

## ARTICLE 5

### Public Records Recovery

#### Section

14-5-1	Short title.
14-5-2	Definitions.
14-5-3	Recovery authorized.
14-5-4	Method of recovery.
14-5-5	Return of public record.
14-5-6	Refusal to appear and produce document; procedure.
14-5-7	District court findings and orders.
14-5-8	Replacement of recovered document.
14-5-9	Effect of replacement of recovered document.
14-5-10	Alternative method.

#### **14-5-1. Short title.**

This act [14-5-1 to 14-5-10 NMSA 1978] may be cited as the "Public Records Recovery Act".

**History:** 1953 Comp., § 71-8-1, enacted by Laws 1973, ch. 270, § 1.

#### **14-5-2. Definitions.**

As used in the Public Records Recovery Act [14-5-1 to 14-5-10 NMSA 1978]:

A. "public officer" means any officer or employee of the legislative, executive or judicial departments of the state or any of its agencies, and any officer or employee of any of the political subdivisions of the state, who is the official custodian of any public record or class of public records; and

B. "public record" means all instruments and documents duly recorded in the records of the county clerk, district court or probate court, which affect interest in real property.

**History:** 1953 Comp., § 71-8-2, enacted by Laws 1973, ch. 270, § 2.

#### **14-5-3. Recovery authorized.**

Any public officer is authorized to recover public records and to duplicate copies of them in the possession of any private party.

**History:** 1953 Comp., § 71-8-3, enacted by Laws 1973, ch. 270, § 3.

#### **14-5-4. Method of recovery.**

Upon determining that a particular public record is not in the hands of the official custodian of such record and upon forming a reasonable belief that those records or copies of them are in

the possession of a private party or parties, the public officer shall send a postage prepaid, certified letter, return receipt requested, to the party believed to be in possession of the records or copies of them, making demand for the production of the record if he has it and if he does not have it, any copy of the record. The letter shall:

A. name with particularity the record, the original or copy of which is believed to be in the possession of the private party;

B. allege that the public record is not in the hands of the official custodian of the record;

C. state the grounds on which the public officer believes that the private party is in possession of the public record or a copy of it; and

D. demand that within thirty days of the receipt of the letter, the recipient shall appear at a time and place stated in the letter, bringing the named public record or if the demand is for a copy, the copy with him.

**History:** 1953 Comp., § 71-8-4, enacted by Laws 1973, ch. 270, § 4.

#### **14-5-5. Return of public record.**

If the recipient of the public officer's letter complies with the demand and produces the document or documents, the public officer:

A. shall determine if the document produced is a missing record or a copy of a missing record; and

B. then shall duplicate the document and return the private party's document to him if it is a copy, or if it is the original public record, give the private party a copy and keep the original public record.

**History:** 1953 Comp., § 71-8-5, enacted by Laws 1973, ch. 270, § 5.

#### **14-5-6. Refusal to appear and produce document; procedure.**

If within thirty days of the receipt of the letter, the recipient fails to appear or fails to produce the requested document or documents without showing cause, the public officer making the demand shall apply to the district court in the judicial district where the documents are allegedly located for an order compelling production of the documents for recovery or copying as provided above.

A. The application shall:

(1) name with particularity the record, the original or copy of which is believed to be in the possession of the third party;

(2) allege that the public record is not in the hands of the official custodian of the record;

(3) state the grounds upon which the public officer believes that the private party is in

possession of the public record or copies of it; and

(4) state, by affidavit or otherwise, that due demand as required by the Public Records Recovery Act [14-5-1 to 14-5-10 NMSA 1978] has been made and that the private party or parties have either failed or refused to produce the document or documents.

B. The application shall be docketed in the district court as a civil proceeding and shall proceed as a civil suit under the rules of civil procedure of the district courts.

**History:** 1953 Comp., § 71-8-6, enacted by Laws 1973, ch. 270, § 6.

#### **14-5-7. District court findings and orders.**

If the district court finds that the petition of the public officer is true and that the named document or documents are in the possession of the named party or parties, the court shall order that the document or documents be turned over for recovery or duplication as required in Subsection B of Section 4 [14-5-4 NMSA 1978] of the Public Records Recovery Act.

**History:** 1953 Comp., § 71-8-7, enacted by Laws 1973, ch. 270, § 7.

**Compiler's notes.** — The reference to Subsection B of Section 4 of the Public Records Recovery Act probably should be to Subsection D of that section, 14-5-4 NMSA 1978.

#### **14-5-8. Replacement of recovered document.**

Records recovered by any public officer or duplicated by the public officer pursuant to the Public Records Recovery Act [14-5-1 to 14-5-10 NMSA 1978] shall immediately be returned to the official custodian entitled to possession of the record. Prior to replacing the recovered documents, the public officer shall attach a certificate to each of them in a manner that it cannot be removed without destruction of the document stating the date on which the documents were recovered and the name of the person who had possession of the original or copy, the statement under oath of the person who had possession as to the authenticity of the original or copy, and if possible attesting to the belief of the public officer that the recovered documents are previously missing public records, or true copies of them.

**History:** 1953 Comp., § 71-8-8, enacted by Laws 1973, ch. 270, § 8.

#### **14-5-9. Effect of replacement of recovered document.**

Nothing in the Public Records Recovery Act [14-5-1 to 14-5-10 NMSA 1978] shall be construed to enlarge the rights of a person claiming an interest in real property under a document recovered under the terms of that act, or to make any conclusive presumptions as to the authenticity of the recovered documents.

**History:** 1953 Comp., § 71-8-9, enacted by Laws 1973, ch. 270, § 9.

#### **14-5-10. Alternative method.**

The remedies provided in this act [14-5-1 to 14-5-10 NMSA 1978] are in addition to and not in lieu of any remedies contained in Section 14-3-16 NMSA 1978 or any other statute relating to the recovery of public records.

**History:** 1953 Comp., § 71-8-10, enacted by Laws 1973, ch. 270, § 10.

---