

Prohibiting Disclosure of Sensitive Personal Information by State Agency Employees

Background: A number of local jurisdictions throughout New Mexico have privacy and confidentiality policies that prohibit the disclosure of a person's sensitive personal information obtained by public employees to outside agencies or individuals.

Recognizing the need for a uniform policy to cover and protect the sensitive information of all New Mexicans, the state's nonpartisan Ethics Commission, within its proposed model ethical code for state agencies, adopted language prohibiting disclosure of such information by state employees. However, this model code is only a recommendation to state agencies and would not include the policy in the state's Governmental Conduct Act, which would require a statutory change.

Ensuring privacy protection is especially important now as the State, in its response to COVID-19, continues to provide essential health-related services and economic relief programs requiring New Mexicans' sensitive personal information, including contact tracing and vaccinations.

A strong privacy and confidentiality law would:

- **Amend the Governmental Conduct Act and create a privacy policy at all state agencies.**
No state employee could disclose sensitive personal information acquired by virtue of his or her position with a state agency to anyone outside of that state agency. This bill would require state employees to keep confidential the sensitive personal information they acquired through their jobs, but would provide for limited exceptions for disclosing this information.
- **Define "sensitive personal information" as the following:**
Protected personal identifier information such as a social security number or Individual Tax Identification Number; a person's status as a recipient of public assistance or as a crime victim; and a person's sexual orientation, gender identity, physical or mental disability, immigration or citizenship status, national origin, medical condition or religion.
- **Ensure information and documents provided to the Motor Vehicle Division by New Mexican residents are not turned over to federal law enforcement without strict criteria.**
- **Allow some exceptions for disclosure of this sensitive personal information.**
These exceptions are when disclosure is:
 - Necessary to carry out a function of the state agency
 - Necessary to comply with an order from a state or federal court
 - Made in court records or in connection to a judicial proceeding
 - Required by state IPRA
 - Made with the written consent of the person whose information would be disclosed
 - Required by federal law

Why it's needed?

Federal agencies such as the Immigration and Customs Enforcement Agency (ICE) and the U.S. Census Bureau attempted to obtain sensitive information about immigrants from state agencies in the recent past. While at least two agencies, the NM Department of Workforce Solutions and the Motor Vehicle Division refused to allow blanket access to New Mexicans' private information, there is no standard policy across state agencies prohibiting such disclosure by employees.

For many state agencies to function properly, they need to obtain sensitive personal information from New Mexicans. When New Mexicans provide this information to state employees, they have a reasonable expectation this information will remain confidential. By adopting a standard non-disclosure policy with these new categories of protected information, New Mexicans will not have to think twice before accessing health, public safety, and other government services.