of Public Records Act (IPRA) and its impact on local governments. This comprehensive study, conducted by NMML over the past several months, explores the financial and operational impacts of IPRA on local governments, as well as its role in balancing the essential values of transparency and privacy.

As part of this effort, NMML compiled a dataset of over 210,000 IPRA requests from 28 municipalities and counties spanning 2017 to 2024. Additionally, we conducted a survey of 54 local governments to analyze trends in request volumes, staffing, and resource allocation. To complement these findings, NMML reviewed open records laws across all 50 states, identifying best practices and statutory differences, and engaged directly with city and county clerks, city and county attorneys, police chiefs, representatives of state agencies, and other key IPRA stakeholders.

As a summary, key findings from the evaluation include:

Increasing Request Volumes:

- Since 2020, average monthly IPRA requests among surveyed local governments have more than doubled, with notable increases in some municipalities exceeding 200%.
- Requests for police records, especially body-worn camera footage, have risen by 270%, significantly increasing the complexity and time required to process requests.

Predominance of Commercial Requests:

- Commercial entities, particularly commercial data brokers, are the largest requestors, often seeking crash and incident reports for resale purposes or inclusion in products such as background check databases.
- Commercial data brokers – primarily LexisNexis – account for 15% of all requests among surveyed local governments and over one-third of requests in Santa Fe, Rio Rancho, and Farmington.

Rising Resource Implications:

- Local governments have committed significantly more resources to handling IPRA requests, with a 46% increase in staff and a 71% rise in compensation costs since 2020. Other critical local government functions like public safety, infrastructure, and quality of life services have likely not seen corresponding increases.

Processing Challenges:

- Requests involving body-worn camera footage are particularly time-intensive, often requiring two to three hours to review every hour of footage. A single incident can generate many hours of footage from multiple officers, further amplifying the workload.
- The lack of consolidated statutory exemptions complicates the review process for records custodians, increasing the time required to fulfill requests.

Privacy and Security Concerns:

- Current IPRA statutes may not adequately protect sensitive information, including juvenile records and victims of crime.
- Discrepancies in disclosure requirements based on the agency or entity holding the record can lead to confusion and potential breaches of privacy.

Legal Framework:

- New Mexico lacks mechanisms like administrative appeals or ombudsman services that could help address disputes more efficiently and facilitate timely resolutions rather than prolonged litigation.
- The lack of a statutory notice provision may discourage less costly resolutions and incentivize lawsuits.
- Strict liability provisions mean that even unintentional errors or miscommunications can lead to penalties, further straining local government resources.

The findings underscore the increasing challenges of administering IPRA and highlight opportunities for thoughtful updates to improve efficiency, protect privacy, and ensure transparency.

The report includes several potential statutory updates to consider, including:

- Adding a statutory notice provision to IPRA, allowing public bodies to address alleged violations before legal action is taken.
- Establishing an administrative appeals process to resolve IPRA disputes efficiently and reduce litigation.
- Defining a clear statute of limitations for filing complaints related to IPRA violations.
- Allowing fees for requests to use records for commercial purposes, to better align with the law's intent of promoting government transparency.
- Codifying procedures for redacting sensitive records related to victims of crime and juvenile information to better protect privacy.

The report's findings will also inform the training and guidance that NMML provides its members on IPRA to ensure compliance with the law and support efficient and effective management of requests.

We encourage you to review the enclosed report for further exploration of local governments and IPRA and to join us in discussing potential solutions to modernize and enhance IPRA for the benefit of all New Mexicans. Should you have any questions or wish to engage further on this topic, please reach out to us.

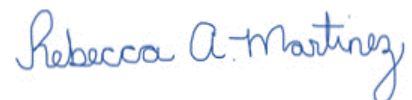
Sincerely,



AJ Forte
Executive Director
ajforte@nmml.org



Alison Nichols
Director of Policy
anichols@nmml.org



Rebecca Martinez
Senior Policy Analyst
rmartinez@nmml.org

IPRA IN ACTION:

EVALUATING IMPACTS OF NEW MEXICO'S
INSPECTION OF PUBLIC RECORDS ACT
ON LOCAL GOVERNMENTS

A REPORT BY THE NEW MEXICO MUNICIPAL LEAGUE



DECEMBER 2024

TABLE OF CONTENTS

3	EXECUTIVE SUMMARY	
5	ACKNOWLEDGMENTS	
6	METHODOLOGY	
7	BACKGROUND	
11	SECTION I.	Since 2020, IPRA requests have more than doubled for surveyed local governments with commercial requestors seeking crash reports in large numbers
17	SECTION II.	The increased volume and complexity of IPRA requests have financial and legal implications for local governments
22	SECTION III.	IPRA provisions should maintain transparency while protecting individuals' privacy and security
25	SECTION IV.	Recommendations
26	APPENDIX A.	IPRA Exemptions
27	APPENDIX B.	Monthly Average IPRA Requests and Percent Increases
29	APPENDIX C.	Municipalities and Counties that Completed the NMML Survey and Submitted IPRA Data to the NMML

EXECUTIVE SUMMARY

Transparency in government activity is a bedrock component of democracy. In New Mexico, the Inspection of Public Records Act (IPRA), much like the federal Freedom of Information Act (FOIA), is a law that ensures the public has access to government records to help foster transparency in government activity. Under this law, the public can request records and public entities must respond promptly with the responsive records, with confidential records or private content redacted or withheld.

In 2024, the New Mexico Municipal League (NMML) conducted an in-depth evaluation of IPRA in order to understand the financial and operational impacts of processing public records requests by local governments and to review how IPRA ensures transparency while maintaining privacy. To accomplish this, the NMML collected and analyzed an original data set of IPRA requests collected from local governments in New Mexico; conducted a survey of local governments; reviewed public records laws in all other states; consulted with stakeholders during structured interviews and focus groups; and reviewed the academic and professional literature on the topic.

Report Objectives



Understand the financial and operational impacts on local governments of IPRA



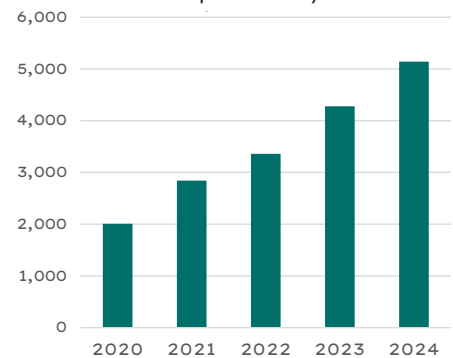
Review how IPRA can ensure transparency while maintaining privacy.

Key Findings

The NMML's research informed the following key findings:

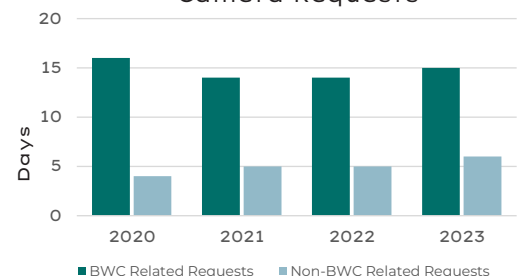
- Since 2020, many local governments in New Mexico have seen a surge in requests for records, with average monthly requests doubling among surveyed entities.
- In 2023, Lexis Nexis, a legal, regulatory, and business information and analytics company, was the single most frequent requestor of records, requesting crash reports and other incident-related records used for resale for commercial purposes. These purposes may not align with the statutory intent of IPRA to increase transparency of government activity.
- Requests for police records, including incident or crash reports, are the most requested records.
- Requests for records with law enforcement body-worn camera (BWC) footage increased by nearly 270 percent from 2020 to 2023. These requests take, on average, three times as long to process as requests without this footage.
- Local governments have increased the number of staff dedicated to processing the increased volume of IPRA requests, and are also paying these staff more, on average. The total number of FTE working on IPRA requests increased

Chart 1. Monthly Average IPRA Requests by Year



Note: Data is combined for 19 local governments
Source: NMML IPRA data set

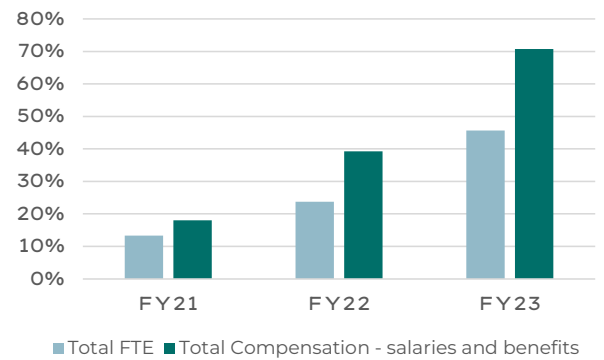
Chart 2. Median Completion Time for Body-Worn Camera Requests



by approximately 46 percent since 2020, and spending on compensation increased by over 70 percent. In the face of surging requests and statutory obligations to fulfill IPRA requests, local governments directed more resources to staffing, potentially leaving fewer resources for other core public functions, such as law enforcement, public road or infrastructure work, or parks and recreational services.

- Without a statutory notice provision (whereby a requestor notifies a records custodian of a potential violation of IPRA and a local entity has an opportunity to remedy the situation) or a dispute resolution process (such as an administrative appeals process or an ombudsman), an unintentional error by a records custodian can result in a costly lawsuit.
- Because New Mexico's IPRA law largely does not exempt records related to juveniles and victims of crimes, the privacy and security of these individuals may be jeopardized in some records requests.

Chart 3. Percent Increase in FTE and Total Compensation Over FY20 Baseline



Source: NMML IPRA dataset

Select Recommendations

To resolve some of the challenges posed by these findings, this report presents recommendations for consideration, including:

- Establishing an administrative appeals process or an IPRA ombudsman function to help resolve complaints regarding potential IPRA violations and provide clear guidance for requestors and records custodians;
- Codifying procedures within IPRA on how to redact records related to victims of crime in order to better protect victims' privacy and dignity;
- Defining a statute of limitations within IPRA;
- Amending IPRA to make exempt sensitive juvenile records;
- Amending IPRA to include a required notice of alleged violation to the records custodian by the complainant to better facilitate the efficient delivery of requested records; and
- Allowing the charging of fees for the use public records for commercial purposes.

ACKNOWLEDGEMENTS

A number of experts and stakeholders contributed their expertise to this report. The NMML would like to thank all involved and the following individuals and organizations.

Elected officials and staff from many municipalities and counties contributed their time and expertise during interviews and focus groups. They shared data about the IPRA requests they have received in recent years. Additionally, local government stakeholders completed a survey that offered additional insight and perspective on how the work of fulfilling IPRA requests has changed in recent years. Their direct experience of receiving and processing IPRA requests was invaluable. A number of NMML and New Mexico Self-Insurers' Fund staff members also contributed to this report.

New Mexico Counties, the University of New Mexico, and New Mexico's Department of Public Safety also offered their experience and perspective related to IPRA.

METHODOLOGY

This report seeks to answer key questions related to how New Mexico's open records laws compare to that of other states, the current financial and operational impacts of IPRA on local governments and how New Mexico's statute balances transparency with privacy. To answer these questions, the report adopts a mixed methods research approach in order to collect the most robust evidence and optimize the analysis of data. Quantitative and qualitative data were analyzed from several sources. A review of relevant New Mexico statutes, policies and procedures provided an overview of the statutory and regulatory landscape related to IPRA. This was paired with a comprehensive review of open records laws in all 50 states. Additionally, the NMML interviewed stakeholders and conducted focus groups. The NMML compiled an original data set of IPRA requests from 2017 to 2024 from 28 municipalities and counties including over 210,000 individual IPRA requests. The data set included information on requestor type, request type, dates of requests and locations. The NMML also conducted a survey of 54 local governments responding to a set of questions related to request volume, resources dedicated to processing requests and interpretation of statute. The NMML also received data on IPRA requests from the New Mexico Department of Public Safety.



BACKGROUND

Transparency in government activity is a critical component of democracy. Open records laws, like the Inspection of Public Records Act (IPRA) in New Mexico, help promote this transparency. All states and the federal government have “sunshine” or open records laws that outline how the public can request government records for inspection, thereby “shining light” on government activity. When the public has access to public records, there is greater oversight of government activity. These open records laws typically describe how records custodians, or public servants, must comply with these requests. At the national level, the Freedom of Information Act (FOIA) establishes a citizen’s right to request certain information from the federal government.

In New Mexico, IPRA governs this process. The statute articulates the legislature’s purpose in enacting the law.¹ The stated intent of the law is to foster transparency in government. IPRA outlines which public bodies and records are covered by the law and which records are exempt, the required time for responses and production of records to requestors, allowable fees public bodies can charge, how to handle denied requests, potential damages associated with inappropriately denied requests and enforcement, among other key components.

“State and local open records laws play a vital role in our democracy. They shed light on the darkest places, exposing corruption and holding the powerful accountable.”

“Shading Sunshine”
Duke Law Journal 425-462 (2023)

There are similarities as well as key differences between IPRA and open records laws in other states. IPRA shares many important similarities with open records laws in other states, notably who is subject to the law and the general process to request records. Some significant distinctions relate to allowable fees, exemptions related to juvenile and law enforcement records, and the administrative appeals processes (see table below for a summary of these distinctions). Key statutory differences will be noted throughout the report as potential models New Mexico could consider.

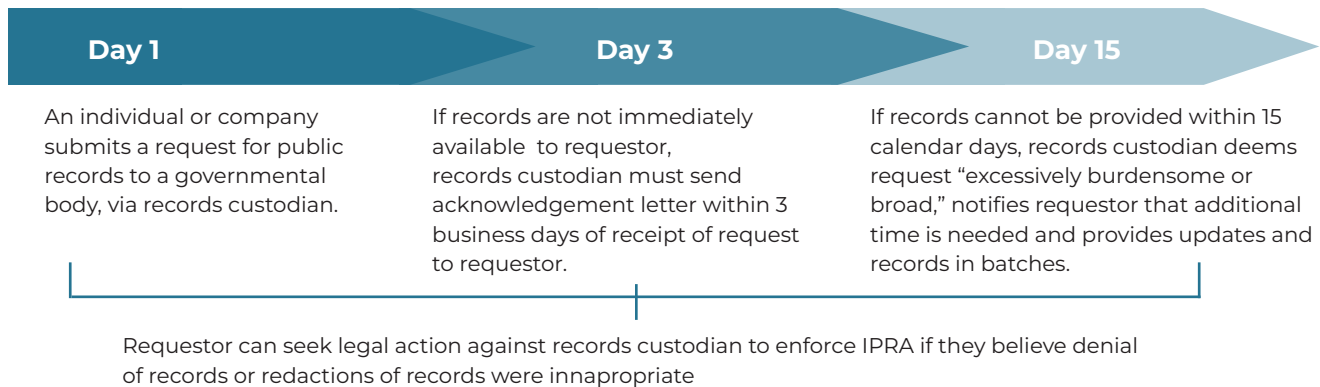
¹ NMSA 1978 § 14-2-5. The law states: “all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees.”

TABLE 4. New Mexico's IPRA and Examples of Open Records Laws from Other States		
Statutory Area	New Mexico	Examples from Other States
Damages	\$100 daily non-compliance penalty. Damages and attorneys' fees are awarded to the prevailing party, usually the requestor.	Many states cap damages or have remedies for non-compliance. Some states place awarded damages in a fund that is used for training.
Statute of Limitations	There is a presumed 3-year statute of limitations before which a requestor must initiate a complaint but it is not identified or defined in IPRA (NMSA 1978 §14-2-1 through 12) but rather in a different section of law (NMSA 1978 § 37-1-4 and § Section 37-1-24).	Other states have statutes of limitations as limited as 6 months after request is denied.
Permitted requestors	No limitations on who can request records.	Some states limit requesting privileges. For example, in some states, only a victim of a crime can request their incident records, only state residents can request records, or commercial entities face limits in making requests.
Fees	No fees can be assessed for staff processing time. Public bodies are permitted to impose a fee per printed page, or for the actual costs for either downloading records to a storage device, or for mailing records.	Over half of states mandate or allow fees for staff time associated with identifying, reviewing, redacting, and producing requested records.
Response time	Fifteen-day response time mandate, unless request is deemed "broad and burdensome."	Some states require requests to be fulfilled in undefined "reasonable" amount of time. If necessary, courts will determine what is reasonable based on circumstances.
Administrative review	No administrative review or quasi-judicial review to provide compliance guidance to responding government entities.	Over half of all states have administrative agencies to aid public bodies in staying compliant or ombudsman programs to adjudicate disputed requests and/or provide guidance.

Generally speaking, New Mexico law does not limit who can request open records and applies broadly to public entities and public records. New Mexico does not place limits on who can request open records. This is not the case in all states. Several states restrict requests to state residents, including Alabama, Arkansas, Kentucky, Tennessee, and Virginia. Pennsylvania allows requests only from United States citizens. In Delaware, public bodies are encouraged, but not required, to respond to requests from non-residents. Some states prohibit incarcerated individuals from submitting a records request or limit the types of records they can request, such as Michigan, Louisiana, Kentucky, Connecticut, Arkansas, South Carolina, and Texas.

Requests for records must be responded to promptly, but New Mexico law allows a records custodian to identify a request as “excessively burdensome or broad” and respond with more time. A record holder, referred to as a custodian in IPRA, must respond immediately to a request for inspection of records or send a letter of receipt to the requestor within three business days. Within 15 calendar days, the request must be responded to as: (1.) granted; (2.) denied or (3.) deemed “excessively burdensome or broad.” If a records request is deemed “excessively burdensome or broad,” custodians are required to periodically update requestors with their progress in fulfilling the request, which can include sending requested documents in batches as they become available.

Inspection of Public Records Act (IPRA) Process



Some states present similar timelines for responding to records requests while other states allow for more time. Similar to New Mexico, in Louisiana, requests for certain records must be responded to "immediately" and in Colorado there is a three-day period with allowable extensions. Other states allow for a longer period, as in Maryland where public bodies have up to 30 days to respond to requests. A minority of states (including Alabama, Arizona, Arkansas, Florida, Minnesota, Montana, North Carolina, North Dakota, Ohio, and Wisconsin) do not provide a period within which requests must be responded to but rather outline that responses must be made as soon as practical, promptly or within a reasonable amount of time. Reasonableness or promptness can be determined on a case-by-case basis and the government bears the burden of proof of promptness in some states.

In New Mexico, a records custodian can charge a reasonable fee for copies and the actual costs associated with downloading or transmitting the copies but cannot charge for staff time associated with processing the request. These fees only apply to making a printed copy of a record, the actual cost of providing a copy via mail, fax or downloading it onto a storage device, and the actual cost of the storage device. Records custodians are permitted to require advance payment of the fees before making copies of public records. Lastly, if a local entity has enacted a fee schedule, custodians are also permitted to waive fees in certain circumstances.

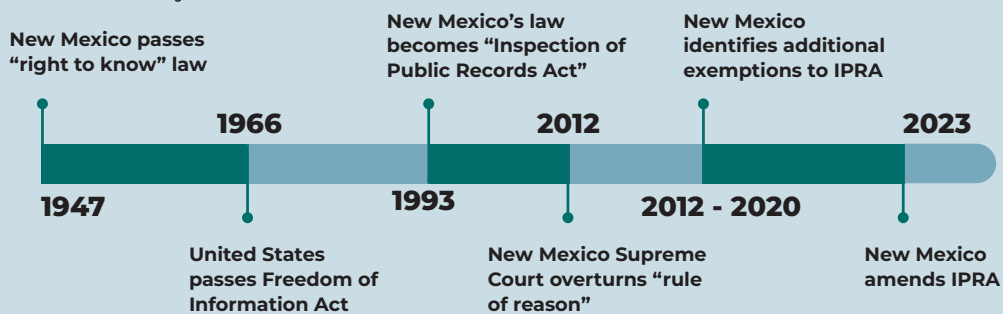
New Mexico is not alone in allowing for fees only for the copying of records. At least eight states (including New Hampshire, Nevada, Arkansas, California, New Jersey, North Carolina, Ohio, and Wisconsin) can charge fees to requestors only for the actual and direct costs of copying requested records. However, at least 25 states allow custodians to charge for the time it takes to identify, review and redact a record. Some states outline that the first few hours of staff time associated with a search for a request cannot be charged and, thereafter, the hourly rate associated with the lowest-paid capable employee be used. Some states allow custodians to charge for the labor costs associated with redacting confidential information. Other states establish different fees for certain records or frequent requestors. These will be discussed in this report.

IPRA permits damages to be awarded to a requestor if a records custodian fails to respond to a request or issues a denial that is later deemed improper by the courts. A records custodian can withhold or redact a record if he or she deems it confidential. The custodian must provide an explanation in writing with the applicable state statute or other law outlining the appropriate exemption. If, however, the requestor believes that a denial or redaction of a record was inappropriate, the requestor can seek legal action to enforce IPRA. If a court finds the denial to be inappropriate, damages may be awarded to the requestor. Damages can reach \$100 per day. Of note, the law states that administrative remedies do not need to be exhausted before any legal action is brought to enforce IPRA.² The impact of this clause on the ability of public bodies to efficiently produce documents will be discussed in this report.

² NMSA 1978 § 14-2-12, <<https://nmonesource.com/nmos/nmsa/en/item/4383/index.do#14-2-12>>, retrieved on 10/16/2024.

Brief History of IPRA

New Mexico's open records law dates to 1947 when the Legislature passed what became known as a "right to know" law, a precursor to today's IPRA. It was not until 1993 that the law was named the "Inspection of Public Records Act" and required public bodies to designate records custodians responsible for facilitating records requests, established the process for making requests, and outlined the enforcement authority. In 2012, the New Mexico Supreme Court overturned what is known as the "rule of reason," making it more difficult for a public body to withhold public records that were not expressly covered by an existing statutory exemption. Since then, the courts have ruled on various aspects of IPRA which have clarified the law, including that government contractors are subject to IPRA because records they create and/or hold via the contractual relationship fall within the definition of a public record and that draft records are also considered a public record, among other things. In 2023, the Legislature amended IPRA by including an expanded definition of Protected Personal Identifier Information (PPII), adding a new section focused on law enforcement records, and a new exception related to critical infrastructure and IT system



SECTION I.

Since 2020, IPRA requests have more than doubled for surveyed local governments,³ with commercial requestors seeking crash reports in large numbers.

Across the country, requests for public records are increasing. In FY23, the federal government received 1,199,699 FOIA requests, the highest number of requests ever received.⁴ According to data published by GovQA, a company that sells proprietary software to aid customers with processing records requests, public request volume for a group of approximately 240 state, county and city organizations increased by 94 percent from 2018 to 2023.⁵

New Mexico has experienced a similar surge, at both the state and local level. In 2023, New Mexico's Department of Public Safety received over 15.4 thousand requests for public records, jumping from an average of 6 thousand requests in 2018 through 2022. Local governments have also received an increasing number of IPRA requests. However, this increase in the volume of public records requests does not necessarily indicate that there is greater transparency in government activity, the statutory intent of IPRA. In New Mexico, data brokers, the largest category of requestors, request public safety incident reports in large numbers and then sell this information to individuals, insurance companies, or law enforcement agencies for a profit. These commercial data brokers are using the IPRA process to promote private, entrepreneurial purposes. These purposes may not align with the statutory intent of IPRA to promote government accountability and transparency, particularly if records are sold or made available to other entities for solicitation of clients.

Chart 5. Total Number of FOIA Requests Received



NMML's Original IPRA Data Set and Survey

The NMML collected an original data set of IPRA requests from local governments across New Mexico. Comparable data from 2020 through 2023 was available for the following local governments: Albuquerque, Belen, Bernalillo County, Carlsbad, Corrales, Curry County, Dona Ana County, Española, Farmington, Hobbs, Los Alamos County, Otero County, Rio Rancho, Roswell, Ruidoso, San Miguel County, Santa Fe, Santa Fe County, and Taos. Additional data was available for Alamogordo, Catron County, Chavez County, Eddy County, Las Cruces, Portales, San Juan County, Sunland Park, Torrance County, Valencia County, Eagle Nest, and Los Lunas.

³ NMML collected IPRA request data from 19 municipalities and counties.

⁴ Office of Information Policy, U.S. Department of Justice. (2023) Summary of Annual FOIA Reports for Fiscal Year 2023. Summary of Annual FOIA Reports for Fiscal Year 2023 (justice.gov)

⁵ GovQA compiles data from states, counties and cities to publish an index of volume and complexity of public records requests. Granicus. (2023) 2023 Public Records Complexity Benchmark Report.

For 19 local governments in New Mexico, the number of average monthly IPRA requests increased an estimated 113 percent from 2020 to 2024. Some communities experienced significant increases in average monthly requests of over 200%, including Belen (214%), Santa Fe (280%) and Dona Aña County (314%). Two communities, Espanola (-3 percent) and the City of Taos (-11 percent), reported decreases. (See Appendix B for more details).

In addition to the comprehensive data set of IPRA requests, the NMML surveyed a larger set of 54 local governments (See Appendix C for list of respondents). Survey respondents reported similar trends of increasing requests: 94 percent of respondents reported an increase in IPRA requests over the last five years, with 78 percent of respondents reporting that requests increased by a lot. This is a more qualitative and broader confirmation of what the quantitative data illustrates.

From 2021 to 2023, IPRA requests from data brokers to local governments approximately doubled and represented 15 percent of requests in 2023, the largest single group of requestors.⁶ Data brokers request traffic reports and other public safety incident reports, then aggregate the reports into a database and sell these reports to consumers, including individuals, insurance companies, and law enforcement agencies. For example, consumers might purchase a report from a data broker to submit information to an insurance company after a traffic incident. Insurance companies use the reports to respond to claims. Law enforcement agencies rely on these data brokers to aggregate information that can be accessed by individuals seeking incident reports. Additionally, the personal data collected via IPRA requests is also likely aggregated and used in other tools or products (such as credit checks or background checks) sold by these companies.

In 2023, Lexis Nexis was the largest user of IPRA among 29 local governments.⁷ The company describes one of their products, LexisNexis® BuyCrash®, as “an online solution designed to help consumers, insurance carriers and law enforcement agencies to access, manage or search for police reports.”

Chart 6. Monthly Average IPRA Requests by Year

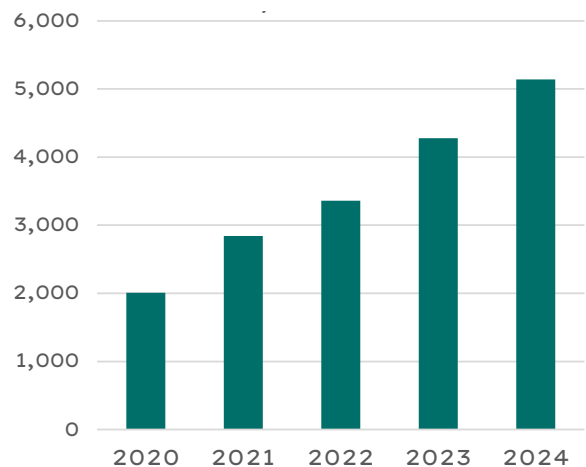
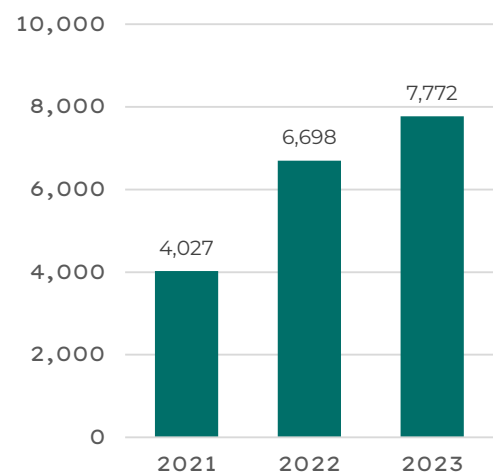


Chart 7. IPRA Requests from Data Brokers



In 2023, data brokers, particularly Lexis Nexis, were the largest single requestor of public records held by 29 local governments.

These commercial data brokers are using the IPRA process to obtain information that furthers their own profit-making ends, a trend present at the national level as well. Nationally, data brokers have been scraping public records for mineable data for resale since at least 2013, if not earlier. In January 2024, the Federal Trade

⁶ In New Mexico, anyone can make a request for open records. While some contact information from the requestor is required in order to deliver the records, a requestor is not required to provide details about who they are or the purpose of their request. Many requestors provide their name, email address, physical address, city, state or company name. The NMML analyzed this information to categorize requests from data brokers, law offices and the media. All other requests were not categorized and likely are from individuals and other businesses. Comparable data from the NMML IPRA data set with contact information was available from 2021 to 2023.

⁷ 29 local government submitted their IPRA data from 2023, allowing for an analysis for a larger number of local governments than for the period of 2020 to 2024, for which there was comparable data for 19 local governments.

Commission banned a data broker from selling people's location data, citing an infringement of privacy and a risk to personal security. A study of requests to the federal government through FOIA noted: "*FOIA is largely being used for purposes other than promoting democratic accountability.*"⁸ This study states, "although there are a variety of purposes behind commercial requesting, one theme is consistent: commercial uses of FOIA primarily fuel private profit, not the public's interest in understanding government activities."⁹

Similarly, IPRA is frequently being used by data brokers to obtain information for resale. While requesting traffic accident and other incident reports is an allowable use of IPRA, it does not clearly serve to further transparency in government activity. For data brokers, there is a clear commercial purpose to their IPRA requests. It is likely that other requestors of public records in New Mexico are also using records for commercial purposes, but since requestors are not required to specify the purpose of a request, it is difficult to determine exactly how many of these requestors there are.

"...commercial uses of FOIA primarily fuel private profit, not the public's interest in understanding government activities."

Troubling Transparency: The History and Future of Freedom of Information.

At least nine states impose limitations on entities requesting records for commercial purpose. Indiana allows public bodies to prohibit the use of public records for commercial purposes. Some states (Arizona, Illinois, Kentucky) require the requestor to provide a statement explaining their commercial purpose. In Arizona, for example, a public entity can then charge for the commercial use of public records. In other states (Arkansas, Illinois, Missouri), fees can be waived or reduced for noncommercial use. Ohio limits the number of commercial requests to ten per month per requestor.

Tennessee establishes guidelines for reasonable charges, including a policy for frequent and multiple requests, which applies when four or more requests are made by the same requestor in a month.

In Arizona, commercial purpose is statutorily defined as: "the use of a public record for the purpose of:

- Selling or reselling public records (whether the records themselves or the inclusion of their contents are in another document for sale).
- Obtaining names and addresses from public records for the purpose of solicitation.
- Selling the names and addresses to another for the purpose of solicitation or for any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from the direct or indirect use of the public record."¹⁰

Kentucky law excludes the media and litigators from its definition of commercial purpose, stating: "Commercial purpose shall not include:

State examples of limitations on entities requesting records for commercial purposes

- **Indiana** allows public bodies to adopt a rule prohibiting the use of record information for commercial purposes.
- **Arizona, Illinois and Kentucky** require the requestor to provide a statement explaining their commercial purpose.
- **Arkansas, Illinois and Missouri** allow fees to be waived or reduced for noncommercial use.
- **Ohio** permits records custodian to limit requests after 10 requests in one month, unless requestor proves it is not being used for commercial purposes.

8 Pozen, D., & Schudson, M. (Eds) (2018) Troubling Transparency: The History and Future of Freedom of Information. Columbia University Press, p.75

9 Ibid, 78.

10 A.R.S. § 39-121.03(D).

- Publication or related use of a public record by a newspaper or periodical;
- Use of a public record by a radio or television station in its news or other informational programs; or
- Use of a public record in the preparation for prosecution or defense of litigation, or claims settlement by the parties to such action, or the attorneys representing the parties.”¹¹

New Mexico could consider imposing limitations on the request of records for commercial purpose. Potential approaches for consideration include: limiting the number of (monthly) requests allowed per requestor, imposing a fee on commercial requests, or prohibiting the use of record information for commercial purpose.

In 2023, law firms accounted for an estimated 13 percent of IPRA requests among 29 local governments, sometimes requesting large numbers of records.¹² In 2023, one large law firm made over 625 requests to the city of Albuquerque. Attorneys use IPRA for a range of purposes, from doing background research to collecting evidence in a case. They use the IPRA process to obtain information to be used to settle a dispute prior to filing a legal claim in court, or to get records not released during the discovery process of litigation. There are important distinctions between discovery and IPRA. During discovery, parties’ requests for documentation from other parties are governed by rules which limit the scope of materials that one party can request from another. Additionally, the court oversees the process and can limit discovery requests that are too burdensome. There are few such limitations in IPRA. During a public record request, a public servant must release all responsive records not identified as exempt, often more promptly than what is required under discovery rules. IPRA requests used to supplement the legal process require significant time and public resources to fulfill.

Attorneys, as well as health care providers or their agents, are already statutorily prohibited from inspecting police records to solicit victims or their families.¹³ This indicates that the law already prohibits a particular commercial and potentially exploitative use of IPRA. However, there is no way to verify whether this is happening and there is no enforcement mechanism in place to ensure it does not happen. Some states, as noted above, require requestors to complete an affidavit ensuring requests are not used for commercial purposes. Such affidavits are not likely allowed in New Mexico because records custodians are prohibited from inquiring into a requesters purpose. Despite this prohibition, it does appear that public records are used to solicit clients. For example, officials in various local municipalities and counties report (and the data confirms) that a private investigator makes weekly requests for all traffic accident reports. Since a requestor is not required to provide the purpose for their request, it is not clear how the private investigator is using the records, but it is possible the records are being requested to solicit business.

In 2023, law firms accounted for an approximate 13 percent of IPRA requests to 29 local governments and journalists accounted for an estimated 2 percent of requests.

Journalists use IPRA to request public records but only accounted for an estimated 2 percent of requests to 29 local governments in 2023. The media often serves as a watchdog on government activity and journalists use IPRA to obtain critical information to promote public awareness about the government. The press is not one of the larger requestors of public records in New Mexico, accounting for only around 2 percent of requests since at least 2021. However, much like law firms, it can be difficult to determine the exact number of requests from the media since journalists’ contact information may not clearly connect them to a news outlet. However, a similar trend is found at the national level with some studies suggesting that requests from the press account for single digit percentages of all FOIA requests.¹⁴

Requests from the media are often time-sensitive, as journalists work under deadlines to file articles. Since IPRA does not direct records custodians to prioritize the fulfillment of requests based on urgency, media requests are typically not fulfilled faster than other requests and can get crowded out when commercial requests are high.

¹¹ KRS 61.874(4)(b).

¹² This is likely an underestimate because it is not always possible to determine who is making a request based on the information submitted.

¹³ Section 14-2A-1 NMSA 1978.

¹⁴ Pozen, D., & Schudson, M. (Eds) (2018) *Troubling Transparency: The History and Future of Freedom of Information*. Columbia University Press, p.75.

Public Information Officers (PIO) within local governments can be a helpful resource for the media, although smaller local governments may not have dedicated PIOs. Information requests from the media could be directed to PIOs, when journalists are gathering information but don't necessarily need to access records, saving time for both journalists and records custodians.

Individuals and companies both within New Mexico and outside of the state request footage of police interactions captured on body-worn cameras (BWC) and post these encounters on YouTube for commercial purposes. The videos are publicly available and depict police interactions captured on BWC. This is a national trend and not unique to New Mexico. In 2023, these “Youtubers” made over 100 individual IPRA requests among a group of 29 local governments. The videos, taken from BWC footage from police, can attract millions of views and garner profits through advertising and clicks. While posting footage of police interactions could increase transparency and accountability in police activity, some requestors, for example, post videos exclusively of young women arrested for DWI, a use of the footage that is likely not designed to promote transparency, but rather to make money off of embarrassing content.

**Screenshot from a YouTube video of a woman arrested for DWI,
likely from BWC footage requested using IPRA**



7.9 million views, posted by a New Mexico source
Source: YouTube.com

TABLE 8. Top Ten IPRA Requestors Among 29 Local Governments in New Mexico by Number of Requests 2023

Description of Requestor	# of IPRA Requests in 2023*	Location where requests were made
Data broker requesting accident reports	7,190	Albuquerque, Bernalillo County, Carlsbad, City of Las Cruces, City of Santa Fe, Corrales, Farmington, Hobbs, Rio Rancho, Roswell, Ruidoso, San Juan County, San Miguel County, Santa Fe County
Large law firm	625	Albuquerque
Hospital billing company	387	Farmington
Federal agency "A" conducting background checks	387	Carlsbad, Farmington
Federal agency "B" conducting background checks	216	Carlsbad, Farmington
Data broker requesting accident reports	187	City of Santa Fe, Farmington
Large law firm	176	Albuquerque
Private Investigator	173	Bernalillo County, Corrales, Española, Rio Rancho, Valencia County
Data broker requesting accident reports	144	Albuquerque
YouTuber posting footage from incidents captured on police body cameras	136	Bernalillo County, Carlsbad, City of Las Cruces, Dona Ana County, Farmington, Rio Rancho, Roswell, Santa Fe

** Numbers are approximate because companies sometimes submit IPRA requests under different names and contact information, making it difficult to aggregate all requests associated with a single company.*

Source: NMML IPRA data set



SECTION II.

The increased volume and complexity of IPRA requests have financial and legal implications for local governments.

Along with a surge in the volume of requests, there has also been an increase in the complexity of the requests, which makes processing requests more challenging. Legislation passed in 2020 requiring police to wear BWC led to the creation of many more records that could be requested. These video and audio records are also more complicated and time consuming to review and redact for confidential information. Additionally, identifying which records, or parts of records (whether in BWC or other records) are confidential can be challenging for records custodians, since the IPRA statute only contains some of these exemptions, while other exemptions are located throughout New Mexico or federal laws.

As a result of the increase in volume and complexity, local governments have dedicated more resources to fulfilling IPRA requests. Other key functions in local government, such as public safety or public works, have not seen increases in funding and staffing to the same degree. Amendments to IPRA, such as including a notice provision, establishing an administrative appeals process, and establishing an ombudsman function, could help facilitate the efficient delivery of requested records.

IPRA requests to local governments for records with law enforcement body-worn camera (BWC) footage increased by nearly 270 percent from 2020 to 2023. These requests take, on average, **three times as long to process** as requests without this footage.

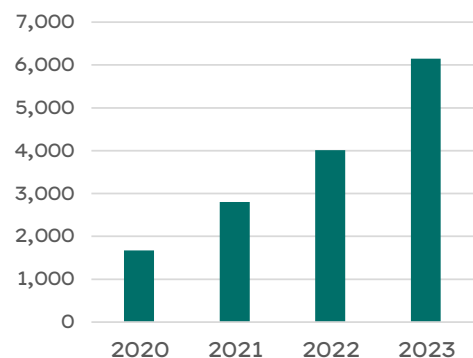
Requests for records containing body-worn camera (BWC) footage increased nearly 270 percent from 2020 to 2023. Legislation passed in 2020 required police to wear body-worn cameras. Due to this legislation¹⁵, there are potentially tens of millions of minutes of BWC footage of public safety incidents available.¹⁶

Requests for records with BWC footage require careful and time-consuming review for redaction, taking nearly three times as long on average to process than requests without this footage. While software can assist records custodians in redacting electronic as well as video records, these systems are not exact and require additional review by records custodians, lawyers, police officers, or others. When a requestor seeks a multitude of records, this review can be time consuming. According to some records custodians, every hour of BWC footage requires at least two hours of review. If, for example, five police officers each wearing BWC are present at the scene of a traffic accident for three hours, the resulting footage could require 30 hours of staff time to review and redact. Additionally, some officers may also have cameras in their police vehicles which would require additional time for review. This all results in multiple versions of footage from the same incident, that, if requested, would all require resource-intensive review.

¹⁵ NM Stat § 29-1-18 (2023).

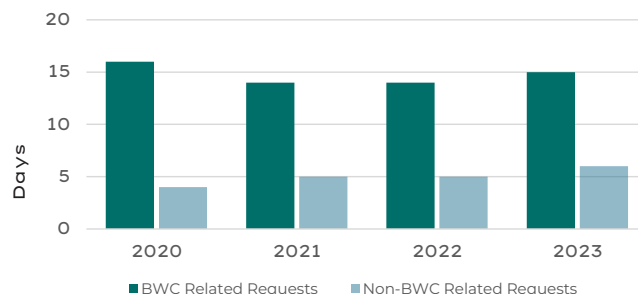
¹⁶ The exact number of minutes of BWC footage generated in New Mexico is unknown. However, if there are approximately 2,000 municipal police officers in New Mexico and each works an estimated 250 days per year and records 60 minutes of BWC footage daily, an estimated 30 million minutes of BWC footage could be created annually.

Chart 9. Requests for BWC Records



Source: NMML IPRA dataset

Chart 10. Median Completion Time for Body-Worn Camera Requests

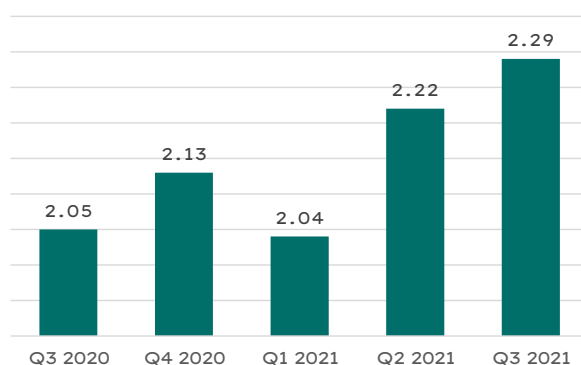


*For requests within NMML IPRA data set
Source: NMML IPRA dataset

The pandemic may have also influenced the complexity and volume of requests. GovQA, a company that sells records request management software to the public sector, created a public records index to measure volume and complexity of records requests. The index considers: 1. the number of requests; 2. the file size and type of record(s) requested; and 3. the time spent per request. A higher number in the index indicates a greater level of volume and complexity. GovQA charted this index from 2018 to 2023 and found a dip in complexity and volume at the beginning of the pandemic (during the first quarter of 2021), when government offices were often closed due to public health orders, followed by an uptick in requests as the media and public wanted access to records documenting how the government was handling the pandemic. New Mexico stakeholders confirmed this effect during semi-structured interviews and focus groups. When asked what could be contributing to the increase in requests, stakeholders pointed to the 2020 BWC legislation as well as an increased interest in government activity fueled by the pandemic.

Chart 11. GovQA's Index of Public Record Request Volume and Complexity Requests

Higher number = greater volume and complexity

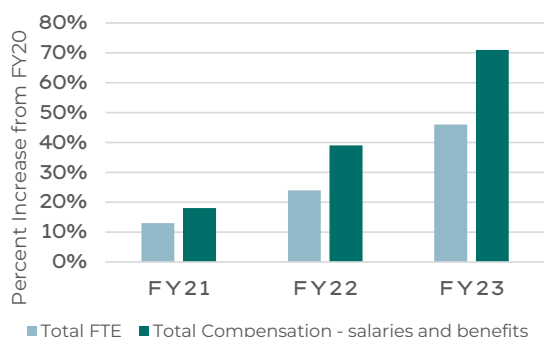


Source: GovQA

From FY20 to FY23, local governments reported an estimated 46 percent increase in the number of staff working on IPRA, with an estimated increase of 71 percent in spending on associated compensation. To

respond effectively and efficiently to the approximate doubling of IPRA requests from 2020 to 2023, local governments dedicated more staff to process requests, and in turn, estimated expenditures on total compensation (salary plus benefits) also increased. For a sample of 47 local governments who submitted survey data, full-time equivalent (FTE) positions working on IPRA increased from an estimated 118 to 172 from FY20 to FY23.¹⁷ Total compensation spent on these positions increased from an estimated \$8.5 million in FY20 to an estimated \$14.4 million in FY24. When data is considered from a longer period, from FY17 to FY24, the increases in FTE and total compensation over time are even greater. In the face of surging requests and statutory obligations to fulfill IPRA requests, public entities directed resources to staffing, leaving fewer resources for other core public functions, such

Chart 12. Percent Increase in FTE and Total Compensation Over FY20 Baseline



Source: NMML IPRA dataset

¹⁷ Compensation associated with these positions was estimated using hourly salary data by position and city size from a 2024 NMML survey of local governments. Salaries for 2024 were based on hourly wages reported in the 2024 salary survey compiled by the NMML. Prior year salaries were inflation-adjusted estimates based on the 2024 salary information. Benefits were estimated to be 30 percent of salary costs.

as law enforcement or parks and recreation.

The City of Albuquerque has tried various staffing structures to help manage the huge volume in IPRA requests.

Albuquerque receives the largest volume of IPRA requests of any local government, with approximately 12 thousand IPRA requests received in 2023. Two thirds of the 2023 requests were for police-related information, requiring greater time and attention to process. Requests for BWC footage from police encounters require detailed and time-consuming review. The city currently dedicates up to 30 FTE to processing requests and has explored various staffing structures to try to tackle the high volume and complexity of requests. Staff turnover coupled with pandemic-related pressures have added to the challenges. The city updated its Standard Operating Procedures, created triage roles, adopted a small team vs direct report approach, and engaged in significant process analysis to help improve their process.

New Mexico's open records law does not currently include a "notice provision" or an opportunity for a requestor to alert a records custodian to a potential violation of IPRA (such as missed records) before proceeding to a legal proceeding. New Mexico's Open Meetings Act includes such a provision, stating that an "individual first provides written notice of the claimed violation to the public body" before pursuing legal action.¹⁸ The public body has 15 days to act on the claim. Including a similar provision within IPRA would allow the public to remedy an alleged violation.

The goal of IPRA is to provide public records to requesting individuals so providing more proactive opportunities for a requestor and custodian to work together to resolve disputes, prior to punitive actions, should be the preferable method. A simple human error can result in a lawsuit and/or damages, sometimes in situations where greater communication between the requestor and public entity could have resulted in a satisfactory outcome without litigation. For example, an IPRA requestor in Albuquerque sought extensive records with which the city substantially complied but unintentionally missed several records. There was significant communication between the requestor and the city and the requestor did not alert the city to the missed record. The requestor subsequently sought remedy in court and was awarded damages. The final amount of damages has not been determined and the city has requested a reconsideration. However, given that New Mexico statute outlines a penalty of up to \$100 per day of non-compliance (and attorneys' fees), the city could face damages of up to \$9,300 to \$13,300, not including attorneys' fees.¹⁹ Because many courts interpret IPRA as a "strict liability" statute, the fact that the mistake was made unintentionally was irrelevant. If the city had been alerted to the missed record, the records custodians could have promptly complied and fulfilled the request, providing the requestor with the information they needed.

However, IPRA states that administrative remedies do not need to be exhausted before any legal action is brought to enforce IPRA. This clause appears to be working against the goal of facilitating the efficient delivery of requested records to the public. If a notice provision were added to IPRA, this clause on administrative remedies would need to be modified. An approach taken at the federal level to address the issue from a different angle could also be considered in New Mexico. In 1996, FOIA was amended to clarify that the custodian's obligation is to conduct a reasonable search for records, allowing government bodies the ability to demonstrate due diligence for compliance when met with a claim of missing records.²⁰

New Mexico's IPRA includes no statute of limitations on when a requestor can file legal action related to a potentially inappropriate denial of a request. IPRA does not specify a deadline by which someone can file a lawsuit for an alleged violation of IPRA. While the New Mexico Department of Justice advises that the general statute of limitation of three years may apply for municipalities and four years for other public bodies (pursuant to NMSA 1978 §37-1-4 and §37-1-24), there is not an explicit statutory limitation of when an IPRA enforcement action can be brought against a public body. Instituting a clear statute of limitations, as other states have done, may support a more streamlined process for requestors and public bodies.

¹⁸ NMSA 1978 § 10-15-3 B.

¹⁹ \$9,300 is based on 93 business days of non-compliance and \$13,300 is based on 133 calendar days of non-compliance.

²⁰ Congress.gov. "All Info - H.R.3802 - 104th Congress (1995-1996): Electronic Freedom of Information Act Amendments of 1996." October 2, 1996. <https://www.congress.gov/bill/104th-congress/house-bill/3802/all-info>.

In at least seven states, the time frame in which an appeal or complaint can be made related to a potentially inappropriate open records denial is less than one year from the date of the denial.

In Connecticut, notice of administrative appeal must be made within 30 days of the denial and appeals from a commission decision must be filed in district court within 45 days of the decision. In New Jersey, a requestor has 45 days in which to file with the superior court. In New York, court proceedings must be filed within four months. In Pennsylvania, administrative appeals must be filed within 15 business days, and judicial review to be filed within 30 days of the final administrative decision. In South Dakota, civil action must begin within 90 days. In Idaho and Michigan, a petition for judicial review must be filed within 180 days. Most other states allow such actions to be brought subject to general statutes of limitations for civil actions against the state, which generally range from one to four years.

New Mexico has no administrative appeal or ombudsman function process to help resolve complaints regarding potential IPRA violations.

Instead of resorting to legal proceedings, about one third of states provide for administrative appeals and/or review through an ombudsman, independent commission, or other such agency (e.g., the attorney general) authorized to assist in resolving disputes arising under their respective records laws. These offices offer training through webinars, FAQs and published guides, in addition to overseeing an administrative appeals process.

Hawaii, Tennessee, Connecticut and Pennsylvania are a few states that provide examples of administrative appeals offices or commissions. A person is not required to use this process before going to court but the process provides an alternative to filing a lawsuit.²¹ In Tennessee, the Open Records Counsel provides education and training to public requestors and agencies and can help resolve disputes. Connecticut's Freedom of Information Commission provides guidance on how the public can make requests and receives requests for appeals from requestors who were denied records. The process to file an appeal is straightforward, involving a concise statement of the facts, a description of the requested records and any pertinent correspondence, among other requirements. Pennsylvania's Office of Open Records has an appeal "e-file portal" where a party can submit an appeal and review relevant and ongoing appeals.

The federal government also offers administrative appeals support to denied FOIA requests through the Office of Government Information Services.²² The office's mission includes resolving disputes between federal agencies and requestors, thereby reducing the need for litigation. In FY23, this office responded to 5,400 inquiries from requestors for mediation services.²³ Additionally, the office provides training sessions on negotiation and offers best practices to agencies.

New Mexico's Department of Justice could be an appropriate place to house an administrative appeal process, given its current role enforcing IPRA by filing lawsuits alleging violations.

Exemptions to IPRA are not uniformly compiled within the statute, making it difficult for records custodians to respond effectively and efficiently to requests.

When a request is received, a records custodian is responsible for reviewing and then redacting content from the records or withholding whole records that are legally not available for public disclosure. This process can be challenging and time-consuming. First, the custodian must have an awareness of exemptions in federal, state, and local law. Second, the custodian must determine whether the exemption or confidentiality provision applies to the record. Third, the custodian must redact the content that should be excluded. Finally, the custodian notifies the requestor of the laws allowing such exclusions. Almost all (90 percent) of the local governments surveyed by the NMML reported that processing IPRA requests is challenging with 44 percent of those surveyed reporting requests are extremely

In at least **seven states** the time frame in which an appeal or complaint regarding a denied open records request can be made is **less than one year** from the date of the denial.

State Examples of Administrative Appeals Process to Help Resolve Open Records Complaints or Disputes:

Tennessee - Open Records Counsel provides education and training to public requestors and agencies and can help resolve disputes.

Connecticut - Freedom of Information Commission provides guidance on how the public can make requests and receives requests for appeals from requestors who were denied records.

Pennsylvania - Office of Open Records has an appeal "e-file portal" where a party can submit an appeal and review relevant and ongoing appeals.

²¹ Guide to Appeals to the Office of Information Practices, Hawaii. Microsoft Word - [Appeals guide - final \(hawaii.gov\)](#).

²² [About OGIS | National Archives](#).

²³ Office of Government Information Services. The Freedom of Information Act Ombudsman 2024 Report for Fiscal Year 2023.

challenging with identifying responsive records or performing redactions among the chief challenges. While IPRA lists several exemptions, it is not an exhaustive list of all potentially applicable exemptions. The statute specifically lists 11 exclusions with the last one being “as otherwise provided by law”, Section 14-2-1 NMSA 1978 (See Appendix A). This important, catch-all provision places the burden of having to locate potential exemptions within all of New Mexico statute on the records custodian.

An example of factors that a records custodian must consider before applying an exemption to a record might include, but are not limited to:

1. Does the exemption apply to the office in custody of the record being requested?
2. For law enforcement records, have charges been filed and what type of crime is involved?
3. For personnel records, is the information fact or opinion?

Finally, the records custodian is responsible for providing the requestor with a comprehensive explanation of the denial and the law that authorized the exemption.

The New Mexico Department of Justice publishes the *Inspection of Public Records Compliance Guide* and includes an expanded (but still not exhaustive) list of exemptions from varying sections throughout state law, the NM Constitution and beyond. This is a helpful resource for both local governments and requestors. However, custodians must still determine applicability of a particular exemption. To expand the correct application of exemptions and reduce the amount of time spent by custodians on requests, the Department of Justice could provide additional guidance and training on identifying exemptions, correctly applying them and clear instructions on which public agencies can use them. Additionally, while the Department of Justice, the NMML and New Mexico Counties all provide trainings to public bodies related to IPRA, additional opportunities to better understand exemptions to IPRA would be beneficial.



SECTION III.

IPRA provisions should maintain transparency while protecting individuals' privacy and security

Open records laws, like IPRA, help promote an informed and engaged public, a critical predicate for a healthy democracy. And yet, access to government records can also present countervailing concerns related to personal privacy, confidentiality, and the need to secure the safety of the citizenry, particularly regarding juveniles. For example, requests for building blueprints of schools or jails or for video footage of election administration offices or courthouses present potential threats to security. Requests for work schedules for reproductive healthcare providers could infringe on personal privacy and potentially present safety concerns. Requests for personal information about victims of crimes, such as the names or images of children or autopsy reports, can sometimes (intentionally or not) revictimize those individuals and their families. Requests for BWC footage that includes images from the inside of the house of a crime victim may also include images of children. These are a few examples of actual IPRA requests in New Mexico.

Requests for Open Records that May Impact Personal Privacy/Confidentiality or Impede Safety:

- Building blueprints of schools, jails, election administration buildings and courthouses;
- Work schedules for reproductive healthcare providers;
- Personal information related to victims of crimes, such as names or images of children;
- Names of children participating in a city-sponsored after-school or summer program

While access to records with personal information may help promote transparency in government, protecting the privacy of vulnerable individuals like juveniles or victims must also be considered.²⁴ When an out-of-state requestor asks for BWC footage of young women being arrested for driving while intoxicated (DWI) and then posts the footage on Youtube.com where it receives over 7 million views, the requestor's and viewer's intent are probably not to promote transparency in government. Recent state and federal legal cases have considered this potential conflict between the public records law's requirements for disclosure and the constitutional right to privacy.

With the government holding an increasing number of records that include personal or private information about citizens, these concerns are only amplified. Striking the right balance between transparency and privacy is an evolving process, as modern technology presents new opportunities and challenges to manage open records. A review of how other states address these privacy and security concerns offers examples for New Mexico to consider. In particular, the state could review how IPRA addresses law enforcement records, juvenile records, discretionary exemptions based on potential invasion of personal privacy or security, and exemptions that protect victims' rights.

Potential areas for statutory review to ensure privacy while maintaining transparency:

- Law enforcement records
- Juvenile records
- Discretionary exemptions
- Victims' rights

While most law enforcement records in New Mexico are public (with a few key exclusions), other states take a different approach. Some of the important statutory exclusions relevant to law enforcement records in New Mexico include:

- Identifying information for a person accused but not charged with a crime;

²⁴Scassa, T., Conroy, A. (2017). The Privacy/Transparency Balance in Open Government. In: Ojo, A., Millard, J. (eds) Government 3.0 – Next Generation Government Technology Infrastructure and Services. Public Administration and Information Technology, vol 32. Springer, Cham. https://doi.org/10.1007/978-3-319-63743-3_13

- Images of deceased or nude individuals;
- Depictions of great-bodily harm (unless caused by a law enforcement officer);
- Confidential sources or methods; and
- The identifying information of victims of certain criminal sexual-related crimes and those involving stalking but only before charges are filed.

Colorado's Open Records Act (CORA) covers public access to the records of government at the state and local level, except for criminal justice records. A separate law added in 1977, the Colorado Criminal Justice Records Act (CCJRA), governs the disclosure of records kept by criminal law enforcement agencies (e.g., police departments, sheriff's offices, district attorneys, the Colorado Bureau of Investigation, the Colorado Department of Corrections). This legislation gives criminal justice agencies, including courts and law enforcement agencies, discretion to withhold all criminal justice information other than records of official action, such as records of arrest, detention, charging, conviction, etc. The latter records are required to be maintained and available for public inspection, but even these records are subject to limited access orders or expungement after certain periods of time.

Other states have laws exempting certain law enforcement content within records. In Alabama, 911 audio recordings are confidential, except to a caller whose voice is on the audio. In California, video and audio created during the commission or investigation of rape, incest, sexual abuse, domestic violence is confidential. In Kansas, criminal investigatory records are exempt from disclosure (except to the person involved), unless a district court finds that disclosure is in the public interest, other than just curiosity. As noted in Section I of this report, in Maryland, traffic accident reports, criminal charging documents, and traffic citations are all exempt.

The Children, Youth and Family Department (CYFD) in New Mexico can identify juvenile content in records as confidential but the public can access these records via the IPRA process if records are held outside of CYFD. This presents a potential loophole where requestors can access confidential juvenile records through IPRA. New Mexico should consider amending statute to ensure that if content is confidentially held by CYFD it cannot be accessed via the IPRA process through other entities that may hold the records..

A high-profile case in Rio Rancho in 2021 illustrates this dilemma. A newspaper requested all records related to the police investigation of the fatal shooting death of a two-year-old boy at his family's home. Requested records included video footage and photographs of the victim and his family and interviews with them. The city of Rio Rancho withheld the records pursuant to the "as otherwise provided by law" section of IPRA and that the records were confidential under the state's Children's Code. The requestor filed a lawsuit alleging violation of IPRA. A state district court found Rio Rancho had violated IPRA, was required to release the records and was responsible for attorneys' fees totaling nearly \$44,000. The city complied. It is important to note that this judicial finding applies to the city of Rio Rancho and not statewide, leaving other public entities open to potential legal dispute in similar situations, should they use the confidential provisions within the Children's Code.²⁵ As another example, nudity within law enforcement records is exempt from disclosure, but not exempt in other records.²⁶

The Legislature could consider expanding these, and other confidentiality provisions such that a record would maintain its confidential status regardless of who holds it. For example, Maine's open records law makes clear that a record's confidentiality exemption status is not lost upon transfer of the record to another governmental entity.

More broadly, some states require the redaction of minor images and identifying information from records. Other states do not allow disclosure of juvenile registrants of recreational or other governmental programs or information about minor criminal history or details of abuse of a child. At least 14 states make juvenile records confidential.

Nearly half of all states (22) allow for discretionary redaction of records. This discretionary withholding of content on records applies when the disclosure would be considered an invasion of personal privacy or could jeopardize safety and security. Much of this discretion pertains to law enforcement records. However, some states extend the discretion to all applicable records. The records custodian responsible for these withholdings must justify the need for confidentiality and the decision is subject to scrutiny and ultimate reversal. There is no

²⁵In 2023, some important changes were made to IPRA, perhaps partially in response to the Rio Rancho case. IPRA was amended to include additional exemptions to requested records of images of a deceased individual and video footage of authorities notifying family members of a death.

²⁶1 M.R.S.A. § 402(3)(F).

discretionary redaction of records in New Mexico for personal privacy considerations.

The New Mexico Constitution outlines certain victims' rights that could be more clearly codified within IPRA. Some of these rights include the right to be treated with fairness and respect for one's dignity and privacy throughout the criminal justice process.²⁷ While records custodians are obligated to adhere to these constitutionally protected rights, these rights are not codified in IPRA, making it unclear how victims' rights should be protected.



SECTION IV.

RECOMMENDATIONS

TO ADDRESS THE HIGH VOLUME AND COMPLEXITY OF IPRA REQUESTS

Best practices:

- The NMML and New Mexico Association of Counties could provide trainings to local governments and journalists on how Public Information Officers can be best leveraged to respond to information requests from the media;
- Local governments could consider posting frequently requested documents on their websites and directing requestors to it for routinely requested records, where feasible;
- The Department of Justice could provide additional trainings to local governments on how to identify and appropriately apply exemptions to record requests; and

Statutory remedy:

- Allow fees for the use of public records for commercial purposes;
- To provide public bodies with an opportunity to locate any missing requested records or obtain clarification on how to process a record in dispute;
- Amend IPRA to include a notice provision which would allow the entity to cure an alleged violation;
- Establish an administrative process and/or an ombudsman function, potentially overseen by the New Mexico Department of Justice, to review allegations of violations and issue nonbinding advisory opinions to requestors and public entities, with the goal of providing access to records without resorting to costly litigation;
- Necessarily, in conjunction with the above point, repeal or amend 14-2-12 NMSA 1978 C. "The exhaustion of administrative remedies shall not be required prior to bringing any action to enforce the procedures of the Inspection of Public Records Act;" and
- Define a clear statute of limitations within IPRA.

TO IMPROVE ADHERENCE TO STATUTORY REQUIREMENTS

- Compile exceptions scattered throughout NMSA, Administrative Rule, federal law and elsewhere into IPRA itself instead of the "as otherwise provided by law."

TO MAINTAIN TRANSPARENCY WHILE ENSURING PRIVACY

- Amend IPRA statute to clarify the applicability of the Children's Code as an exemption (i.e. only certain people have access to juvenile records).
- Codify procedures within IPRA for how to comply with preserving the identity and dignity of a victim, as required by Victims' Rights within N.M. Const., art. II, sec. 24; NMSA 31-26-4

Appendix A: IPRA Exemptions

Most records are accessible under IPRA (NMSA 1978 §14-2-1). However, some critical exemptions are noted in statute:

- Records pertaining to physical or mental examinations and medical treatment of persons confined to any institution;
- Letters of reference concerning employment, licensing or permits;
- Letters or memorandums which are matters of opinion in personnel files or students' cumulative files;
- Portions of law enforcement records as provided in Section 14-2-1.2 NMSA 1978,
- As provided by the Confidential Materials Act;
- Trade secrets;
- Attorney-client privileged information;
- Long-range or strategic business plans of public hospitals discussed in a properly closed meeting;
- Tactical response plans or procedures prepared for or by the state or a political subdivision of the state, the publication of which could reveal specific vulnerabilities, risk assessments or tactical emergency security procedures that could be used to facilitate the planning or execution of a terrorist attack;
- Information concerning information technology systems, the publication of which would reveal specific vulnerabilities that compromise or allow unlawful access to such systems;
- Submissions in response to a competitive grant, land lease or scholarship and related scoring materials and evaluation reports until finalists are officially named or the award is announced;
- As otherwise provided by law.

Appendix B: Monthly Average IPRA Requests and Percent Increases

Municipality/County	2017	2018	2019	2020	2021	2022	2023	2024
Bernalillo County				199	253	267	313	362
Catron County					1	4	4	
Chavez County							11	10
City of Alamogordo	19	29	32		28	38	46	78
City of Albuquerque	273	384	471	538	530	588	715	924
City of Belen			1	2	26	6	5	7
City of Carlsbad				238	256	306	370	393
City of Espanola	12	17	26	25	18	23	22	24
City of Farmington				313	386	481	585	742
City of Hobbs				25	30	36	33	35
City of Las Cruces					141	197	181	239
City of Portales							4	5
City of Rio Rancho				113	176	244	341	337
City of Roswell	26	35	42	77	48	62	45	94
City of Santa Fe				227	587	675	694	863
City of Sunland Park							8	12
Curry County	2	5	4	3	6	7	5	7
Dona Ana County			14	31	67	86	112	128
Eddy County					51	78	105	110
Los Alamos County	40	34	32	40	32	46	44	47
Otero County	9	1	35	24	15	14	21	26
San Juan County							340	358
San Miguel County	5	7	9	9	10	12	12	16
Santa Fe County				53	54	56	85	93
Torrance County					21	33	44	46
Town of Taos	67	87	104	79	87	73	62	70
Valencia County							39	72
Village of Corrales				6	13	18	20	24
Village of Eagle Nest			0		1	1	2	2
Village of Los Lunas						2	4	8
Village of Ruidoso				8	8	10	9	9

Note: Blank cells denote data was unavailable for that period.

Source: NMML IPRA dataset

Percent Increase in Average Monthly IPRA Requests 2020-2024

Municipality/County	% Increase	Municipality/County	% Increase
Bernalillo County	82%	Curry County	99%
City of Albuquerque	72%	Dona Aña County	314%
City of Belen	214%	Los Alamos County	18%
City of Carlsbad	65%	Otero County	8%
City of Española	-3%	San Miguel County	77%
City of Farmington	137%	Santa Fe County	76%
City of Hobbs	39%	Town of Taos	-11%
City of Rio Rancho	199%	Village of Corrales	318%
City of Roswell	22%	Village of Ruidoso	18%
City of Santa Fe	280%		

Source: NMML IPRA dataset

Appendix C: New Mexico Municipalities and Counties that Completed the NMML Survey and Submitted IPRA Data to NMML

Municipality/County	Responded to NMML Survey	Submitted data on IPRA requests
Artesia Police Department	X	
Bernalillo County	X	X
Catron County	X	X
Chaves County	X	X
City of Alamogordo	X	X
City of Albuquerque	X	X
City of Artesia	X	
City of Belen	X	X
City of Carlsbad	X	X
City of Clovis	X	
City of Deming	X	
City of Espanola	X	X
City of Farmington	X	X
City of Grants	X	
City of Hobbs	X	X
City of Las Cruces	X	X
City of Portales	X	X
City of Portales Police Department	X	
City of Rio Rancho	X	X
City of Roswell		X
City of Santa Fe	X	X
City of Sunland Park	X	X
City of Tucumcari	X	
Curry County	X	X
Dona Ana County	X	X
Eddy County	X	X
Harding County	X	
Lea County Sheriff's Office	X	X
Los Alamos County	X	X
Luna County	X	
Otero County	X	X

Municipality/County	Responded to NMML Survey	Submitted data on IPRA requests
Quay County	X	
Rio Arriba County	X	
San Juan County	X	X
San Juan Sheriff's Office	X	X
San Miguel County	X	X
Sandoval County	X	
Santa Fe County	X	X
Sierra County	X	
Taos County	X	
Torrance County	X	X
Town of Bernalillo	X	
Town of Dexter	X	
Town of Edgewood	X	
Town of Red River	X	
Town of Taos	X	X
Valencia County	X	X
Village of Angel Fire	X	
Village of Corrales	X	X
Village of Eagle Nest	X	X
Village of Jemez Springs	X	
Village of Los Lunas	X	X
Village of Ruidoso	X	X
Village of Taos Ski Valley	X	
Village of Tijeras	X	



