

121412-DraftDocsPubRecord

Court: Draft Docs Are Public Record

By [Scott Sandlin / Journal Staff Writer](#) on Fri, Dec 14, 2012

In case anyone didn't get it the first time, the New Mexico Court of Appeals has restated its earlier position on draft documents produced by public agencies: They're public and available for inspection.

The court had granted a rehearing from its earlier opinion in *Edenburn v N.M. Department of Health*, issued in July, and asked the New Mexico Foundation for Open Government and the Attorney General's Office to file friend-of-the-court briefs.

FOG attorney Charles "Kip" Purcell argued in his brief that the idea of a draft document is "hopelessly subjective" and had been manipulated often to keep otherwise public documents from being released.

"This is a powerful reinforcement of New Mexico's sunshine laws," said Gwyneth Doland, FOG's executive director. "Draft documents — and the view of the process that they provide — are as important as the final actions taken by public officials."

In the underlying case, Laurel Edenburn sought records from the Department of Health. She got some but was denied others, and subsequently filed a petition to force the department to release the materials.

The state asked for summary judgment — a form of pretrial dismissal based on the law — which was granted by the trial judge, now a Supreme Court justice, Barbara Vigil. The Court of Appeals reversed the district court ruling and the case has been sent back.

Vigil said "public policy protects drafts such as this document from disclosure."

Edenburn was seeking information under the state Inspection of Public Records Act related to abstinence education grants managed by the state.

DOH refused to release an email string and a letter, contending they were part of "the deliberative process" and not subject to release. The department also claimed executive privilege.

The court opinion by Judge Michael Bustamante, joined by Judges Cynthia Fry and Michael Vigil, defers ruling on damages, attorney fees and costs.

The case was pending appeal at the time Vigil was sworn in as a justice and has not yet been reassigned to a new district judge in Santa Fe.

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