IN THE NEW MEXICO COURT OF APPEALS

DANIEL LIBIT,

Plaintiff-Appellee,

v. No. A-1-CA-38255

UNIVERSITY OF NEW MEXICO LOBO CLUB, et al.,

Defendants-Appellants

Appeal taken from the Second Judicial District Court
The Honorable Nancy J. Franchini, Case No. D-202-CV-2017-05096
The Honorable Clay Campbell, Case No. D-202-CV-2019-00290

BRIEF OF *AMICI CURIAE* THE NEW MEXICO FOUNDATION FOR OPEN GOVERNMENT AND THE BRECHNER CENTER FOR FREEDOM OF INFORMATION IN SUPPORT OF PLAINTIFF DANIEL LIBIT

Respectfully submitted,

PEIFER, HANSON, MULLINS & BAKER, P.A.

By: */s/ Gregory P. Williams*
Gregory P. Williams
Post Office Box 25245
Albuquerque, NM 87125-5245
Tel: 505-247-4800
Email: gwilliams@peiferlaw.com

Attorneys for NM Foundation for Open Government and The Brechner Center for Freedom of Information

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STATEMENT OF COMPLIANCE

The body of the *Amici Curiae* for The New Mexico Foundation for Open Government ("NMFOG") and The Brechner Center for Freedom of Information ("The Brechner Center") uses a proportionally-spaced typeface (Times New Roman), contains 5301 words, as counted by Microsoft Word, Version 2010 (Build 13328.20292 Click-to-Run), and thus complies with the limitations of Rule 12-320(E) NMRA and Rule 12-504(G)(3).

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Amici Curiae New Mexico Foundation for Open Government ("NMFOG") and The Brechner Center for Freedom of Information submit this brief in support of Plaintiff-Appellee Daniel Libit's Answer Brief.[1]

STATEMENT OF INTEREST

NMFOG is a non-profit, nonpartisan organization committed to helping citizens, students, educators, public officials, media and legal professionals in New Mexico understand, obtain and exercise their rights and responsibilities under New Mexico's "sunshine laws," including the Inspection of Public Records Act and Open Meetings Act. In pursuit of these purposes, NMFOG has participated in judicial proceedings, either as a party or as amicus curiae, where access to public records and information is at stake. *See, e.g., Jones v. City of Albuquerque*, 2020-NMSC-013, 470 P.3d 252 (amicus); *New Mexico Foundation for Open Government v. Corizon Health*, 2020-NMCA-14, 460 P.3d 43 (party); *San Juan Agr. Water Users Ass'n v. KNME-TV*, 2011-NMSC-011, 150 N.M. 64, 257 P.3d 884, 885; *see also Palenick v. City of Rio Rancho*, 2013-NMSC-029, 306 P.3d 447 (amicus); *Edenburn v. New Mexico Dep't of Health*, 2013-NMCA-045, 299 P.3d 424 (amicus); *Republican Party of New Mexico v. New Mexico Taxation & Revenue Dep't*, 2012-NMSC-026, 283 P.3d 853 (amicus).

[1] In accordance with Rule 12-320(C) NMRA, *amici* state that no counsel for any party authored this brief in whole or in part, nor made a monetary contribution intended to fund the preparation of submission of the brief.

The Brechner Center for Freedom of Information is located at the University of Florida College of Journalism and Communications, where for 40 years the Center's legal staff has served as a source of research and expertise about the law of access to information. The Brechner Center regularly publishes scholarly research about the public's rights under open-government laws, responds to media inquiries about the workings of public-records statutes, and conducts educational programming to inform citizens about their access rights.

Pursuant to Rule 12-320(D)(1), *amici* provided notice of their intent to seek leave to file this brief on October 16, 2020.

ARGUMENT

Because the University of New Mexico Foundation ("the Foundation") and the University of New Mexico Lobo Club ("the Lobo Club") act on behalf of the University of New Mexico ("UNM"), their records are subject to IPRA pursuant to *State ex rel. Toomey v. City of Truth or Consequences*, 2012-NMCA-104, ¶ 24, unless they can demonstrate that the Legislature exempted those records from IPRA, notwithstanding New Mexico's emphatic policy in favor of transparency in public matters. Because the Foundation and the Lobo Club cannot do so, the district courts' orders should be affirmed.

I. THE UNM FOUNDATION AND THE LOBO CLUB ARE SUBJECT TO IPRA TO THE SAME EXTENT AS IS THE UNIVERSITY

A. The records of the Foundation and the Lobo Club are public pursuant to *Toomey*

Both the Foundation and the Lobo Club are functional equivalents of departments or divisions of UNM. Each serves one function: raising money for UNM. **[BIC 6, 12]** (the Foundation's "primary purpose is raising and managing private donations to support the University, its programs and its students … [t]he Lobo Club's sole purpose is to solicit, manage, and distribute private gifts and donations given for the benefit of the University of New Mexico."). These entities serve no other partners than UNM; their operating boards include numerous UNM administrators and employees, including UNM's president and athletic director; they share some facilities and overhead expenses with UNM, or UNM provides them outright; and UNM hand-picks some of their leadership. **[AB 3-5]**. This is not a situation in which an independent private entity provides certain services to a public entity; to the contrary, both the Foundation and the Lobo Club are creations of UNM and exist only to carry out one of UNM's core needs: fundraising. **[AB 3]**

These facts mean that unless the Foundation and the Lobo Club are otherwise exempt from IPRA, *Toomey* requires this Court to uphold the district court's findings that the Foundation and the Lobo Club act on behalf of UNM, and thus the records of the two entities are subject to IPRA to the same extent that

UNM's records are subject to IPRA. It appears that neither the Foundation nor the Lobo Club are now asserting, as they did in the district court, that the two entities do not meet the *Toomey* requirements. To the contrary, it is obvious that the *Toomey* requirements are met; as the Foundation and the Lobo Club concede, the relationship between organizations like the Foundation and Lobo Club would make it "impossible for such organizations to prevail under the *Toomey* analysis." **[BIC 20]**

This type of intertwined relationship between foundation and institution is what has led other courts to conclude that a foundation's records are subject to public records requests under state sunshine laws. *See, e.g., Chicago Tribune v. Coll. of Du Page*, 79 N.E.3d 694, 708 (Ill. App. Ct. 2d Dist. 2017) (where a foundation was plainly performing a governmental function (fundraising) on behalf of the College of Du Page, its records were subject to Illinois's open records law); *Gannon v. Board of Regents*, 692 N.W.2d 31, 32 (Iowa 2005) (private not-for-profit corporation that managed gifts to the university was subject to Iowa Freedom of Information Act due to its service agreement with university); *Jackson v. Eastern Mich. Univ. Found.*, 544 N.W.2d 737 (Mich. Ct. App. 1996) (state university foundation was a public body under freedom of information act and open meetings act), *State ex. rel. Toledo Blade Co. v. Univ. of Toledo Found.*, 602 N.E.2d 1159 (Ohio 1992) (nonprofit corporation that solicited and received

donations for public university was a public office subject to public records disclosure, including donor names); *Cape Publications, Inc. v. Univ. of Louisville Found., Inc.*, 260 S.W.3d 818, 822-23 (Ky. 2008) (holding that Kentucky open-records act applied even to foundation records disclosing names of certain donors); *Weston v. Carolina Research and Dev. Found.*, 401 S.E.2d 161 (S.C. 1991) (holding that private foundations that receive public funds are subject to the state freedom of information act), *Calif. State Univ., Fresno v. McClatchy Co.*, 90 Cal.Rptr.2d 870 (Cal. Ct. App. 2001) (holding that documents revealing identities of donors were public records); *see also* N.D. A.G. Opin. 2014-O-04 (April 24, 2014) (opining that Dickinson State University's foundation is a "public entity" because it performs governmental services on behalf of a state agency and directing the foundation to fulfill a freedom-of-information request for its CEO's email correspondence).

B. The Foundation and the Lobo Club have not shown that the Legislature exempted their records from disclosure.

The Foundation and the Lobo Club must demonstrate that the Legislature, in enacting NMSA 1978, Section 6-5A-1 (2011), exempted the records requested by Mr. Libit from IPRA. The Foundation and the Lobo Club bear the burden of doing so. *See Noll v. New Mexico Dep't of Pub. Safety*, 2019 WL 1615040, at *4 (N.M. Ct. App. Mar. 19, 2019) ("[i]n an IPRA enforcement action, the burden is on the public entity to establish that the records requested are exempt from inspection),

citing City of Farmington v. The Daily Times, 2009-NMCA-057, ¶ 13-14, 146 N.M. 349, overruled on other grounds by *Republican Party of N.M. v. N.M. Tax. and Rev. Dept.*, 2012-NMSC-026, ¶ 16 (stating that the burden is on "the custodian of the records to demonstrate a reason for non-disclosure"). They have not met that burden.

The Court must interpret Section 6-5A-1 in the context of IPRA. The Foundation and the Lobo Club correctly note that provisions of a statute are to be read together **[BIC 26]**, but the same principle applies to multiple statutes addressing a similar subject matter. *See, e.g., N.M. Bd. of Veterinary Med. v. Riegger*, 2007-NMSC-044, ¶ 13, 142 N.M. 248 (internal citation omitted)("we apply the fundamental rule of statutory construction ... that all provisions of a statute, together with other statutes in pari materia, must be read together to ascertain the legislative intent."). As a result, the provision of Section 6-5A-1 that addresses IPRA must be read together with IPRA. IPRA, of course, states its underlying policy explicitly:

> Recognizing that a representative government is dependent upon an informed electorate, the intent of the legislature in enacting the Inspection of Public Records Act is to ensure, and it is declared to be the public policy of this state, that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees.

NMSA 1978, § 14-2-5 (1993). New Mexico courts, as required of them, have consistently looked to this statement of policy in interpreting public records issues.

See, e.g., Crutchfield v. New Mexico Dept. of Taxation & Revenue, 2005-NMCA-022, ¶ 18, 137 N.M. 26 ("IPRA unquestionably sets a policy of citizen entitlement to access to public records"); *Cox v. N.M. Dep't of Pub. Safety*, 2010-NMCA-096, ¶ 17, 148 N.M. 934) (in light of IPRA's purpose, as set forth in Section 14-2-5, "[e]ach inquiry starts with the presumption that public policy favors the right of inspection.").

In light of this policy, when the Legislature has intended to exclude certain otherwise public records, it has done so explicitly. For example, just this year, in statutes regarding small business loans, the Legislature's enactment stated that "[i]nformation obtained by the authority regarding individual loan applicants is confidential and not subject to inspection pursuant to the Inspection of Public Records Act." NMSA 1978 § 6-32-7 (2020). Similarly, in the context of access to applications for the position of president of higher learning, the Legislature stated that such records "are exempt from inspection under the Inspection of Public Records Act." NMSA 1978 § 21-1-16.1 (2011). The Legislature has done this many times; for a non-exhaustive list of examples of the Legislature's explicit exclusion of records from IPRA, see Addendum A.

The Legislature did not do so in Section 6-5A-1. As set forth in depth by both Mr. Libit and the New Mexico Attorney General, the most straightforward interpretation of Section 6-5A-1(D) is that a private entity which enters into a

contract with a public entity does not, by the fact of having done so, automatically subject its records to IPRA. And if a record is held by a private entity on behalf of a public body, it is a record of both the private entity and the public body. Nothing in Section 6-5A-1(D) suggests that the Legislature intended to exempt public records held by private entities from disclosure. And nothing in the statute comes close to demonstrating, as the Foundation and the Lobo Club argue, that the Legislature specifically intended to create a blanket exclusion of records relating to donations to public universities and the use of these donations.[2]

The Foundation and the Lobo Club's assertion that affirmance of the district court's decision will affect "dozens upon dozens" of organizations and "thousands upon thousands" of donors **[BIC 33]** serves as a reason to deny their requested relief. They ask this Court to recognize a carve-out for a single type of public records – fundraising records for public entities – that are of substantial public importance, and to do so based on, at best, an ambiguous statutory reference. The Court should reject this effort. *See Dunn v. New Mexico Dep't of Game & Fish*, 2020-NMCA-026, ¶ 14 (rejecting a public entity's argument in favor of a narrow definition of "public records" under IPRA that would be be "tantamount to

[2] *Amici* adopts the arguments of Mr. Libit and the Attorney General by reference, and for purposes of judicial economy does not repeat those arguments here.

creating an additional policy-based exception not identified in IPRA or in other statutes”).

Had the Legislature intended to exclude all records of a foundation from IPRA, it could have done so explicitly. It did not. Reading Section 6-5A-1 together with IPRA, in light of the Legislature’s pronouncement that the stated policy of IPRA is to provide the greatest possible information to the public, requires a finding that the Foundation and Lobo Club have not met their burden of demonstrating that the records at issue are exempt from disclosure.

II. PUBLIC POLICY CONSIDERATIONS FAVOR ACCESS TO THE RECORDS.

This Court is limited in applying policy considerations to resolution of this issue. In considering the Foundation and the Lobo Club’s request that this Court recognize an exemption to IPRA, the Court may not substitute its own policy judgments for those of the Legislature. *See Republican Party of New Mexico v. New Mexico Taxation & Revenue Dept.*, 2012-NMSC-026, ¶ 16 (rejecting the non-statutory “rule of reason” exemption to IPRA). The court’s consideration of policy matters should be limited to the stated policy of transparency in IPRA.

That policy of transparency strongly favors affirmance of the district courts. The public has a considerable interest in access to information about donations to, and fundraising by, UNM and the state’s other institutions of higher learning. The

Court should not permit these institutions to hide such information through the creation of a nominally separate, but functionally intertwined, private entity.

The rationale for recognizing that state open records statutes apply to university-created foundations was addressed by the Kentucky Supreme Court in a case brought by a news organization against the University of Louisville Foundation:

> As a public institution that receives taxpayer dollars, the public certainly has an interest in the operation and administration of the University…. The Foundation's stated goal is to advance the charitable and educational purposes of the University of Louisville. To this end, it solicits, receives, and spends money and other assets on behalf of the University. The public's legitimate interest in the University's operations then logically extends to the operations of the Foundation.

Cape Publications, Inc. v. Univ. of Louisville Found., Inc., 260 S.W.3d 818, 822-23 (Ky. 2008) (holding that Kentucky open-records act applied even to foundation records disclosing names of certain donors).

The Foundation asserts that in 2015-16, it received $5.4 million in direct support payments from UNM, assessed $2.7 million in fees from the endowments owned by UNM, and raised $87 million to benefit UNM. **[BIC 7]** Raising money to sustain the operations of a university is a core governmental function. It is increasingly accepted that attracting grants and donations is the single most important and time-consuming job of the university president. *See* Melissa Ezarik, "The President's Role in Fundraising," University Business, April 27, 2012

(quoting estimates that university presidents can spend as much as 70 percent of their time on fundraising). A 2013 survey of 142 public university presidents found that, by their own estimate, they spent an average of 6.7 workdays per month on fundraising and 3.85 workdays per month traveling for fundraising. *See* Robert L. Jackson, "The Prioritization of and Time Spent on Fundraising Duties by Public Comprehensive University Presidents," Int'l J. of Leadership & Change, Vol. 1: Iss. 1, Art. 9 (May 2013). It is not possible to transform the character of this core governmental function into a private function simply by delegating it to a nonprofit entity of the agency's own creation. The public has a considerable interest in how this money is raised and spent on UNM's behalf, and that interest is not diminished by the fact that UNM has created a separate entity to conduct such matters.

In addition, the Foundation's arguments that access to records "would likely have a catastrophic effect" on its ability to fundraise for UNM **[BIC 9]** is at best speculative. The Foundation and the Lobo Club offer no evidence that the foundations in California, Pennsylvania or any other state subject to open-government laws have ceased being able to effectively fundraise because their records are accessible. Foundations across California, for instance, have reported record donations in recent years, indicating that it does not handicap these institutions to make their operations transparent. *See, e.g.,* University of California-Davis news release, "UC Davis Announces Another Record-Breaking

Fundraising Year," July 25, 2017, available at https://www.ucdavis.edu/news/uc-davis-announces-another-record-breaking-fundraising-year/; University of California-Berkeley news release, "Campus sets new records for fundraising," July 14, 2016, available at http://news.berkeley.edu/2016/07/14/campus-sets-new-records-for-fundraising/.

Furthermore, while foundations commonly argue that they need confidentiality to avoid compromising donors' privacy, universities and their foundations routinely publicize the names of donors – even chiseling their names into the edifices of buildings – when disclosure serves their objectives. They cannot be heard to argue that disclosure is appropriate only where the information flatters the university and not where the information might be disadvantageous. Open government laws do not allow agencies to release only those records that they regard as strategically helpful.

Because there is no practical separation between foundations and their host universities, ethically dubious behavior at a foundation often ensnares the host institution as well. Using public records that are accessible under Michigan's equivalent to IPRA, the *Detroit Free-Press* reported on what gives the appearance of a "pay to play" system at the University of Michigan's $11 billion endowment fund, where the foundation had placed billions with money management firms run by executives who have made large donations to the university or served on the

foundation's board. *See* Matthew Dolan & David Jesse, "University of Michigan pours billions into funds run by contributors' firms," *Detroit Free Press*, Feb. 1, 2018. The disclosures prompted an outcry from student leaders, who signed a joint statement declaring that the foundation's investment practices "eroded our trust" in the university. *See* Matthew Dolan & David Jesse, "University of Michigan students: Be more transparent about endowment investments," *Detroit Free Press*, Feb. 15, 2018. Thus, if New Mexicans are to be assured that their universities operate in an honest and above-board manner, they need access not just to the universities' public records but to their foundations' records as well.

In an illustrative case, journalists from the *Pocono Record* were forced to file suit against Pennsylvania's East Stroudsburg University Foundation to obtain access to records comparable to those sought here, in their attempt to inform the public about a scandal that resulted in the ouster of the foundation's chief fundraiser, Isaac Sanders. *East Stroudsburg University Foundation v. Office of Open Records*, 995 A. 2d 496 (Pa. Commw. 2010). After winning that legal challenge, the journalists used foundation records to expose irregularities in the way the university doled out scholarship money, and raised questions about whether the former director misused foundation money to cultivate inappropriate personal relationships with students, over which he and the university were later sued. *See* Dan Berrett, "ESU Foundation records may hold clues to Sanders

scandal," *Pocono Record*, June 30, 2013. Similarly, a student editor at Texas A&M University won a national investigative-reporting award by analyzing records of his university's endowment investments to show how frequently the university invested donors' money in companies implicated in human-rights abuses in the developing world. *See* Spencer Davis, "The bottom line first: Without a social policy, A&M is invested in companies of unclear character," *The Battalion*, Nov. 12, 2015; University of Georgia news release, *Investigative series examining Texas A&M's investments wins 2016 Holland Award*, July 26, 2016, *available at* http://grady.uga.edu/investigative-series-examining-texas-ams-investments-wins-2016-holland-award/. In California, reporting by the *Santa Rosa Press Democrat* prompted an investigation by the state Attorney General into the Sonoma State University Foundation, after a series of stories disclosed that the SSU Foundation made unorthodox personal loans to clients of a foundation board member, and loaned the board member himself $1.25 million, which he was unable to fully repay. Nathan Halverson, "Attorney General auditing SSU loans to Carinalli," *Santa Rosa Press-Democrat*, July 29, 2009.

Furthermore, universities can be financially responsible for mismanagement by their foundations. At the University of Wisconsin-Oshkosh, where the university's purportedly "separate" and "private" foundation ended up suing the university to make good on millions of dollars that the foundation lost to

improvident investments. When the foundation declared bankruptcy, it brought a claim arguing that the university was the guarantor of its debts, and won a $15 million judgment from a U.S. bankruptcy judge that eventually settled for a $6.3 million payout of university funds.[3] This scandal dispels any notion that the finances of a university and its foundation are meaningfully separate.

These concerns are especially relevant at UNM. Mr. Libit's records requests ask for information related to fundraising by the Foundation and the Lobo Club for UNM's athletic department. That department has been beset with problems related to financial irregularities. In 2017, the New Mexico State Auditor designated "UNM and its component units" for a special audit due to questions about athletic fundraising and expenses.[4] The subsequent report, as reported in the media, "revealed extensive mismanagement of public and private funds, a glaring lack of accountability within the athletics department and the school's various fundraising entities, and a confusing array of internal policies that led to years' worth of financial missteps and perks to employees and donors."[5] The audit report led to an

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[3] https://madison.com/wsj/news/local/education/university/uw-system-settles-with-uw-oshkosh-foundation-in-6-3-million-agreement/article_6da6e329-ec49-55b2-9bb3-acf2977199ff.html

[4] https://www.abqjournal.com/1049037/unm-audit-prompting-concerns.html.

[5] https://www.santafenewmexican.com/news/local_news/state-audit-blasts-unm-athletics-over-mismanagement-of-funds/article_69ca69ab-180f-54df-aa80-47f3c43bc301.html

inquiry by the Higher Learning Commission that threatened to jeopardize UNM's reaccreditation.[6] Furthermore, repeated budget issues within the athletic department led to the state Higher Education Department to place UNM on a "enhanced fiscal oversight program."[7]

In sum, the public policy favoring transparency of the actions of UNM and its athletic department apply equally to the Foundation and the Lobo Club. Without access to those entities' records, the public's ability to monitor and oversee UNM is significantly impaired.

CONCLUSION

For the foregoing reasons, the decisions of the district courts should be affirmed.

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[6] https://www.santafenewmexican.com/sports/accreditation-agency-questions-unm-s-finances/article_b375a2db-2987-5f17-b21f-96b590268447.html

[7] https://www.abqjournal.com/1172926/state-to-continue-close-watch-of-unm-athletics-finances.html#:~:text=In%20April%20%E2%80%94%20six%20months%20after,save%20%241.9%20million%20a%20year.

Respectfully submitted,

PEIFER, HANSON, MULLINS & BAKER, P.A.

By: */s/ Gregory P. Williams*
Gregory P. Williams
Post Office Box 25245
Albuquerque, NM 87125-5245
Tel: 505-247-4800
Email: gwilliams@peiferlaw.com

Attorneys for NM Foundation for Open Government and The Brechner Center for Freedom of Information

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was submitted for e-filing and e-service on all counsel of record via the Court's EFS on November 4, 2020, which caused all counsel of record to be served by electronic means to their respective email addresses of record, as more fully reflected on the Notification of Service generated by the Court's EFS.

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ADDENDUM A

NMSA 1978 § 1-6B-12 (from the Uniform Military and Overseas Voters Act)

A. The county clerk shall request an electronic-mail address from each federal qualified elector who registers to vote. An electronic-mail address provided by a federal qualified elector shall not be made available to the public **and is exempt from disclosure pursuant to the Inspection of Public Records Act**.

NMSA 1978 § 1-12-69 (relating to elections)

G. Paper ballots marked by voters, their digitized equivalents and records related to voting **are exempt from the Inspection of Public Records Act** until forty-five days following any recount, contest or other judicial inquiry or until forty-five days after adjournment of the state or county canvassing board, whichever is later.

NMSA 1978 § 6-32-7 (from the Small Business Recovery Act of 2020)

B. Information obtained by the authority regarding individual loan applicants **is confidential and not subject to inspection pursuant to the Inspection of Public Records Act**; …

NMSA 1978 § 9-15-49 (from the Defense Conversion and Technology Act)

E. Information developed or obtained by the commission that pertains to proprietary commission strategies or related to the relocation of military units **shall be confidential and not subject to inspection pursuant to the Inspection of Public Records Act**.

NMSA 1978 § 15-7-9 (relating to risk management claim documents)

The following records created or maintained by the risk management division of the general services department **are confidential and shall not be subject to any right of inspection by any person** except the New Mexico legislative council or a state employee within the scope of the New Mexico legislative council's or state employee's official duties:…

NMSA 1978 § 21-1-16.1 (relating to applications for university president)

A. Public records containing the identity of or identifying information relating to an applicant or nominee for the position of president of a public institution of higher education **are exempt from inspection under the Inspection of Public Records Act**.

NMSA 1978 § 24-1-5.9 (from the Public Health Act)

A. A hospital, a long-term care facility or a primary care clinic shall provide information sufficient for the secretary to make a reasonable assessment based on clear and convincing evidence of its financial viability, sustainability and potential impact on health care access. Information provided to the secretary pursuant to this section shall remain confidential, **is exempt from the Inspection of Public Records Act**, unless disclosure or use is mandated by the state or federal law, and shall not be used as a basis for suspension, revocation or issuance of a license.

NMSA 1978 § 34-9-19 (relating to the national instant criminal background check system)

J. The administrative office of the courts is prohibited from disclosing information regarding a court order, judgment or verdict referred to in Subsection B of this section or regarding a petitioner or proceedings under this section, except as otherwise provided by law. Information compiled and transmitted under this section **is not a public record and is not subject to disclosure pursuant to the Inspection of Public Records Act**.

NMSA 1978 § 40-13B-5 (from the Confidential Substitute Address Act)

E. A participant's residential or delivery address, telephone number and email address that are maintained by an agency are not public records and **shall not be disclosed pursuant to the Inspection of Public Records Act** while a person is a participant.

NMSA 1978 § 53-7A-6 (from the Economic Development Corporation Act)

C. Information obtained by the corporation that is proprietary technical or business information or related to the possible relocation or expansion of a business **shall be confidential and not subject to inspection pursuant to the Inspection of Public Records Act**.

NMSA 1978 § 57-22.9.2 (from the Charitable Solicitations Act).

The attorney general may exchange information obtained by the civil investigative demand with comparable authorities of other states or the federal government regarding charitable organizations, professional fundraisers and professional fundraising counsel. Information acquired by exchange with other states or the federal government **shall be exempt from inspection pursuant to the Inspection of Public Records Act**.

NMSA 1978 § 58-22-19 (from the Escrow Company Act)

Division examination reports, financial information contained in licensee applications and renewal applications and information on investigations relating to violations of the Escrow Company Act that do not result or have not yet resulted in administrative, civil or criminal action:

A. **are not public records subject to the Inspection of Public Records Act**; …

NMSA 1978 § 58-31-18 (from the Spaceport Development Act)

A. The following information obtained by the authority is **not subject to inspection pursuant to the Inspection of Public Records Act**: …

NMSA 1978 § 58-33-5 (from the New Mexico Work and Save Act)

A. Information obtained by the board that is proprietary or information about covered employees or participants in the New Mexico retirement plan marketplace **is confidential and not subject to inspection pursuant to the Inspection of Public Records Act**.

NMSA 1978 § 59A-5A-9 (from the Insurance Code)

A. To the extent not set forth in any other form accessible to the public, all information in risk-based capital reports, risk-based capital plans, results or reports of any examination or analysis of an insurer or health organization performed exclusively for the purposes required by the Risk-Based Capital Act and all corrective orders issued by the superintendent pursuant to such examination or analysis are and shall be kept confidential by the superintendent and **are not subject to the Inspection of Public Records Act**.

§ 59A-8A-4 (from the Insurance Code)

E. (8) except as provided in Paragraph (12) of this subsection, the documents, materials and other information that constitute a memorandum in support of the opinion and that are in the possession or control of the office of superintendent of insurance, and other materials provided by the company to the superintendent in connection with the memorandum, **are confidential and are not subject to the Inspection of Public Records Act**.

NMSA 1978 § 59A-8A-11 (from the Insurance Code)

B. Except as provided in this section, a company's confidential information **is confidential and is not subject to the Inspection of Public Records Act**.

NMSA 1978 § 59A-11-13 (from the Insurance Code)

K. The documents and materials related to termination or cancellation of an insurance producer's appointment shall be deemed confidential as follows: (1) any documents, materials or other information in the control or possession of the office of superintendent of insurance that is furnished by an insurer, insurance producer or an employee or agent thereof acting on behalf of the insurer or insurance producer, or obtained by the superintendent in an investigation pursuant to this section, **shall be confidential and shall not be subject to the Inspection of Public Records Act**.

NMSA 1978 § 59A-13-17 (from the Insurance Code)

B. Records submitted to the superintendent pursuant to this section that contain information identified in writing as proprietary by the public adjuster and accepted as confidential by the superintendent shall be treated as confidential by the superintendent, **shall not be subject to the Inspection of Public Records Act**, shall not be subject to subpoena and shall not be subject to discovery or admissible as evidence in any private civil action.

NMSA 1978 § 59A-37-24 (from the Insurance Code)

A. All documents, materials or other information in the possession or control of the office of superintendent of insurance that are obtained by or disclosed to the superintendent or any other person in the course of an examination or investigation made pursuant to Sections 59A-37-20 through 59A-37-22 NMSA 1978, and all information reported pursuant to Section 59A-37-4 NMSA 1978, **shall be confidential and shall not be subject to the Inspection of Public Records Act**.

NMSA 1978 § 61-4-10 (from the Chiropractic Physician Practice Act)

B. All written and oral communication made by any person to the board or an agent of the board relating to actual or potential disciplinary action, including complaints made to the board, are confidential communications and are not public records for the purposes of the Inspection of Public Records Act; provided that all information contained in a complaint file

is public information and subject to disclosure when the board acts on a complaint.

NMSA 1978 § 61-6-34 (from the Medical Practice Act)

All written and oral communications made by any person to the board relating to actual and potential disciplinary action shall be confidential communications and **are not public records for the purposes of the Inspection of Public Records Act**.

NMSA 1978 § 61-9-5.1 (part of the Professional Psychologist Act)

B. All written and oral communications made by a person to the board relating to actual or potential disciplinary action shall be confidential communications and **are not public records for the purposes of the Inspection of Public Records Act**. All data, communications and information acquired by the board relating to actual or potential disciplinary action shall not be disclosed except: …

NMSA 1978 § 61-10-5.1 (from the Osteopathic Medicine Act)

A. A report to the board regarding actual or potential disciplinary action, including a complaint, shall be a confidential communication and **is not a public record for the purposes of the Inspection of Public Records Ac**t.

NMSA § 61-14-4.1 (from the Veterinary Practice Act)

B. All written and oral communications made by any person to the board relating to actual or potential disciplinary action shall be confidential communications and **are not public records for the purposes of the Inspection of Public Records Act**.

NMSA 1978 § 61-36-6 (from the Lactation Care Provider Act)

G. All written and oral communication made by any person to the board relating to actual or potential disciplinary action, including complaints made to the board, shall be confidential communications and **are not public records for the purposes of the Inspection of Public Records Act**.

NMSA 1978 § 62-16A-16 (from the New Mexico Renewable Energy Transmission Authority Act)

Information obtained by the authority that is proprietary technical or business information **shall be confidential and not subject to inspection pursuant to the Inspection of Public Records Act**