



# New Mexico Foundation for Open Government

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Dec. 31, 2009

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P.O. Box 1269  
Santa Fe, NM 87504-1269

Cc: Vice Chairman David King, Commissioner Jerome Block, Commissioner Carol Sloan,  
Commissioner Jason Marks, Juan Rios

Dear Commissioners,

The New Mexico Foundation for Open Government would like to bring to your attention a matter of great concern. The Foundation made an Inspection of Public Records Act request last month for all responses to the PRC's employee ethics survey. Upon the advice of counsel, Juan Rios provided the surveys in partially redacted form, citing policy exceptions for matters of opinion in personnel files and an "investigatory" privilege in ongoing criminal investigations. In some cases, entire pages were blacked out. (see attachments) We believe that for several surveys, the redaction was improper and/or overzealous and would not stand up under a court review.

We do not propose an all-or-nothing approach. Although the Inspection of Public Records Act narrowly limits the subjective-information privilege to letters of reference or materials within a personnel file, we understand the Commission's desire to withhold subjective and potentially damaging allegations against individual employees. However, we do not believe this privilege extends to allegations concerning Commissioners themselves, since you are elected officials employed by the citizens of New Mexico. Likewise, allegations which do not name specific individuals or which concern individuals not employed by the Public Regulation Commission would not fall under a protective privilege.

Therefore, we urge you to reconsider the redaction decisions made by staff. We applaud the Commission's decision to engage in an agency-wide self-evaluation, which promotes the core value of accountability. Now that the results are in, we believe it is in the public's interest and the Commission's interest to handle them with maximum transparency. To quote the New Mexico Administrative Code, "Public acceptance of New Mexico state government and the roles of its employees depend on trust and confidence. This trust is founded on all of government being accountable for its actions. Access to full and accurate records is at the heart of the accountability process."

Thank you for your time and consideration, and we wish you a safe and happy new year.

Sincerely,

Sarah Welsh  
Executive Director