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February 2, 2011

Sandra Jaramillo
Administrator
State Records Center and Archives
1205 Camino Carlos Rey
Santa Fe, NM 87507

Via email: Sandra.jaramillo@state.nm.us

Dear Ms. Jaramillo,

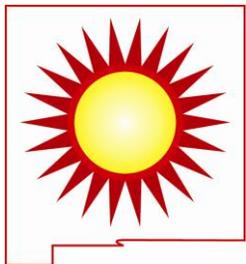
I am writing to express my concern that the public is being denied access to gubernatorial public records that were transferred to the State Records Center and Archives at the end of former governor Bill Richardson's term in office.

NMSA 1978 § 14-4-11 allows the state records administrator to "accept and place in the state archives the personal files, records and documents of elected state officials or of former elected state officials, subject to any reasonable restrictions, moratoriums and requirements concerning their use by other persons."

It seems clear that this statute was not intended to be a massive and far-reaching exception to the Inspection of Public Records Act. Rather, it deals only with **personal** records voluntarily donated to the state by current or former officials. Such records belong to the donor and it is reasonable to honor the donor's wishes when accepting the gift.¹

By contrast, public records as defined in NMSA 1978 § 14-2-6(E) fundamentally belong to the public. They are simply not the outgoing governor's to control; they belong to the citizens of New Mexico. Any materials that were subject to public inspection as of December 31, 2010 do not lose their public character upon being transferred to a new location or placed under the custody of a separate public agency. Just as placing an otherwise public document into a personnel file does not exempt it from public inspection, placing a cache of otherwise public documents in the care and custody of the State Records Center does not exempt those

¹ The Confidential Materials Act (NMSA 1978 § 14-3A-2) allows similar restrictions to be placed on materials donated to public libraries, colleges and other institutions. That statute explicitly provides in subsection (C) that any materials which were public records at the time of donation or sale cannot be held in confidence. The word "personal" in both the title and body of 14-4-11 provides the same guarantee.



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documents from public inspection. Nor does it give the outgoing governor sweeping powers to seal up the public's business. Access to those public records continues to be governed by the New Mexico Inspection of Public Records Act and any procedural inspection requirements adopted by the State Records Center.

Therefore, I urge you to review any outstanding requests for these records, and to allow inspection of any and all responsive public materials as soon as possible. I understand that there are likely to be practical difficulties associated with sorting and indexing such a large volume of documents, and it may take time to provide access to them. Such reasonable delays are perfectly in keeping with the Inspection of Public Records Act, whereas I believe an eight-year moratorium on important public records is not.

Thank you for your time and consideration of this matter, and please do not hesitate to contact me to discuss it further.

Sincerely,

Sarah Welsh
Executive Director

Cc: Matthew Stackpole, Records Custodian, Office of the Governor
Elizabeth Glenn, Director, Civil Division, New Mexico Attorney General's Office