

August 5, 2020

VIA ELECTRONIC MAIL ONLY

New Mexico Ethics Commission
UNM Science & Technology Park
800 Bradbury Drive SE
Suite 215
Albuquerque, NM 87106

Re: New Mexico Ethics Commission Rulemaking R20-01

Dear Commissioners:

We are writing in response to the New Mexico Ethics Commission's request for comments on the proposed adoption of a new Part 4 of Title 1, Chapter 8, of the New Mexico Administrative Code, presenting a model code of ethics for submission to state agencies pursuant to Section 10-16G-5(A)(4) NMSA 1978.

Our organization believes the proposed model code of ethics would benefit from containing certain additional provisions pertaining to confidentiality that do not appear in the current version. These additional provisions, which are set forth in the attached draft of proposed amendments to the code, would consist of prohibitions against disclosure or misuse by state officers or employees of sensitive personal information that they have acquired by virtue of their positions as state officers or employees.

A prohibition against disclosure or misuse of confidential information for private gain is necessary to implement the statutory prohibition against such disclosure or misuse that is imposed by Section 6 of the Governmental Conduct Act (§10-16-6 NMSA 1978). The aforementioned statute reflects an important principle of ethical government service that has not been included in the proposed code of ethics, and we think it should be.

When New Mexicans provide their sensitive personal information to state agencies either to access the agency's services or participate in programs, they do so with a reasonable expectation their information will remain confidential. There are presently a few provisions among our statutes that attempt to limit the disclosure of discrete kinds of personal information by certain agencies (e.g., §7-1-8 et seq. NMSA 1978; §66-2-7.1 NMSA 1978). But some of these provisions have loopholes or exceptions that virtually swallow the rule (e.g., §66-2-7.1(A)(2) NMSA 1978). There is no uniform policy across state agencies dictating how state employees must handle New Mexicans "sensitive personal" information and when disclosure is appropriate. Yet for many state agencies to function properly, they need to obtain and handle sensitive personal information from New Mexicans. Examples of sensitive information individuals might want to keep private may include their status as a public assistance recipient or as a crime victim, national origin, disability, and religion. This type of information should be kept private by state employees unless disclosure is required by law.

We propose adding language to the model code that would provide such guidance. Specifically, we suggest including the definition of “confidential information” directly from Section 10-16-2(B) NMSA 1978 as part of the new Section 1.8.4.7. We also propose the inclusion of a new subsection defining “sensitive personal information” to mean “information about an individual who has provided the information for use by this agency and who may suffer harm or adverse consequences from disclosure of the information to persons outside the agency.”

These proposed additions would delineate the circumstances in which officials and employees of state agencies could share people’s personal information with outside agencies, and would prohibit this practice in all cases in which these circumstances are not present.

While our proposal may not have an exact counterpart in the current statutes, such supplementation of the statutory rules by departmental codes of conduct is expressly authorized by §10-16-11.1 NMSA. The prohibition on the disclosure of sensitive personal information would fit well within this statutory authorization, and such a prohibition is needed, as a matter of sound policy, to restrain inappropriate disclosure of New Mexicans’ personal information by state employees. We also suggest including examples of unallowable disclosure of an individual's personal, sensitive information within the Commission’s newly created commentary guideline as an aid to state employees.

In sum, state employees’ practice of sharing personal information with outside agencies or individuals to be used for purposes entirely unrelated to the purposes for which the information was provided undermines New Mexicans’ faith in their state government and hinders our state agencies in the performance of their proper functions. This practice should therefore be curtailed, and our proposed addition to the model code would begin to accomplish this aim by giving state agencies the opportunity to impose clearer restrictions. We hope the commission will give careful consideration to the inclusion of this provision in its model code.

Sincerely,

//s// Gabriela Ibañez Guzmán
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