

February 2024

FOG Light

At the New Mexico Foundation for Open Government, we are constantly on guard against those **continually chipping away** at the public's right to know by limiting information available under open records laws.

Because of this commitment, we spent several days in Santa Fe during the 2024 Legislative session – yet our efforts were not entirely successful. In the closing days of the session, the Legislature passed Senate Bill 6, a bill with a provision to add a new exception to the Inspection of Public Records Act. Sen. Katy Duhigg was the sponsor of the bill that gives the Cannabis Control Division new powers. The exemption keeps information about the investigation from the public until the investigation is completed an exception that is not extended to law enforcement investigations. While we worked with members of the House to remove this section from that version of the bill, the Senate version, which ultimately passed, contained the language for the new exception.

It was timely that after the bill's passage, FOG received a report from the Brechner Freedom of Information Project. The report cites three types of **exemptions that pose serious threats to freedom of information**, gleaned from [Cat Reid](#) who wrote a note published in the Duke Law Journal about the exemptions.

The exemptions are:

- Tied to special interests and shaped by lobbyists.
- A retaliatory response to investigative journalism.
- Proposed by lawmakers themselves, limiting the amount of information constituents can obtain about them.

She also cites potential remedies:

- Legislatures should follow Congress's lead and enact local versions of the federal FOIA reforms passed in 2009 and some reforms in Florida.

- New exemptions should be standalone bills.
- Exemptions must cite records law.
- Exemptions should expire unless reauthorized by the Legislature. Sunset provisions allow more oversight and make it easier to get exemptions off the books.
- Public engagement beyond public records advocates and journalists is needed when exemptions are proposed.

While FOG was disappointed about SB 6, we did see success as the Senate and the House both gave Senate Bill 137, School Board Training, wide support. The bill, sponsored by Sen. Mimi Stewart and Sen. William Soules, is now on the governor's desk. The legislation would allow New Mexicans to know that individuals chosen to oversee school district operations are equipped with the tools to carry out these important jobs because of mandated training, including information about New Mexico's transparency laws. Also, if signed, Senate Bill 137 would require those seeking school board positions to disclose their campaign donors. Finally, the bill would require webcasting of proceedings and the preservation and posting of minutes online. All of these are huge steps to increase transparency and accountability. FOG sent a letter to the governor asking her to sign this bill.

Several organizations also supported the passage of this legislation including Think New Mexico, Common Cause, the League of Women Voters, the Greater Albuquerque Chamber of Commerce as well as education groups, individual school board members and district superintendents.

NMED TO Change IPRA Request Form

The New Mexico Environment Department has agreed to remove an attachment on its IPRA request form following a request to do so from FOG Legal Director Amanda Lavin. Ms. Lavin sent the letter to NMED on Feb. 15, 2024, after receiving a call to the FOG Hotline concerning language in that department's records request form. Ms. Lavin pointed out the form's wording, "incorrectly advises that a requestor abide by conditions regarding use of requested records or face criminal penalties." She also stated the form's requirement "has a chilling effect on a person's right to access public records." The NMED responded four days later stating the change would be made to the form and the website.

Sunshine Week

Plans are underway to mark and celebrate 2024 Sunshine Week March 10-16. FOG is planning a mixer on Tuesday, March 12, 2024, at the Albuquerque Press Club beginning at 5 p.m. The event will be open to journalists, good government advocates, and friends of FOG. Sunshine week is a national nonpartisan collaboration among groups in the journalism, civic, government and private sectors that shines a light on the importance of public records and open government. Plan to join us.

Annual Report

It's here, the first FOG annual report. Thanks to everyone who worked to get the report to the finish line – Jessica Onsurez, Karen Moses and Amanda Lavin who provided proofing. Thanks to Kathy Montoya of Montoya Creative and special thanks to the folks at Minute Man Press. To request your copy, send an email to info@nmfog.org.

New Intern

FOG welcomes Gavin Moughan, a University of New Mexico senior, set to graduate in May with a bachelor's degree in multimedia journalism. He has published articles primarily on politics and worked the recent session in Santa Fe. He will be helping out on FOG's social media and other tasks.

Membership—Democracy needs you

It's time to pay your 2024 NMFOG dues. If you have let your FOG membership lapse, we miss you! There's value in being part of FOG and your yearly membership dues do more than keep the lights on. They help us answer more than 500 calls each year about open meetings and access to public records—all of which advance our efforts to improve the accountability of local and state government. You can make a difference. Democracy cannot survive in darkness.

Individual membership is \$50 and organizational memberships are \$250. Additional donations are encouraged and can be made at NMFOG.org as well. [Click here](#) to pay your dues electronically. If you prefer, mail a check to NMFOG, 2333 Wisconsin St., NE, Albuquerque, NM 87110. Thank you!

Open-government questions? Call 505-764-3750

