



# New Mexico State Personnel Board

## State Personnel Office

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### Interpretive Memorandum 2022-001

To: Cabinet Secretaries, Agency Directors, and Human Resource Managers

From: Ricky Serna, Acting Director

Date: June 10, 2022 

Subject: Employment Record and Personnel File  
Retention, Transfer, and File Review Guidance

#### 1. Purpose

This Memorandum serves to interpret and clarify the application of State Personnel Board (SPB) Rule 1.7.1.12(A) NMAC concerning Employment Records. This Memorandum replaces State Personnel Office (SPO) Interpretive Memorandum 2011-003 re: Personnel Record Retention Guidelines and SPO Interpretive Memorandum 2014-001 re: Inter-Agency Personnel Record Reviews.

#### 2. Scope

This Memorandum applies to all state executive agencies and all state classified employee employment records and personnel files.

#### 3. References and Definitions

SPB Rule 1.7.1.12(A) NMAC, Employment Records:

***Agencies shall maintain a record of each employee's employment history in accordance with operational necessity and applicable state and federal law requirements.*** Employees shall have access to review their own file. ***Employment-related confidential records shall be available for inspection by agencies during the process of interviewing for employment when the employee has provided a signed release.*** No materials shall be placed in an employee's employment history without providing the employee with a copy. Employees may submit written rebuttal to any material placed in their employment history. ***Agencies shall transfer the complete record of an employee's employment history upon inter-agency transfer.***

(Emphasis supplied.)

## SPB Rule 1.7.1.7(U) NMAC, Definition of "Employment Records"

Employment records are any and all documents that contain information related to a person's employment or application for employment. (1.7.1.7(U) NMAC)

4. Guidelines**A. Employment Records, Personnel Files, and Medical Files**

- i. Employment records include records in an employee's personnel file, in an employee's confidential medical file, and any other records, whether or not maintained by agency Human Resources, related to an employee's employment with the agency and the State of New Mexico.
- ii. An employee's personnel file includes, without limitation, job application material, job offer letter, policy acknowledgments, personnel actions, training records, competencies assessments, certifications, awards or letters of recognition, and resignation letter. **An employee's personnel file must also include performance appraisals, performance development plans, attendance improvement plans, and final formal disciplinary actions.**
- iii. An employee's confidential medical files must be maintained separately from the employee's personnel file and contain any and all forms and documents that contain private medical information about the employee, including, without limitation, insurance-related materials, designated beneficiary information, accident/injury/illness reports, medical diagnoses, disability documentation, Workers' Compensation records and documentation, Family and Medical Leave Act leave records and documentation, Americans with Disabilities Act reasonable accommodation records and documentation, physician's examinations/notes/recommendations, and vaccine and medical testing information.

**B. Agency Retention, Archiving, and Legal Transfer of Personnel Files**

- i. State agencies are responsible for maintaining an employee's personnel file for the duration of the employee's tenure with the agency plus three years following the employee's separation from the agency.
- ii. When three years have elapsed after an employee's separation from an agency and the employee has not transferred to or been hired by another state agency, the agency shall transfer the employee's personnel file to the State Records Center and Archives ("Records Center") for archiving following the Procedure set out below.
- iii. Procedure: The agency shall transfer physical custody of employee personnel files to the Records Center and legal custody of employee personnel files to SPO according to the State of New Mexico State Records Management Procedure for Records Liaison Officers. (Attachment A.)

- iv. State agencies interested in transferring custody of an employee's personnel file to SPO and to the Records Center **prior** to three years after the employee's separation from the agency must make special arrangements with SPO's Records Custodian, [SPO.HRS@state.nm.us](mailto:SPO.HRS@state.nm.us).
- v. Employee medical files have a retention period of three years from the date of separation of the employee and are not stored at the Records Center. (1.21.2.225 NMAC.) Agencies should contact the Records Center to determine the appropriate steps for disposition of these files after three years.

### **C. Inter-Agency Transfer of Employment Records**

- i. Upon inter-agency transfer of a current employee, the hiring agency shall request the employee's employment records from the 'giving' agency, and the 'giving' agency shall transfer custody of the **employee's personnel file and medical information files** to the hiring agency.
- ii. If an employee who separated from a state agency within the last three years is hired at another state agency, the hiring agency shall request the employee's employment records from the previous agency, and the previous agency shall transfer custody of the **employee's personnel file and medical information files** to the hiring agency.
- iii. If an employee who separated from a state agency more than three years ago is hired at another state agency, the hiring agency shall request the employee's personnel file from SPO, and SPO shall transfer custody of the **employee's personnel file** to the hiring agency.

### **D. Inter-Agency File Review**

- i. An employee's or former employee's personnel file shall be available for inspection by a state agency interviewing the individual for employment when the individual has provided a signed release. (See Attachment B, Template Release and Waiver.)
- ii. On March 26, 2020, due to the public health emergency, the State Personnel Office temporarily suspended in-person file review. Although we remain in a public health emergency as of the date of this Memorandum, conditions have improved to where state employees have returned to state buildings, facilities, and offices. In-person file review is more comprehensive, more reliable, and, therefore, preferred over remote file review.
- iii. Beginning immediately, agency Human Resources Managers or their designees shall conduct all inter-agency file reviews in person whenever possible.

- iv. Upon receiving a file review request and signed release, the custodian of the employee's or former employee's personnel file (whether the 'giving' agency, the previous agency, or SPO) shall make the personnel file available to the interviewing agency. Before making the personnel file available, a 'giving' agency or previous agency shall ensure that the employee's or former employee's personnel file is completely up-to-date. **Please keep in mind that an up-to-date personnel file must include all performance appraisals, performance development plans, attendance improvement plans, and final formal disciplinary actions.**

**E. Attachments**

- Attachment A: State of New Mexico State Records Management Procedure for Records Liaison Officers
- Attachment B: Template Release and Waiver

# State of New Mexico Records Management Procedure for Records Liaison Officers

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- 1.21.2.233 PERSONNEL FILES - CONTRIBUTING:**
- A. Category:** Employee services - personnel management
  - B. Description:** Records related to an individual government employee who contributes to a retirement plan, does not include medical files.
  - C. Retention:** destroy 50 years **from date file created** (emphasis added)

## Section A: Objective

This process is used to assist New Mexico State agencies with the physical transfer of separated employee personnel files to the State Records Center and Archives (Records Center) and the transfer of legal custody of those files to the State Personnel Office (SPO).

## Section B: Process

Once the personnel files of separated employees have met a three-year retention within the agency, the files need to be organized and boxed appropriately and the agency records custodian must authorize the transfer of the files as follows:

### 1. Prepare the Employee Personnel File Packets:

- a) Each personnel file should be divided into two groups of records: one for non-confidential records and one for confidential records.
- b) Secure each group of records into a file folder with clasps or a manila envelope and label the folder or envelope according to Example A and identify the records as "CONFIDENTIAL" or "NON-CONFIDENTIAL". Please type the labels to ensure accuracy and readability.
- c) Attach the labels to the top portion of the long side of the folder or envelope so that they are visible when stored in the box.
- d) The two files or envelopes are considered one personnel file and must be filed as a set. **Do not separate the two groups of records into different boxes.**

### 2. Complete the Legal & Physical Custody Transfer Form:

- a) Complete **one** "Legal & Physical Custody Transfer Form" for **each box** (blank form available from SPO HR Services, Section C below). See Example B.
- b) For each Personnel File within a box, enter the following information into the form:
  - Employee Last Name, First Name, and Middle Initial
  - Employee ID Number – If none assigned, enter N/A
  - Employee Social Security Number (XXX-XX-9999 format, disclose last four digits only)

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- File Creation Date -- This is the date the original personnel file was created, most likely the original State hire date. **Files in each box cannot have more than a five (5) year span between the earliest and latest File Creation Date.**
- Separation Date – This is the employee’s final day with the agency
- Separation Type – Terminated or Retired
- Folder Number – Give sequential numbers (1, 2, 3...) to each complete personnel file in the box. Place files in the box in alphabetical order by employee last name.
- Box Number – Will be the same for all files in the same box and should be carried down through the entire box number column
- Agency Records Custodian signature and date

### 3. Proper Packing and Boxes:

- a) Please do not overfill the boxes with records. Records Center personnel must be able to get their hands into the box handles and between the files without struggling, cutting, or hurting themselves. **Overfilled boxes will be rejected by the Records Center and will result in having to re-distribute the personnel files among boxes and redo the paperwork for all the boxes.**
- b) Check that the personnel files are placed into the correct numbered box in alphabetical order.
- c) A copy of the fully signed Legal & Physical Custody Transfer Form must be placed inside the box on top of the records. See 4(e) below.
- d) Do not use damaged boxes or box tops.
- e) The Records Center recommends using sturdy brown storage boxes, not white office file boxes which tend to collapse and break down quickly. Brown storage boxes may be ordered from the Records Center.  
**Please Contact:** SANTA FE RECORDS CENTER, (505) 476-7937  
ALBUQUERQUE RECORDS CENTER, (505) 270-7388

### 4. Transferring Forms and Boxes:

- a) State agency will send the following to: [SPO.HRS@state.nm.us](mailto:SPO.HRS@state.nm.us):
  - The signed PDF Legal & Physical Custody Transfer Forms;
  - The Excel version of the Transfer Forms; and
  - The contact name, phone number, and email of the person responsible for the boxes being archived.
- b) The SPO records custodian will review and sign the Transfer Forms.
- c) SPO will send the signed Legal & Physical Custody Transfer Forms to the Records Center.

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- d) Upon receipt of approval to transfer the files to the Records Center, SPO will pick up the bar code stickers for the boxes.
- e) SPO will contact the agency to pick up the bar code stickers for placement on the boxes, instructions on appropriate placement of the stickers on the boxes, and each fully signed Legal & Physical Custody Transfer Form for placement in the corresponding box.
- f) SPO and the agency will coordinate delivery to the Records Center of the boxes ready to be archived.
- g) On the designated date and time, the agency will deliver the boxes to the Records Center.

### Section C: References

1. If you have questions or concerns, before submittal of any personnel file boxes, please contact SPO:
  - SPO HR Services Email: [SPO.HRS@state.nm.us](mailto:SPO.HRS@state.nm.us)
  - Oksana Klapischak (505) 250-3361 Email: [Oksana.Klapischak@state.nm.us](mailto:Oksana.Klapischak@state.nm.us)
  - Heather Vigil Clark (505) 365-3300 Email: [HeatherV.Clark@state.nm.us](mailto:HeatherV.Clark@state.nm.us)
  - Johnna Padilla (505) 470-5180 Email: [JohnnaK.Padilla@state.nm.us](mailto:JohnnaK.Padilla@state.nm.us)
2. See attached "Quick Reference Checklist" as you prepare your packets.

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### QUICK REFERENCE CHECKLIST

- ❑ Check for spelling, middle initial and any missing data.
- ❑ If employee does not have an employee ID number, enter “N/A.”
- ❑ Check information on the Legal & Physical Custody Transfer Form against the files in the box.
- ❑ Check that all labels are positioned properly on the file folders or envelopes. (See Example A)
- ❑ Double check the alphabetical order of files.
- ❑ Check for a sequential 5-year range of File Creation Date.
- ❑ Send completed electronic Legal & Physical Custody Transfer Form spreadsheet to SPO.
- ❑ DO NOT overfill your boxes. The Records Center will reject them.
- ❑ Carefully read and follow instructions provided by SPO for bar code sticker placement.
- ❑ Any damaged boxes will be rejected by the Records Center. If needed, order brown boxes from the Records Center as mentioned in Section B(3)(e) above).



## State of New Mexico Records Management Procedure for Records Liaison Officers

### Example A: Labeling Employee Personnel File Packet:

*Long side of folder or envelope*

<b>Name:</b>	<b>Last, First, MI</b>
<b>Employee ID #:</b>	<b>XXXXXX</b>
<b>Creation/Hire Date:</b>	<b>MM/DD/YYYY</b>
<b>Box #</b>	<b>Folder #</b>

**Non-Confidential/Confidential  
Agency Acronym -- e.g., SPO**

### Example B: Preparing Legal & Physical Custody Transfer Form:

Employee Last Name	Employee First Name	Employee Middle Initial	Employee ID #	Employee SSN (last 4 digits)	File Creation Date	Separation Date	Terminated (mark x)	Retired (mark x)	Folder #	Box #
Cooper	Sheldon	T	123456	xxx-xx-7894	11/10/2004	10/21/2019	x		1	1
Fowler	Amy	F	204758	xxx-xx-3286	12/1/2008	4/19/2022		x	2	1
Wolowitz	Howard		248586	xxx-xx-4591	8/6/2006	2/25/2020	x		3	1

**[AGENCY]**

**INTER-AGENCY FILE REVIEW  
RELEASE AND WAIVER**

**Date:** \_\_\_\_\_

**To:** **[AGENCY] and All Present and Former State Agency Employer(s)**

**From:** \_\_\_\_\_  
(Candidate's Name)

Pursuant to State Personnel Board Rule 1.7.1.12(A) NMAC, employment records, including employment-related confidential records, shall be available for inspection by state agencies during the process of interviewing an employee or former employee for employment when the employee or former employee has provided a signed release.

By my signature below:

I hereby authorize and release my present and former employers to release to [AGENCY] or any of [AGENCY]'s duly authorized agents or representatives, and authorize and release [AGENCY] to obtain and review, any of my State of New Mexico employment records and confidential employment records that will assist [AGENCY] in making a hiring decision, including without limitation: my complete personnel file, my performance appraisals, and any performance development plans, attendance improvement plans, and final formal disciplinary notices or actions.

I understand that this authorization is good for one time only and replaces any prior agreement or understanding we may have had.

I agree that a facsimile copy of this signed Release and Waiver shall be as effective as my original signature.

I hereby release and hold harmless [AGENCY], my present and former employers, and their employees from any liability or damage that may result from reviewing or furnishing such employment records and confidential employment records as per my authorization. I hereby waive any right of action, cause of action, claim, or means of redress which I may have against my present and former employers, or any other person or entity, arising from the supplying of my employment records and confidential employment records to [AGENCY].

Signature	
Signature: _____	Date: _____
Printed Name: _____	