

**MINUTES OF THE  
STATE COMMISSION OF PUBLIC RECORDS  
REGULAR MEETING  
March 29, 2011**

The State Commission of Public Records convened at 9:30 a.m. on Tuesday, March 29, 2011 at 1209 Camino Carlos Rey, Santa Fe, New Mexico 87507.

**Members Present**

Stanley Hordes, Ph.D.	Chair, Historian
Honorable Dianna J. Duran	Secretary of State
Frances Levine, Ph.D.	Director, Museum of New Mexico
Edwynn Burckle	Secretary, General Services Department
Robert Mead	State Law Librarian
Betsy Glenn	Representative for the Honorable Gary King, State Attorney General
Evan Blackstone	Representative for the Honorable Hector Balderas, State Auditor

**Staff Present**

Sandra Jaramillo	State Records Administrator
Judi Hazlett	Deputy State Records Administrator
Antoinette L. Solano	Administrative Assistant
Pete Chacon	Director, Information Technology Management Division
John Martinez	Director, Administrative Law Division
Jackie Garcia	Records Management Analyst, Records Management Division (RMD)
Leo Lucero	Chief, Agency Analysis Bureau, RMD
Melissa Salazar	Director, Archives and Historical Services Division
Rick Hendricks, Ph.D.	State Historian
Tania Maestas	Assistant Attorney General

**Guests Present**

Robert J. Rivera	CPA, PC, Auditor
Roderick Ventura	New Mexico Public Education Department (NMPED), Legal Counsel
Stephanie Lujan	NM Public Education Department, Ethics Bureau
Anna Marie Ortiz	Santa Fe County Attorney's Office

**CALL TO ORDER**

The Chair called the meeting to order at 9:30 a.m.

**INTRODUCTION OF NEW COMMISSION MEMBERS**

The Chair welcomed Mr. Edwynn Burckle, Cabinet Secretary of the General Services Department, who was attending his first Commission meeting.

## **APPROVAL OF AGENDA**

The Chair entertained a motion to approve the agenda. Dr. Frances Levine so moved; Mr. Robert Mead seconded the motion. The Chair asked if there was any discussion; hearing none, the Chair called a vote to approve the agenda. The motion passed. The agenda was approved.

## **APPROVAL OF MINUTES – November 16, 2010**

The Chair entertained a motion for approval of the minutes for the November 16, 2010 meeting. Mr. Mead so moved and Ms. Betsy Glenn seconded the motion. The Chair asked if there was any discussion; hearing none, the Chair called for a vote to approve the minutes. The motion passed. The minutes were approved.

## **ACCEPTANCE OF THE AUDIT REPORT – FISCAL YEAR 2010**

### **Robert J. Rivera, CPA**

Ms. Sandra Jaramillo referred the Commission members to their copies of the Fiscal Year (FY) 2010 audit report and informed the Commission that the FY 2010 financial audit report had been submitted to the State Auditor's office by the established deadline. She introduced Mr. Robert Rivera, CPA, who presented the agency's FY 2010 report. Mr. Rivera briefly reviewed how the audit was conducted in November 2010 and stated the audit exit interview was held on December 1, with Ms. Jaramillo, Chair Hordes, Deputy Director/CFO Judi Hazlett and Fiscal Officer Ruben Rivera, attending. Mr. Rivera reviewed the audit opinion letter and stated that the audit was unqualified – meaning that it was a clean audit. Further, there were no findings. In addition, he said that finding from the prior year FY 2009, which pertained to the agency's failure to revert unexpended General Fund money by the established deadline, had been resolved.

Mr. Rivera then thanked the staff of the agency for its hard work. On behalf of the Commission the Chair thanked Mr. Rivera and staff for doing a great job. The Chair entertained a motion to approve the FY 2010 financial audit report. Mr. Mead so moved. Dr. Levine seconded the motion. The Chair asked if there was any further discussion. Secretary Edwynn Burckle asked if a management opinion letter was included in the report. Mr. Rivera replied that the audit opinion letter stands as a management letter and state agencies' audit reports do not require management opinion letters. The Chair called for a vote to accept the audit. The motion passed unanimously, with no abstentions.

The Chair acknowledged that Secretary of State Dianna J. Duran had joined the meeting. He asked the Commission members to introduce themselves since this was the first Commission meeting attended by Secretary of State Duran.

## **ACTION ITEMS**

### **A. Records Retention and Disposition Schedules**

**1.18.369 NMAC, Executive Records Retention and Disposition Schedule (ERRDS), Commission of Public Records**

Ms. Sandra Jaramillo stated that the first schedule for the Commission's consideration was an amendment to *1.18.369 NMAC, Commission of Public Records*, which would be presented by Ms. Jackie Garcia. Ms. Garcia informed the Commission that the amendment was to the existing ERRDS, Commission of Public Records. The amendment added a new records series *1.18.369.29 NMAC, Regrant Program Files*, to the existing schedule.

She said that the amendment was at the request of the New Mexico Historical Records Advisory Board (NMHRAB) grants administrator. Ms. Garcia informed the Commission that she had an additional change to the retention period for funded projects. She indicated that the retention period for funded projects should be changed from six to seven years because the agency receives federal funds and the federal government requires records to be retained for seven years. The Chair entertained a motion to approve the change to the amendment. Secretary Edwynn Burckle so moved and Mr. Mead seconded the motion. The Chair asked if there was any discussion; Dr. Levine indicated she had one correction to *Paragraph 1 of Subsection D 1.18.369.29 NMAC*, regarding the retention period for funded projects. She stated the word "year" should be inserted after "fiscal." Dr. Levine also asked if there were any issues regarding confidentiality. Ms. Garcia replied that there were and apologized for leaving out the confidentiality statement. She stated the records could include social security numbers, which were exempt from disclosure as well as other financial information. Ms. Garcia indicated she would make the necessary corrections.

The Chair then entertained a motion to adopt the amendment as revised to *1.18.369 NMAC*. Secretary Burckle so moved and Mr. Mead seconded the motion. The Chair asked if there was any further discussion. Ms. Jaramillo stated that the NMHRAB was an adjunct to the Commission of Public Records and was created in 1976 to review grants submitted to the National Historical Publications and Records Commission by New Mexico organizations. She informed the Commission that Board members are appointed by the governor with the exception of the State Records Administrator who serves *ex officio*. She stated that the agency receives federal funds and that the funds are re-granted to counties, municipalities and historical societies for the preservation of historical records. The Chair called for a vote to approve the amendment to *1.18.369 NMAC*. The motion passed unanimously, with no abstentions.

### **1.18.924 NMAC, ERRDS, Public Education Department**

Ms. Jaramillo stated that the next item for consideration was an amendment to *1.18.924 NMAC, ERRDS, Public Education Department*, which Ms. Garcia would present. Ms. Garcia informed the Commission that the Public Education Department (PED) initially requested changes to portions of the schedule that related to licensure. However, the staff of the State Records Center and Archives (SRCA) determined that other modifications and additions were also required. Modifications were made to the following sections: *1.18.924.7 NMAC, Definitions*; *1.18.924.8 NMAC, Abbreviations and Acronyms*; and *1.18.924.9 NMAC, Instructions*, to comply with current style and format standards. Changes were made to *1.18.924.351 NMAC, Educator Licensure Files*; *1.18.924.352 NMAC, Life Certification Files*; and *1.18.924.353 NMAC, Educator Violation Investigation Case Files*. Ms. Garcia noted that the changes proposed also included the repeal of certain sections and the enactment of two new sections. She reported that the sections being repealed were; *1.18.924.354 through 1.18.924.360 NMAC and 1.18.924.601 through 1.18.924.602 NMAC*. New sections added were *1.18.924.361 NMAC, AS/400 Database*

and *1.18.924.362 NMAC, Licensure Document Management system (ONBASE)*. Ms. Garcia then introduced Mr. Roderick Ventura, legal counsel, for the Department and Ms. Stephanie Lujan, from its Ethics Bureau.

The Chair entertained a motion to accept the amendments. Ms Glenn so moved and Dr. Levine seconded the motion. The Chair asked if there was any discussion. Mr. Mead noted that under *1.18.924.353 NMAC, Educator Violation Investigation Case Files*, the retention for Children, Youth and Families Department (CYFD) violation notifications was only six months and asked if that was sufficient. He also asked for clarification on whether CYFD oversees the six-month retention compliance measures. Mr. Ventura replied that the Licensing and Ethics Bureau, when notified by CYFD that a teacher is delinquent in a child support payment, then takes action to ensure a teacher becomes compliant with paternity payment agreements. Ms. Garcia stated that CYFD maintains the original notifications and that the notifications maintained by PED are copies, which are held for six months after a teacher, is in compliance.

Ms. Glenn advised that the notifications are required by state statute (Parental Responsibility Act). Licensing agencies are required to be notified when a licensee is delinquent in making child support payments. An agency may not issue or renew a license if the applicant is not in compliance with a judgment and order for support. She stated that normally there is no formal investigation and only a notification that the agency must act on. Mr. Blackstone replied that his concern was the 20-year retention on investigative files as opposed to six-month retention on notifications. Mr. Blackstone asked Mr. Ventura if the CYFD violation notifications required a longer retention after the investigation was completed. Mr. Ventura replied that there was no need for a longer retention period.

The Chair asked Mr. Ventura why it was necessary to maintain both substantiated and unsubstantiated investigations identified in Section D-1 and D-2 *18.924.353 NMAC*, for 20 years. Mr. Ventura stated that PED wanted to retain both for 20 years because information in the files provided PED with documentation often required for other investigations.

Secretary Duran asked if the retention period applied to other state agencies. Ms. Garcia replied that retention schedules are developed for each state agency for records series that are agency specific and that agency schedules are updated when changes are requested by an agency. The SRCA also tries to review agency retention schedules every five years to capture new records created by an agency. She said initially the schedule was to be a repealed and replaced but staffing shortages at the SRCA precluded updating the entire schedule.

Secretary Duran asked if the PED had requested all of the changes presented in the amendment to *1.18.924 NMAC* and if the Department had followed correct procedure when requesting changes for the Commission's approval. Ms. Jaramillo replied that state agencies may initiate changes to an executive records retention and disposition schedule by contacting the SRCA. An Analyst from the Agency Analysis Bureau will work with the agency to review the agency's request and to make any appropriate changes. After changes are made to a schedule, it is reviewed by the SRCA's internal review committee. After the committee's review, additional changes or requests for clarification are sent back to the agency. Once changes are completed the requesting agency's legal counsel has signed off and a notice of rulemaking is published in

the newspaper and in the NM Register, the amendment is submitted to the Commission for approval and adoption.

Secretary Duran inquired about the procedures for the retention of emails and information retained in databases of state government agencies. Ms. Jaramillo explained that the content of the email determines how long it should be retained and that the SRCA did have just as with paper records, a specific rule, *Management of Electronic Messages* that provides direction to state agencies on how email messages are to be managed. Each agency is required to have an email policy in place that provides direction to agency employees about how email is to be managed, accessed and stored. The Commission discussed other issues pertaining to email policies and electronic records and the creation of retention periods for electronic data. The Chair asked if there was further discussion, hearing none. He asked for a vote to approve the amendment for the Public Education Department. The motion passed, unanimously with no abstentions.

#### **1.19.4 NMAC, Local Government Records Retention and Disposition Schedule (LGRRDS), Board of County Commissioners, County Managers**

Ms. Jaramillo informed the Commission that Ms. Garcia would be presenting the amendment for *1.19.4 NMAC, LGRRDS, Board of County Commissioners, County Managers*. Ms. Garcia stated that the amendment to the schedule added Sections *1.19.4.250 NMAC, Teen Court Case File* and *1.19.4.251 NMAC, Teen Court Database*, to the existing retention schedule. She informed the Commission that the changes were made at the request of the Santa Fe County Community Services Department that administers the Teen Court Program as a first-time offenders program with alternative sentencing conducted for teens by their peers.

She introduced Ms. Ana Marie Ortiz from the Santa Fe County Attorney's Office who was representing the County and would answer any questions from the Commission. The Chair entertained a motion to approve the amendment. Dr. Levine so moved and Secretary Duran seconded the motion. The Chair asked if there was any discussion. Secretary Burckle asked if there was a requirement for the type of database to be used to retain these particular types of files. Ms. Jaramillo replied there was no requirement concerning the type of database that had to be used as the retention applied to the data and not the database application. Mr. Mead inquired whether the Teen Court files contained citations or other information that was part of the magistrate or municipal courts case file for the individual referred to the program. Ms. Garcia replied no, only referrals are sent to the teen court for each individual and no other documentation is provided. Mr. Blackstone asked if the retention period for Teen Court Case files was consistent with other Court retention schedules. Ms. Jaramillo replied that Teen Court programs are for alternative sentencing, and therefore the only information that is common to both the Teen Court files and the referring Court files are the referral and compliance documents. The records maintained by the Courts include the complete case files, which have a different retention period. Mr. Mead stated that if the judicial records retention and disposition schedules required modifications or changes, those changes would be recommended by a special committee appointed by the judiciary. The Chair asked for a vote to approve the amendment. The motion passed unanimously, with no abstentions.

## **OLD BUSINESS**

### **Building Issues**

Ms. Jaramillo stated that the most pressing building issues were the storage requirements for the Records Centers and the State Archives. She stated that three years ago the agency determined the Albuquerque Records Center which is a leased facility as well as the Santa Fe Records Center and the State Archives were running out of storage space. The problems presented by the space limitations and how to address them were discussed with staff of the Legislative Counsel Service, the Capitol Buildings Planning Commission (CBPC) and the Property Control Division of the General Services Department. Ultimately, funding for the feasibility study was made available through the Legislative Counsel Services. The Architectural Research Consultants firm conducted the study and presented its findings and report as part of the Albuquerque Master Plan to CBPC in November 2009 and later to the Commission in June 2010. The goals of the study were to: project long-term records and archives growth in the Santa Fe, Albuquerque and Las Cruces metropolitan areas; identify space requirements to meet projected demand; identify the capacity of existing facilities to meet existing and projected demands; and identify alternatives and strategies to meet needs in the three metropolitan areas. She then referred the Commission to a handout in which she had summarized the findings and recommendations of the feasibility report. Ms Jaramillo then proceeded to review the findings and recommendations with the Commission.

1. Increase the training of state agencies so that only appropriate records are sent for storage. Ms. Jaramillo said the agency continually provides training to state agencies in basic records management; however, with the current staff shortage, the agency has been unable to provide onsite training. The Agency Analysis Bureau Chief has created online training modules awaiting her review and approval.
2. Invest in an electronic records management systems. She noted that the agency had requested funding for a Centralized Electronic Records Repository and that funding was included in the General Appropriations Act of 2011 (House Bill 2). The bill was awaiting action by Governor Martinez.
3. Serve state agencies as a priority and local governments as space permits. Ms. Jaramillo indicated that it was the policy of the agency to provide storage to state agencies first before local governments.
4. Improve storage efficiency within existing facilities by investing in additional high capacity storage shelving. Ms. Jaramillo stated that funding for high density shelving had been included in Senate bill 218, Severance Tax Bond Projects; however the Bill failed to pass the Senate.
5. Lease additional space in Albuquerque. Because of the revenue shortfall, DFA instructions for FY 12 appropriations did not provide for other than emergency special appropriation on expansion requests. The SRCA there fore did not submit a request for additional leased space.
6. Investigate creating an additional record storage space in Santa Fe. Ms Jaramillo indicated a facility study of the Santa Fe Library, Archives and Records Center was currently underway. She stated she was working with the Property Control Division of the General Services Department to review space requirements of the Santa Fe facility. She included a diagram for illustration purposes of the renovation and additions proposed by Michael Rodriguez from the Property Control Division and Mr. Joe Browning,

Architect. Ms. Jaramillo informed the Commission that a final report would be available by June 2011. Mr. Mead asked if scheme A and B could be done if the funds were available and if C meant the Southwest Room of the library were to be moved. Ms. Jaramillo replied yes to all three. She said that moving the Library's Southwest Room upstairs was a part of Scheme C and required renovating the vacant space for use as a vault. However, the Archives had specific space requirements which had to be met before a move could be considered. The Chair asked for a time frame for a complete move once the building issues were completed. Ms. Jaramillo replied five to six years. The Commission discussed other moving issues, such as shelving and expansion of the Santa Fe Records Center. Ms. Jaramillo indicated no action had been taken on recommendations 7, 8 and 9, except as noted below.

7. Consider creating additional records centers in other parts of the state;
8. Investigate lease of existing facilities to test demand prior to constructing new facilities.
9. Maintain one central archive in Santa Fe and expand the archives vault located at the Santa Fe facility. The possible expansion of the State Archives' vault was included in the facility study discussed under recommendation six, above.

## **NEW BUSINESS**

### **2011 Legislative Update**

Ms. Jaramillo referred the Commission members to their packets and stated she had included a summary of the bills that would impact the Commission of Public Records. She stated that only four of the twenty-three bills the agency had followed had passed and were awaiting action by the Governor. They included House Bill 2 (Appropriations), House Bill 160 amending the Inspection of Public Records Act (IPRA), Senate Bill 52 also amending IPRA and a companion bill to House Bill 160; and Senate Bill 349 amending the Public Records Act, allowing the agency to accept donations for specific agency functions.

She asked Ms Judi Hazlett to discuss House Bill 2 and the FY 12 appropriations that affect the agency. Ms Hazlett informed the Commission member that included in the Legislative Update was a summary of the agency's appropriation for FY 2012. She explained that the general fund appropriation was extremely tight. Although money was added back by the Senate to keep the Albuquerque records center open, were the agency' to pay all fixed costs, including GSD fees there would be virtually no money left to cover many routine operating expenses. Ms. Hazlett also pointed out that the appropriations, especially those for Personal Services and Benefits would be further reduced to reflect the additional PERA shift and certain other reductions. She said that she had been in contact with the Department of Finance and Administration about how it was going to calculate the reductions. The report from the agency's budget analyst was that the calculations would be on the current filled positions and that they were working on the spreadsheets to reflect this. She went on to explain more calculations, budget restrictions and vacancy positions. She also touched on the impact of the reductions and the current staffing shortage on hours of operation of the agency.

## **DIRECTOR'S REPORT**

Ms. Jaramillo reviewed her report with the Commission and discussed the agency's vacancy issues indicating that permission had been given to advertise for two of the Management Analyst

positions. She summarized the outcome of Executive Order (EO) 2011-001 on the agency. The EO established a 90-day review period for all proposed and impending rules and regulations and is set to expire March 31, 2011. She indicated that Mr. John Martinez, Director, Administrative Law Division, had informed her that there had been some activity in terms of filing notices and rules but that the agency had lost revenue due to the EO.

She also said that she had kept the Commission apprised as to what occurred with the writ of mandamus, and that the agency had since published all the rules that were affected by the writ. She said that a listing of the affected rules was available in the packet and she would take any questions.

She provided a brief summary on the eight year moratorium placed on Governor Richardson's papers, the Attorney General's advice and the resulting IPRA requests. She thanked Ms. Tania Maestas and Ms. Betsy Glenn of the Attorney General's office for their assistance. Ms. Jaramillo provided the Commission with a list of the IPRA requests the agency had received. She introduced Ms. Melissa Salazar, Director, of the Archives and Historical Services Division and stated that 75 percent of Ms. Salazar's time was being spent locating and reviewing all of the emails and electronic records in response to these requests. She said that the agency is spending a great deal of time redacting from the files information that was exempt from disclosure, particularly since the information had to be redacted manually. She stated one of the requests required review of over 5000 emails.

Ms. Jaramillo noted that, due to current staffing limitations, the process of responding to these requests would be more time consuming than anticipated. The Commission went on to discuss the time frames for IPRA requests. Ms. Jaramillo stated that the agency has tried to stay within the required times for responses, however, she has had to inform individuals that it could take longer. Ms. Maestas responded that Ms. Jaramillo had, pursuant to IPRA, deemed that the requests were excessively burdensome and broad. She said Ms. Jaramillo had asked for an extension beyond the 15 days set in the IPRA for some of the requests. Ms. Jaramillo reiterated that the first request was being done with 45 additional days. Ms. Maestas informed the Commission that at this time the agency had not gone over the extended days of any request. She stated that if more time was deemed necessary, a second letter would go out requesting an extension. Ms. Jaramillo asked for any questions that the Commission might have at this time, for either Ms. Salazar or herself.

Ms. Jaramillo said she had one correction to her Director's report. Under the New Mexico Historical Records Advisory Board, she erred in reporting that no general fund was available for the regrant program. In reviewing the appropriation it appeared that \$10,000 could be budgeted as match.

She stated that there were two new items she would like to point out to the Commission first the **PeDALS Research Grant**, the multistate federal project was completed and had helped the agency in formulating strategies for dealing with the preservation of digital records. Second the **Virtual class room** that Mr. John Martinez had been preparing for use. She said the agency would be able to utilize the virtual classroom for state agency training instead of traveling to



state agencies. Also included in the report were the performance measures for each division of the agency and the records that were authorized for destruction. She asked for any questions.

The Chair commended Ms. Jaramillo for negotiating these very difficult issues and for following the advice of legal counsel. He extended the Commissions gratitude to her and the staff of the agency.

#### **SCHEDULING OF NEXT MEETING**

The Chair asked the Commission members if June 14, 2011 at 9:30 am would be an acceptable time for the next meeting. There were no conflicts with the date; the Chair scheduled the meeting for June 14, 2011 at 9:30 am.

#### **ADJOURNMENT**

The Chair entertained a motion for adjournment. Secretary Duran so moved and Mr. Mead seconded the motion. The motion passed; the meeting adjourned at 11:42 a.m.