

**Nevada State Library, Archives and Public Records**

**Nevada Public Records Act:  
A Manual for Executive Branch  
Agencies**

**Bulletin No. 3 rev.**

**State Records Program**



**2020**

**Tammy Westergard, Administrator**  
**Adopted by reference, in accordance with NAC 239.869**  
**Revised August 2020**

# 2020

## TABLE OF CONTENTS

<b>Scope of Public Records Manual</b>	<b>1</b>
Who is Subject to this Manual?	1
Non-Compliance with an Inspection Request	1
<b>The Nevada Public Records Act (“NPRA”) – Legislative Intent</b>	<b>2</b>
What is an Official (or Public) Record?	3
<b>Managing Records</b>	<b>4</b>
Retention and Disposition Schedules	5
Failure to Properly Manage Official Records	5
Is it okay for me to maintain records on my personal computer devices?	6
<b>Identifying Responsive Records</b>	<b>6</b>
Is it a Responsive Record?	6
Request Must be for an Identifiable Record	7
Not Required to Create a Responsive Record	7
Request for Information is not a Public Records Request	7
Computer Software	7
Role of the Office of the Attorney General	8
Nonrecord Material	8
Copyrighted Material	8
<b>Confidential and Restricted Records</b>	<b>9</b>
NRS Confidentiality Provisions	9
Balancing Test Analysis	10
<b>Each Agency Must Adopt a Policy</b>	<b>10</b>
Agency Responsibilities	11
Agency Records Official	11
Records Request Form	12
Posting on the Agency Website	13
<b>When a Request is Received</b>	<b>13</b>
Assisting the Requester	13
Locating Records	14
<b>Responding to a Request</b>	<b>14</b>
Disclosure	14
Request to Inspect Public Records:	14
Request a Copy of Public Records:	15
Disclosure with Redaction	15
Redaction Prior to Inspection	16
Denial	16
Destruction Hold	17
<b>Fees</b>	<b>17</b>
Posting a List of Fees	18
Actual Costs	18
Fee Deposit	19
Payment Prior to Release of Copies	19
Waiving Fees	19
Geographic Information System (GIS)	20

Use of Outside Copying Service _____	20
Minutes, Agendas, Supporting Materials and Audio Recordings of Public Meetings _____	20
<b>Request Deadlines _____</b>	<b>21</b>
Request Received – Day 0 _____	21
Response – Day 1 to Day 5 _____	21
<b>Filing a Complaint for Judicial Review _____</b>	<b>22</b>
<b>Subpoenas _____</b>	<b>23</b>
<b>Public Records Log _____</b>	<b>23</b>
<b>Retention _____</b>	<b>24</b>
<b>Court Decisions (SELECTED) _____</b>	<b>24</b>
<b>Public Record Form Samples _____</b>	<b>26</b>
Public Records Request Form _____	26
Fulfill: Public Records Request Acknowledgement Letter Form _____	26
Denial: Public Records Request Acknowledgement Letter _____	26

Please contact your assigned Deputy Attorney General for more information about The Nevada Public Records Act.

## SCOPE OF PUBLIC RECORDS MANUAL

This manual presents guidelines for agencies to use in determining which documents are subject to public access under Nevada Revised Statutes (“NRS”) Chapter 239 and discusses the procedure for handling requests for access to public records. It also discusses the preservation and disposition of records.

The general intent of the Nevada legislature with respect to public inspection of government records is to increase public access to government information in order to make government agencies more transparent and accountable to the public. This manual is designed to reduce costs, harmonize administrative practices, improve the efficiency of response times, and augment an agency’s public accountability.

The purpose of this manual is to provide a single source for best practices for an agency to implement and support compliance with the provisions of the Nevada Public Records Act (“NPRA”). The provisions of this manual shall be liberally interpreted and construed to promote full access to the agency’s public records in order to:

- Assure continuing public confidence in government and
- Prevent unreasonable invasions of privacy.

---

### Who is Subject to this Manual?

All agencies of the Executive Department of the State of Nevada are subject to this manual. There is no central office in the state that handles public records requests for agencies. Each agency receives and processes public records requests for the records managed by that specific agency.

**NRS 239.005(2) “Agency of the Executive Department”** means an agency, board, commission, bureau, council, department, division, authority or other unit of the Executive Department of the State Government. The term does not include the Nevada System of Higher Education.

The Federal "Freedom of Information Act" (“FOIA”) does not apply to requests for the public records of the State of Nevada. Federal FOIA only applies to requests for public records maintained by the federal government. Requests received under FOIA should not be denied and will be processed by the agencies under the Nevada Public Records Act. For more information on FOIA, see the US Department of Justice, Office of Information Policy.<sup>1</sup>

---

### Non-Compliance with an Inspection Request

The goal of this manual is to obtain compliance, not to sanction. In the event of an agency’s unlawful refusal to provide access to public records, citizens may bring civil actions in district court in order to obtain compliance

---

<sup>1</sup> <https://www.justice.gov/oip>

with the law. If the requester (person) prevails, the court will order the agency to produce the record(s) and pay the requester's attorney's fees.<sup>2</sup>

Open government is an essential element of democracy. As such, the purpose of the NPRA is to foster open government by making open government an obligation of Executive Branch agencies. *Agencies should be cautioned that a deliberate concealment of public records may result in a risk of criminal conviction, should they be accused of violating the NPRA.*

**NRS 239.011 Application to court for order allowing inspection or copying, or requiring that copy be provided, of public book or record in legal custody or control of governmental entity for less than 30 years.**

1. If a request for inspection, copying or copies of a public book or record open to inspection and copying is denied or unreasonably delayed or if a person who requests a copy of a public book or record believes that the fee charged by the governmental entity for providing the copy of the public book or record is excessive or improper, the requester may apply to the district court in the county in which the book or record is located for an order:

- (a) Permitting the requester to inspect or copy the book or record;
- (b) Requiring the person who has legal custody or control of the public book or record to provide a copy to the requester; or
- (c) Providing relief relating to the amount of the fee,  
↳ as applicable.

2. The court shall give this matter priority over other civil matters to which priority is not given by other statutes. If the requester prevails, the requester is entitled to recover from the governmental entity that has legal custody or control of the record his or her costs and reasonable attorney's fees in the proceeding.

**NRS 239.310 Removing, injuring or concealing public records and documents.** A person who willfully and unlawfully removes, alters, mutilates, destroys, conceals or obliterates a record, map, book, paper, document or other thing filed or deposited in a public office, or with any public officer, by authority of law, is guilty of a category C felony and shall be punished as provided in NRS 193.130.

## THE NEVADA PUBLIC RECORDS ACT ("NPRA") – LEGISLATIVE INTENT

The Nevada Public Records Act ("NPRA") is codified at NRS Chapter 239 and is the relevant statute for seeking access to Executive Branch records. The Nevada legislature enacted the NPRA to ensure that public books and records of state government agencies are available to the public. The Legislature's intent is clear:

**NRS 239.001 Legislative findings and declaration.** The Legislature hereby finds and declares that:

1. The purpose of this chapter is to foster democratic principles by providing members of the public with prompt access to inspect, copy or receive a copy of public books and records to the extent permitted by law;
2. The provisions of this chapter must be construed liberally to carry out this important purpose;
3. Any exemption, exception or balancing of interests which limits or restricts access to public books and records by members of the public must be construed narrowly; and

---

<sup>2</sup> NRS 230.011

4. The use of private entities in the provision of public services must not deprive members of the public access to inspect, copy or receive a copy of books and records relating to the provision of those services.
5. If a public book or record is declared by law to be open to the public, such a declaration does not imply, and must not be construed to mean, that a public book or record is confidential if it is not declared by law to be open to the public and is not otherwise declared by law to be confidential.

A common law right of access to public records in Nevada dates back to at least 1906.<sup>3</sup> However, that right required the requester to have a demonstrated “interest” in the records. The first Nevada public records law was enacted in 1911, and has been significantly revised over the last century to provide additional guidance to the public and government employees.

---

## What is an Official (or Public) Record?

Official Record is defined in [NRS 239.005\(6\)](#)<sup>4</sup>:

**NRS 239.005(6) “Official state record” includes, without limitation:**

Papers, unpublished books, maps and photographs; Information stored on magnetic tape or computer, laser or optical disc; Materials that are capable of being read by a machine, including, without limitation, microforms and audio and visual materials; and Materials that are made or received by a state agency and preserved by that agency or its successor as evidence of the organization, operation, policy or any other activity of that agency or because of the information contained in the material.

As used in the NPRA, **the term “all public books and public records” includes everything within the definition of official records in [NRS 239.005\(6\)](#), with the exception of those official records that are explicitly declared confidential by law.**

The NPRA does not give a specific definition of “public record.” However, the NPRA provides parameters that define the scope of the public’s right to access records in accordance with Nevada’s legislative intent. The NPRA<sup>5</sup> applies to records of non-federal Executive Branch agencies in Nevada unless otherwise declared confidential by law. Records “must be open at all times during office hours to inspection by any requester and may be fully copied.”<sup>6</sup>

The right of the public to request and inspect is not absolute, and requests are subject to time and subject matter parameters as provided by statute and case law.<sup>7</sup> Further, “an officer, employee or agent of a governmental entity that has legal custody or control of a public record shall not refuse to provide a copy of that

---

<sup>3</sup> *State v. Grimes*, 29 Nev. 50, 84 P. 1061 (1906).

<sup>4</sup> [NRS 239.005](#).

<sup>5</sup> [NRS 239.010, as amended by Senate bill 287 of the 2019 Nevada legislature.](#)

<sup>6</sup> [NRS 239.010\(1\)](#).

<sup>7</sup> [NRS 239.0107](#).

public record in the medium that is requested because the officer, employee or agent has already prepared or would prefer to provide the copy in a different medium.”<sup>8</sup>

Note that in 2019, the Legislature amended NRS Chapter 239 to address “electronic records” for the first time. If a requester identifies a record in an electronic format, the record should be provided in that format unless one of the following applies:

- Record was not created in an electronic format and is not available in an electronic format, or
- Providing the record electronically allows the requester access to proprietary software or the electronic record contains information that is confidential and cannot be redacted.

**The presumption is, all agency records are open to public inspection and copying, unless they are specifically declared by law to be confidential.**

## MANAGING RECORDS

As required by the NPRA, agency heads have an explicit responsibility to organize and preserve records that document the organization’s functions, policies, decisions, procedures and essential transactions of the agency, also known as the official records of the agency.<sup>9</sup> This includes records designed to furnish information necessary to protect the legal and financial rights of the government and of its citizens.

Each agency is required to maintain the records used in transacting public business<sup>10</sup>, and to permit public inspection or copying of those records to the public when requested.

**NAC 239.696 Records management program: Establishment.** A state agency shall establish a records management program which documents its organization, functions, policies, decisions, procedures and essential transactions.

**NAC 239.697 Records management program: General requirements.** The records management program established pursuant to NAC 239.696 must include controls for the creation, maintenance, use, security and distribution of the records of the state agency to ensure that the state agency:

1. Refrains from accumulating unnecessary records or gathering information which is not essential to the proper functioning of the state agency;
2. Adheres to the appropriate schedule;
3. Maintains its records in a manner which is cost-effective, and which allows for the rapid retrieval and protection of the information contained within that record;
4. Establishes and documents standards for a filing system for the state agency;
5. Provides for the transfer of its records which are of historical value to the State Archives in accordance with NRS 239.080, 239.085, 239.090 and 378.250 and NAC 239.750, 239.940 and 239.945; and

---

<sup>8</sup> NRS 239.010(5), as amended by SB 287. This language was amended such that 239.010 no longer makes reference to “readily available.”

<sup>9</sup> For more information on managing email records, see [Bulletin No.1 - Guidelines for Developing a Policy for Managing Email](#).

<sup>10</sup> NAC 239.696



6. Establishes written policies and procedures for the proper access or denial of access to the public or other governmental agencies to records which have been declared by law to be confidential or otherwise restricted.

---

## Retention and Disposition Schedules

The Committee to Approve Schedules for the Retention and Disposition of Official State Records (State Records Committee or Committee) was created by NRS 239.073 to review and approve the minimum retention periods of official records. The official records created and preserved by an agency must be retained for the length of time established by the Committee. Official records may only be destroyed in accordance with an approved schedule. Agency records retention schedules are made available to agencies and to the public on the Nevada State Library, Archives and Public Records website: <https://nsla.libguides.com/state-records-services/retention-schedules>.

Agencies are responsible for making certain all of their records, regardless of media or format, are properly retained and remain accessible during their entire retention period. All records must be stored in a secure and stable environment that will protect them from unlawful removal, misuse, damage, destruction or loss.<sup>11</sup>

Records may exist in any medium including, but not limited to, paper, electronic, microfilm, and film. Records can also be found in multiple formats such as word processing documents, spreadsheets, PDFs, html pages, database reports, email messages, photos, videos, and films. Records retention schedules apply to records in any medium or format.

Agencies are advised to systematically and consistently destroy records according to the retention timetable. The destruction of records must be a planned activity which occurs as part of the agency's regular course of business. Haphazard or selective destruction of records may raise suspicion concerning the reliability and authenticity of the agency's record keeping system.

**NRS 239.080 State records: Schedules for retention and disposition.**

1. An official state record may be disposed of only in accordance with a schedule for retention and disposition which is approved by the Committee.
2. In cooperation with the Division [NSLAPR], each agency, board and commission shall develop a schedule for the retention and disposition of each type of official state record.
3. The Division [NSLAPR] shall submit the schedules described in subsection 2 to the Committee for final approval.

**Stopping Destruction.** If a record is scheduled for destruction by an approved records retention schedule and the record is included in a public records request, audit, investigation, litigation, or anticipated litigation, or subject to a litigation hold, the record must be retained until the request, audit, investigation, litigation, or anticipated litigation is completed. Failure to stop the destruction of records pursuant to this section could result in penalties.<sup>12</sup>

---

## Failure to Properly Manage Official Records

---

<sup>11</sup> [NAC 239.699](#)

<sup>12</sup> [NRS 239.310](#)

Records created or received in connection with the transaction of public business are official records and are owned by the State of Nevada, regardless of whether the agency created or received those records. This applies to all agencies, including agencies, boards, commissions, bureaus, councils, departments, divisions, authorities or other units of the Executive Department of the State Government.<sup>13</sup> Records document the conduct of government business and must be filed in a way that allows for easy access to these records over time. Records shall not be prematurely destroyed. It is recommended the records not be retained long past the retention period.

The Nevada legislature has made it clear, failure to retain records in accordance with an approved schedule may result in a reprimand or in a more severe disciplinary action up to and including criminal penalties:

**NRS 239.083(4)** The head of an agency, board or commission that is required to maintain its official state records in accordance with a schedule for the retention and disposition of official state records that has been developed pursuant to NRS 239.080 and approved by the Committee pursuant to NRS 239.077:

(a) Except as otherwise provided in paragraph (b), shall issue a letter of reprimand to any employee of the agency, board or commission, as applicable, who knowingly and willfully disposes of an official state record of the agency, board or commission in a manner contrary to the approved schedule for the retention and disposition of the official state records of the agency, board or commission.

(b) In lieu of a letter of reprimand issued pursuant to paragraph (a), may take more severe disciplinary action against an employee in a matter involving a repeated offense or where circumstances otherwise warrant such action.

---

### Is it okay for me to maintain records on my personal computer devices?

Agency staff should not store any state records on personal computers or devices. If state records are on personal devices or personal devices are used to conduct state business, these devices may be subject to disclosure under the NPRA or subject to discovery in litigation.

Likewise, it is best to maintain personal records on personal devices. Personal records should only be retained on state-owned devices for a limited period (if allowed by the agency policy).

## IDENTIFYING RESPONSIVE RECORDS

The NPRA applies to “all public books and public records of a government entity, the contents of which are not otherwise declared by law to be confidential.”<sup>14</sup> *Public Record* is not a statutorily defined term. Public records are retained by each agency during the discharge of that agency’s official duties.

---

### Is it a Responsive Record?

Many factors contribute to the determination of responsive records. If the answer to any of the following questions is “yes,” it is a responsive record. If you are uncertain, then treat it as a responsive record.

---

<sup>13</sup> See NRS 239.005(2) for a definition of “Agency of the Executive Department.”

<sup>14</sup> NRS 239.010, as amended by Senate Bill 287 of the 80<sup>th</sup> (2019) Legislative Session, hereinafter (“SB 287”).

- Does the agency have custody of the original record requested?
- Does the agency have possession of a copy of the record requested?
- Is the record held by (1) a contractor of the agency that is (2) providing public services?

---

### Request Must be for an Identifiable Record

The NPRA permits requesters to file requests both verbally and in writing.<sup>15</sup> Accordingly, if agencies receive a request verbally, then they may ask that the requester follow up with a written request. If a requester does not wish to follow up with a written request, then the agency should proceed to document the verbal request and provide an acknowledgment within five business days of receiving the request.<sup>16</sup>

A record is any document, media, data, or file that is prepared, used or maintained by any agency in the course of governing or performing a governmental function. A request should be for an identifiable record that exists at the time of the request. Examples of an identifiable record may be a contract, invoice, letter, final report, etc.

---

### Not Required to Create a Responsive Record

Recent case law provides that agencies are not required to create records in response to a public records request.<sup>17</sup> However, this is a wholly separate matter from the printing of a report or production of data from an existing system. The printing or production of data presently existing should not to be conflated with the compilation of information across separate systems or manual aggregation of data. The NPRA does not require an agency to create data or generate new documents to respond to a public records request. A request applies only to existing records. An agency is not required to organize data to create a record that does not exist at the time of the request. There is also no requirement to reconstruct a record that was lawfully destroyed prior to receipt of the request.

An agency is not required to provide records that are not identified within the request. An agency does not "deny" a request when it does not provide records that are outside the scope of the request because they are "not responsive" records.

---

### Request for Information is not a Public Records Request

A request for general information, such as to answer a question, is not a public records request and is not subject to the NPRA. For example, asking a records official how the agency handles a job application is not a request for an identifiable record. There is no obligation to conduct research, fill out checklists, or answer questions in a public records request.

---

### Computer Software

Computer software and code for software raises complex issues. Consult your Deputy Attorney General regarding issues related to computer software and code for software.

---

<sup>15</sup> NRS 239.0107(1).

<sup>16</sup> *Id.*

<sup>17</sup> *City of Sparks v. Reno Newspapers*, 133 Nev. Adv. Op. 56 (2017); *PERS v. NPRI*, 134 Nev. Adv. Op. 81 (2018).

---

## Role of the Office of the Attorney General

Public agencies subject to the state public records law should first consult with their organization’s general counsel, or in-house counsel, if a question arises during the administrative process of responding to a request. If the organization’s counsel is unable to answer the legal question regarding the applicable case law, statute, or privilege, then staff or counsel may reach out to the Office of the Attorney General for additional guidance. Note that the Attorney General does not act as counsel for non-Executive Department agencies, and unless provided in the capacity of an attorney-client relationship, such guidance does not constitute privileged legal communications.

Agency administrative staff should consult with legal counsel to create and implement best practices for intake, logging, searching, and reviewing records associated with complex requests for public records. Further, staff should note the particular importance of consulting with legal counsel when an agency receives a request for records that the agency believes may be relevant to a potential or pending legal claim or litigation against the agency.

---

## Nonrecord Material

NAC 239.051 defines non-record materials for records retention requirements ONLY. This regulation does not apply to requests for the release of records under NRS Chapter 239.<sup>18</sup> This regulation may not be cited as a legal authority for withholding records in response to a public records request.

---

## Copyrighted Material

If the agency maintains public records containing copyrighted material, the agency will permit the person making the request to inspect the copyrighted material and may allow limited copying of such material if allowed under Federal copyright law.<sup>19</sup>

**NRS 239.010**

1. This section does not supersede or in any manner affect the federal laws governing copyrights or enlarge, diminish or affect in any other manner the rights of a person in any written book or record which is copyrighted pursuant to federal law.
2. A governmental entity may not reject a book or record which is copyrighted solely because it is copyrighted.

The agency may require written consent from the copyright holder or an opinion from legal counsel before allowing extensive copying of such materials.

---

<sup>18</sup>*Comstock Residents Association v. Lyon County Board of Commissioners*, 134 Nev., Adv. Op. No. 19, 414 P.3d 318, 322 (2018) (holding that the NAC does not limit the reach of the NPRA, but merely establishes regulations for good records management practices of those local programs); *Clark Cty. Sch. Dist. v. Las Vegas Review-Journal* 134 Nev. Adv. Op. 84, 429 P.3d 313 (2018); *LVMPD v. Blackjack Bonding*, 131 Nev. 80, 343 P.3d 608 (2015).

<sup>19</sup> NRS 239.010(1), NRS 239.010(2).

## CONFIDENTIAL AND RESTRICTED RECORDS

It is reasonable and encouraged for an agency to consult with its assigned legal counsel regarding disclosure of records that appear to be confidential, in whole or in part.

In the course of responding to a public records request, any determination of confidentiality or privilege status of a record must be made only after a determination of whether the record is first responsive. After a record is determined to be responsive to a request, then an agency should consult the applicable regulations, statutes, and case law to determine if any redaction or withholding of the record is required. Agency staff must not speculate on the confidentiality or privileged status of a potentially responsive record and must actually review the records in question prior to making any determination regarding the record.

NRS 239.010 identifies many statutes that declare records to be confidential or restricted and, therefore, not publicly accessible. Timely access to accurate information is central to fulfilling an agency's mission; therefore, the agency's records official must know and understand the specific statutes which declare records of the agency, in whole or in part, to be confidential as well as the specific statutes which may restrict access<sup>20</sup> to the records, in whole or in part.

When evaluating records for purposes of determining whether the material falls within any confidentiality law under the NPRA, the agency should consult with its assigned legal counsel to establish if the records are subject to confidentiality under any applicable statutes, such as trade secrets, privileged information, litigation, etc.

Note that failure to timely respond to a public records request does not waive an assertion of confidentiality.<sup>21</sup>

---

### NRS Confidentiality Provisions

The application of any confidentiality restriction – whether based on case law, statute, regulation, or common law – should only be considered after the record has been first determined to be responsive to the request. If a record is not responsive to the public records request, then the agency should refrain from denying the request (and citing legal authority) due to the non-existence of responsive records. If the agency determines that responsive records exist, then administrative staff should consider whether any applicable case law, statute, regulation, or common law may restrict public release of the record. Agency staff should consult legal counsel as necessary.

The Nevada Revised Statutes (NRS) are the current codified laws of the State of Nevada. Within each chapter of NRS are specific statutes that restrict the public release or dissemination of records and information beyond a certain scope. Statutes that contain confidentiality restrictions are cited in NRS 239.010 and an agency may cite these legal authorities (if applicable to the specific agency) to explain withholding a responsive record from

---

<sup>20</sup> Records with restricted access generally relate to, but are not limited to, an individual's private interests and disclosure of such to the public would constitute a clearly unwarranted invasion of privacy. Examples include certain medical, psychiatric, or psychological data about an individual; information about Homeland Security interests, see NRS 239C.090 and NRS 239C.220; and records regarding open and ongoing civil and criminal investigations.

<sup>21</sup> *Republican Attorneys General Association v. Las Vegas Metropolitan Police Department*, 136 Nev. Adv. Op. 3 (2020).

public release. The numbers preceding the decimal point indicate the chapter, while the numbers following the decimal pinpoint indicate the specific section. The subject matter for each NRS chapter is identified on the Legislative Counsel Bureaus' website: <https://www.leg.state.nv.us/nrs/>.

Pursuant to SB388 from the 2019 Legislative Session, if a governmental agency determines that a record is confidential because it contains personally identifiable information collected by automated means over the internet or other digital network by a governmental entity as part of the electronic collection of information from the general public, the agency shall maintain a list of those records and portions of records, including the reasons that those records and portions of records are deemed confidential, and submit the list to the Director of the Legislative Counsel Bureau on or before February 15 of each year. The agency's determination must be based upon a determination that the disclosure of the personally identifiable information could potentially create negative consequences, including, without limitation, financial loss, stigmatization, harm to reputation, anxiety, embarrassment, fear or other physical or emotional harm for the person to whom the information pertains. A requester may be granted access to these records only if the requester can show a compelling operational, administrative, legal or educational justification that overrides the agency's declaration that the record is confidential.

Personally, identifiable information is defined as information that, alone or in combination with other information, may be used to identify a person or an electronic device used by the person. The term includes, without limitation, the name, address, telephone number, date of birth and directory information of a person.<sup>22</sup>

---

## Balancing Test Analysis

In 1990, the Supreme Court of Nevada adopted the *Bradshaw* balancing test approach for certain requested records.<sup>23</sup> The balancing test may be considered by agencies in the public records context when no statute exists that declares a record to be confidential but there is a need for the agency to keep that record confidential. The balancing test may not be applied arbitrarily and should only be applied for a compelling government purpose in a narrowly tailored manner. Typically, this test is applied to law enforcement sensitive information, victim information, witness information, sources and methods, and records that may jeopardize ongoing law enforcement investigations.

This *Bradshaw* test balances the general public's interest in government transparency with an agency's need to maintain confidentiality. The test favors open government, and requires narrowly tailored restrictions when possible, but recognizes the existence of policy or privacy reasons for nondisclosure of public records. The burden is on the agency when conducting the balancing test to show specific evidence justifying the non-disclosure. The agency's legal counsel should be consulted whenever the balancing test is used. The final decision to disclose or not disclose a record must be made by the agency.

## EACH AGENCY MUST ADOPT A POLICY

Regarding policies and procedures for handling public records requests, each agency of the Executive Department shall make available on any website maintained by the agency on the internet or its successor the

---

<sup>22</sup> SB388, 2019 Legislative Session.

<sup>23</sup> *Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990).

forms and procedures prescribed by the State Library, Archives and Public Records Administrator and the Office of the Attorney General.<sup>24</sup>

The following information shall be posted at each agency and on the agency's internet website, if it maintains one.<sup>25</sup>

- The policies and procedures for accessing public records. NRS 239.008(4)
- The form which may be used to file a request. NRS 239.008(4)
- A fee list and explanation of fee waivers. NRS 239.052

When an agency receives a request for public records, it shall be the policy of the agency to comply with all such requests for copies of information by members of the public, media, and state and federal government officials. Per NRS Chapter 239, all such requests shall be handled as expeditiously as possible.

---

## Agency Responsibilities

Each agency has the responsibility to:

- Appoint a records official.
- Log and record all requests and formal responses to requesters.
- Stay informed about public records laws and any new legislation or changes to the law.
- Make available the procedures for inspecting or copying public information and inform requesters of these procedures.<sup>26</sup>
- Provide a form for requesting public records easily available to all requests. The form should be available on the agency website and in person at the agency.
- Treat all requesters uniformly and give the requester all reasonable accommodations for inspection, including accommodations in accordance with Americans with Disabilities Act (ADA) requirements.
- Provide an opportunity for individuals with disabilities to request public records in an alternative form.

---

## Agency Records Official

The head of each public agency shall designate one or more records official(s).<sup>27</sup>

**NRS 239.008 Designation of records official for certain state agencies; forms and procedures applicable to requests for public records.**

1. The head of each agency of the Executive Department shall designate one or more employees of the agency to act as records official for the agency.
2. A records official designated pursuant to subsection 1 shall carry out the duties imposed pursuant to this chapter on the agency of the Executive Department that designated him or her with respect to a request to inspect or copy or receive a copy of a public book or record of the agency.

---

<sup>24</sup> NRS 239.008(4).

<sup>25</sup> NRS 239.008.

<sup>26</sup> NRS 239.008(4).

<sup>27</sup> NRS 239.008(1)

The records official or their designee shall serve as the point of contact for members of the public who request disclosure of public records. Each records official shall be responsible for implementation of and compliance with the NPRA and may be guided by this manual. If the head of an agency does not appoint a records official, the head of the agency is the *ex officio* records official of the agency.

The records official has a duty to:

- Coordinate the agency’s response to requests for access to public records,
- Assist individuals seeking public records in identifying the records requested,
- Assist the records officer ([NAC 239.700](#)) in preserving public records, and
- Create agency procedures for public records requests.

The records official of each agency of the Executive Department shall ensure that the agency makes available on the website maintained by the agency on the Internet or its successor:<sup>28</sup>

- The address and regular office hours of the principal office of the agency;
- The name of each records official of the agency;
- An explanation of any fees the agency charges for providing a copy of a public record;
- An explanation of how a person may request to inspect, copy or receive a copy of a public record; and
- A link to the form described in [NAC 239.863](#) to request to inspect, copy or receive a copy of a public record.

Information about how a person may request to inspect, copy, or receive a copy of a public record should also be posted conspicuously in the office of the agency, if an office exists.

The records official is typically a chief administrative officer or another officer or employee of the agency who is responsible for the maintenance, care, and keeping of the agency’s records, regardless of whether the records are in his or her actual physical custody and control. Records officials shall be aware of all laws and regulations relating to records, confidential records, and records retention requirements of the agency.

---

## Records Request Form

Records officials should add their contact information to the prescribed form and make the form available for use on the agency website or in person at the agency office locations.

While requests for records may be made verbally via telephone or in person, it is preferable to make the request in writing. Anyone may request public records directly from the records official.

**NAC 239.863 Form to inspect, copy or receive copy of public record.**

1. The form to request to inspect, copy or receive a copy of a public record of an agency of the Executive Department must include, without limitation:

- (a) The name, address and telephone number of the person submitting the request;
- (b) The date that the request is submitted to the agency;
- (c) A description of the public record that is sufficient to identify the record;
- (d) An indication of whether the person submitting the request wants to inspect, copy or receive a copy of the public record;

---

<sup>28</sup> NAC 239.862



- (e) If the person wants to receive a copy of the public record, an indication of:
  - (1) Whether the person wants a paper copy, an electronic copy or a certified copy of the record; and
  - (2) Whether the person will receive the copy of the record at the office of the agency or the person wants to receive the copy by mail, facsimile machine or electronic mail; and
- (f) An oral or written affirmation by the person requesting to inspect, copy or receive a copy of the public record that the person understands that:
  - (1) There may be a fee to receive a copy of a public record, which the person must pay in full before receiving the copy; and
  - (2) He or she will receive from a records official a written estimate to reproduce the public record if the estimated actual cost of reproducing the record is more than \$25.
- 2. If a person indicates that he or she wants to receive a copy of the public record by facsimile machine or electronic mail, the person must include on the form a facsimile number or electronic mail address, as applicable.

---

### Posting on the Agency Website

The NPRA requires each agency to post in a conspicuous location on the agency website, if available, contact information for each agency's records official, the agency public records access procedures, the public records request form, and the applicable fees. In addition, this information must be easily accessible in the office of the agency, as well as in all branch offices.

**NRS 239.008 Designation of records official for certain state agencies; forms and procedures applicable to requests for public records.**

4. Each agency of the Executive Department shall make available on any website maintained by the agency on the Internet or its successor the forms and procedures prescribed by the State Library, Archives and Public Records Administrator and the Attorney General pursuant to subsection 3.

The NPRA does not require an agency to post public records on the agency's website but doing so may reduce the number of public records requests the agency receives for posted records.

### WHEN A REQUEST IS RECEIVED

Requests for public records shall be directed to the records official of the agency. The request should be made on a standard records request form for the agency. The request may be verbal, hand-delivered, mailed, emailed or sent via facsimile to the agency

A written request is preferred, however, if an oral request, in person or by phone, is received, the agency may consider confirming the request in writing in order to eliminate any confusion regarding the request.

---

### Assisting the Requester

The request must describe the public records sought with reasonable detail or identify the public record in sufficient detail to enable agency personnel to reasonably identify and locate the records.

To the extent reasonable, agencies should assist members of the public in making focused and effective requests. When a records official is unclear as to the records that are being requested, it is the records official's duty to assist the requester in narrowing and/or clarifying the request in order to ensure more expeditious access to the record by the requester. The records official should document in writing his or her attempts to

assist the requester in narrowing and/or clarifying the request. The agency and the requester should communicate and cooperate in narrowing and/or clarifying the request to the greatest extent possible. For example:

- It may be helpful to ask why the individual is requesting a public record in order to narrow or clarify a broad request, for example by subject matter or time.
  - However, if asked, the requester is not required to provide a reason for seeking a record, and the agency cannot deny a request based on the requester’s refusal to provide a reason.
- Provide the responsive records in batches, rather than in one complete package in order to expedite access to the records by the requester.

---

## Locating Records

An agency must make a reasonable effort to search for and locate the requested records. When the agency receives a public records request, the records officer or his/her designee should consult with the records personnel who manage those records in an effort to locate the records.

When a large public records request is received, an agency is encouraged to work cooperatively with the person to streamline the request, with the result that the person still obtains the records or information the person has requested, while the burden on the agency in complying with the request is reduced.

It is reasonable and encouraged for an agency to consult with legal counsel if the agency determines the request imposes a substantial burden on the agency.

## RESPONDING TO A REQUEST

The reasonable search for records will determine the type of response the records officer will send to the person, which is generally as follows:

- **Disclosure:** Provide access to the record without restriction.
- **Disclosure with Redaction:** Provide the record with redacted information as necessary citing legal authority
- **Denial:** Withhold the record in full citing legal authority

---

## Disclosure

The NPRA provides for two types of access: inspection or copy.

---

### REQUEST TO INSPECT PUBLIC RECORDS:

(A)All public books and public records of a governmental entity must be open at all times during office hours to inspection by any person.<sup>29</sup>

---

<sup>29</sup> NRS 239.010(1).

---

#### REQUEST A COPY OF PUBLIC RECORDS:

The NPRA provides that an officer, employee or agent of a governmental entity who has legal custody or control of a public record:

(a) Shall not refuse to provide a copy of that public record in the medium requested because the officer, employee or agent has already prepared or would prefer to provide the copy in a different medium.

(b) Except as otherwise provided in NRS 239.030, shall, upon request, prepare the copy of the public record and shall not require the person who has requested the copy to prepare the copy himself or herself.<sup>30</sup>

A requester may request to inspect a set of records, and then, based on that review, decide which records should be copied. The agency shall permit access to the record in the medium requested.

Inspection shall occur at a time mutually agreed upon by the requester and the agency but should not be unreasonably delayed. The agency is obligated to offer inspection during normal business hours and to provide appropriate space for the inspection.

- The agency must have an employee observe the inspection or copying of records by the requester to the level necessary to make certain the records are not stolen, altered, or destroyed.

The agency must grant access to the record by any method of delivery requested by the person. The agency may charge a fee to recover actual costs to deliver records by mail or by other means.

If copies of public records were requested and the requester fails to claim the copies, the agency is not obligated to hold the copies for pick up for more than 30 days after the date the copies were made available to the person.<sup>31</sup>

---

#### Disclosure with Redaction

When a record contains confidential information, it does not mean that the record “in whole” must be denied. Rather, the rule is that the agency can “redact, delete, conceal or separate” confidential information,<sup>32</sup> and the remainder of the record must be produced. Every redaction shall be considered to be an “in part” denial of the request.<sup>33</sup>

Whenever a record is redacted, the agency is to provide the requester with a written denial notice for redaction when the redacted records are provided to the requester. Do not be vague about the reason. The notice should provide the requester with sufficient information about the reasoning behind the denial. The notice of denial must contain:

- A description of the information, which is redacted, and

---

<sup>30</sup> NRS 239.010(5), as amended by Senate Bill 287 of the 2019 Nevada legislature.

<sup>31</sup> NAC 239.868(2).

<sup>32</sup> NRS 239.010(3).

<sup>33</sup> See also, Denials.

- The legal citation of the specific statute or other legal authority<sup>34</sup> which is the basis for denying access to the information.
- Providing only a list of legal citations, or string cite, does not satisfy the requirement. An explanation must be provided that explains how the statute or legal authority applies to the information and requires that it be redacted.

The agency is required to redact all personally identifiable information<sup>35</sup>, proprietary information<sup>36</sup>, information about on-going criminal investigations<sup>37</sup>, the names of victims of crimes<sup>38</sup>, and other personal information, as required by statute.

- The loss of Personally Identifiable Information (PII) can result in substantial harm to individuals, including identity theft or other fraudulent use of the information. Many agencies manage personally identifiable information and other sensitive data concerning residents, and as such, have a special responsibility to protect that information from loss or misuse.

Because it may be time consuming to redact confidential information does not override the requirement to do it.

---

## Redaction Prior to Inspection

If a requester wishes to inspect rather than receive a copy of a record and the record contains both public and confidential information, the agency shall redact the confidential information. An agency may not charge the requester for the redaction. However, the agency may charge for the copies it must make of the redacted material in order for the requester to inspect the record.

If it is going to charge such fees or costs, the agency should estimate the actual cost in advance and notify the requester, giving him or her the opportunity to accept such costs or withdraw or modify his or her records request. If, after inspecting the records, the requester chooses to obtain the copies, no additional fee may be charged for the redacted records.

---

## Denial

The NPRA requires that the law be interpreted liberally, in favor of access, and that any exemption allowing public records to be withheld must be interpreted narrowly.

---

<sup>34</sup> For example, in addition to a state statute, a court rule, state regulation, or federal statute may require redaction of the record.

<sup>35</sup> Personally, identifiable information is defined as “information that, alone or in combination with other information, may be used to identify a person or an electronic device used by the person. The term includes, without limitation, the name, address, telephone number, date of birth, and directory information of a person.” SB388, 2019 Legislative Session. See *also* NRS 603A.040.

<sup>36</sup> NRS 333.335.

<sup>37</sup> NRS 199.520.

<sup>38</sup> NRS 178.5691.

When denying a request, either in whole or in part, an agency must provide a written notice of denial. Do not be vague about the reason. The response should provide the requester with sufficient information about the reasoning behind the denial.

The notice of denial must contain:

- A description of the record(s) to which access is being denied, and
- The legal citation of the specific statute or other legal authority<sup>39</sup> which is the basis for denying access to the requested records.

Providing only a list of legal citations, or string cite, does not satisfy the requirement. An explanation must be provided that explains how the statute or legal authority applies to the information and requires that it be deemed confidential and not provided in response to the request.

---

## **Destruction Hold**

All records pertaining to a reasonably foreseeable or existing public records request, audit, investigation, litigation, or anticipated litigation must not be destroyed, damaged or altered until the request, audit, investigation, litigation or anticipated litigation is complete. If a request for inspection pertaining to a record due for destruction is initiated before the destruction of the record is fulfilled, then destruction of the record must be stopped, and the record must be produced for inspection. Destruction can be reinitiated following completion of the inspection.

**NAC 239.868** Agency prohibited from disposing of requested public record; disposal of unclaimed copy of public record.

1. Except as otherwise provided in subsection 2, if a person requests to inspect, copy or receive a copy of a public record, the records official of the agency of the Executive Department which possesses the record shall ensure that the agency does not dispose of the record until the agency has complied with the request.

## **FEES**

The agency may charge a fee for providing a copy of a public record; agencies assessing a fee must do so in accordance with the applicable statutory provisions.<sup>40</sup> Providing copies of public records to the public is deemed part of the agency's regular duties. If an agency intends to charge a fee for its actual costs in providing the record to the requester, a fee schedule must be posted in a conspicuous place in each of the agency's offices and posted on the agency's website, if one exists.

**NRS 239.052 Fees: Limitations; waiver; posting of sign or notice.**

---

<sup>39</sup> For example, in addition to a state statute, a court rule, state regulation, or federal statute may require denial of the records request.

<sup>40</sup> NRS 239.052(1).

1. Except as otherwise provided in this subsection, a governmental entity may charge a fee for providing a copy of a public record. Such a fee must not exceed the actual cost to the governmental entity to provide the copy of the public record unless a specific statute or regulation sets a fee that the governmental entity must charge for the copy. A governmental entity shall not charge a fee for providing a copy of a public record if a specific statute or regulation requires the governmental entity to provide the copy without charge.
2. A governmental entity may waive all or a portion of a charge or fee for a copy of a public record if the governmental entity:
  - (a) Adopts a written policy to waive all or a portion of a charge or fee for a copy of a public record; and
  - (b) Posts, in a conspicuous place at each office in which the governmental entity provides copies of public records, a legible sign or notice that states the terms of the policy.
3. A governmental entity shall prepare and maintain a list of the fees that it charges at each office in which the governmental entity provides copies of public records. A governmental entity shall post, in a conspicuous place at each office in which the governmental entity provides copies of public records, a legible sign or notice which states:
  - (a) The fee that the governmental entity charges to provide a copy of a public record; or
  - (b) The location at which a list of each fee that the governmental entity charges to provide a copy of a public record may be obtained.
4. The fee for providing a copy of a public book or record in the custody of a law library operated by a governmental entity must not exceed 50 cents per page.

The NPRA contains no provision authorizing a fee in connection with the inspection of records. The exception is when confidential information within the record must be redacted prior to copying for inspection then a fee may be charged.

It is reasonable and encouraged for an agency to consult with legal counsel at the Office of the Attorney General on the exception prior to applying a fee.

---

## Posting a List of Fees

There is no uniform fee schedule for executive branch agencies. Absent any set statutory or regulatory fees, each agency must establish and maintain a uniform list of the fees it charges for providing public records. The list must be posted in a conspicuous place in each office of the agency where records are accessed<sup>41</sup> and on the agency's website, if one exists. The agency's list of fees must also include the per-page fee for court reporter transcripts, if applicable.<sup>42</sup>

---

## Actual Costs

The NPRA allows agencies to recover their actual costs in fulfilling a public records request. Unless otherwise provided by statute, these costs may include only actual costs incurred in reproduction the records, such as those for toner, paper, media and postage.<sup>43</sup>

An agency can charge for:

---

<sup>41</sup> NRS 239.052(3).

<sup>42</sup> NRS 239.053(2).

<sup>43</sup> NRS 239.005(1), NRS 239.052(1).

- Costs for photocopying or photographic reproduction
- Costs of electronic or other media, such as CDs, DVDs, flash (thumb) drives, audiotapes, microfilm, etc.
- Postage, express mail, delivery services, etc.
- Overtime, if it is actually incurred by the agency in order to comply with a request.

Fees are not a revenue-generating operation of an agency. An agency may not charge a fee for:

- Review of a record to determine if the record is a responsive record.
- Searching for or retrieving documents, unless otherwise allowed by statute.
- Regular staff time for complying with a public records request.
- Requestor's use of a personal device to copy or photograph public records. (In such cases, the agency may make reasonable rules to prevent disruption of business operations, to preserve the security of public records and/or to protect the records from damage.)
- Recouping the original cost of developing or producing the records, in the case of multiple requesters asking for the same records.

---

## Fee Deposit

If an estimate of the fee exceeds \$25, the agency may request a deposit from the person requesting a copy of the record. The agency must provide the person with written notice of the estimated amount of the fee. In such instances, the agency is not required to fulfill the public records request until the person makes a deposit in an amount of the estimated fee.

**NAC 239.864 Fee for providing copy of public record: Estimate of fee; deposit.**

If an agency of the Executive Department charges a fee for providing a copy of a public record:

1. A records official shall provide a person who requests a copy of a public record with an estimate of the fee for the copy, if the estimated actual cost is more than \$25. The estimate of the fee must include, without limitation, the amount of postage that the agency will charge the person if the person requested to have the copy delivered by mail.
2. A records official:
  - (a) May require the person who requests a copy of a public record to pay a deposit of not more than the estimate of the actual cost of providing the copy; and
  - (b) Shall require the person who requests a copy of a public record to pay the fee for providing the copy, including, without limitation, postage for mailing the copy, if applicable, before the person receives the copy.

---

## Payment Prior to Release of Copies

Once the request is fulfilled and prepared for release, the agency may request payment of the fees prior to releasing the records to avoid situations in which the agency provides the records and the requester fails to submit payment.

---

## Waiving Fees

Agencies have the discretion to waive or reduce their fees. Should an agency choose to waive a portion of its entire fee for providing records, the agency must adopt a written policy and post notice of this policy in a

conspicuous place in each of its offices and should post it on the agency's website, if one exists.<sup>44</sup> All fees waivers must be standardized by a written policy and evenly applied. Nothing in this manual prevents an agency from providing records for free or at a reduced cost.

If there is a statute or regulation which requires no fee to be charged for providing a copy of a public record the agency shall provide the record without charge.

---

## Geographic Information System (GIS)

In NRS 239.054, the NPRA provides for additional reasonable costs for GIS systems. Agencies may recover costs related to:

- Gathering and entry of data into the system,
- Maintenance and updating of the database of the system,
- Hardware,
- Software,
- Quality control, and
- Consultation with personnel of the governmental entity.

---

## Use of Outside Copying Service

If the services of an outside vendor are required to copy any public record, the actual charges in connection with such services may be charged. The agency may make arrangements with a local bonded copying service to perform this service. If the agency uses an outside copying service to make the copies, the agency may require the person to pay the cost of the entire copying job, as billed by the copying service, unless specific statute or regulation requires the agency to provide the copy without charge. The use of an outside copying service must be standardized by policy and evenly applied.

---

## Minutes, Agendas, Supporting Materials and Audio Recordings of Public Meetings

Meeting minutes, meeting agendas, meeting supporting materials and meeting audio recordings are routine requests for public records which are to be satisfied immediately and at no charge.<sup>45</sup> Meeting minutes must be retained and made available to the public by the public body for the first five years after the meeting. After five years, meeting minutes may be transferred to the State Archives and the State Archives will respond to requests for those minutes. Meeting audio recordings must be retained for three years. After three years, they may be destroyed.

A requestor is allowed one copy of each meeting agenda, meeting minutes, and meeting supporting materials at no cost. Drafts of minutes and audio recordings of meetings must be made available to the public at no charge within 30 working days after the adjournment of the meeting. After the draft minutes are approved by the public body at its next meeting or after 45 days, whichever is later, the approved minutes should be available to the public at no charge upon request.

---

<sup>44</sup> NRS 239.052(2).

<sup>45</sup> NRS 241.035



If a public body uses a certified court reporter to transcribe its meetings, it may charge for a copy of that transcription as provided in NRS 239.053 as long as that fee is listed in its list of fees charged for public records requests.

## REQUEST DEADLINES

Time is critical in responding to public records requests. An agency must respond promptly, but no later than five business days from the day after the receipt of the request, to notify the requester whether records are available. If the request is received after business hours or on a weekend or holiday, the next business day is considered the date of receipt. The five business-day response period starts with the first business day after the date of receipt.<sup>46</sup>

**The time limit for responding to a public records request is not the same as the time within which the records must be disclosed to the requester.**

An agency may lengthen the response time to search for and collect records. If an agency requires additional response time beyond the initial five business-day period, it must provide a written notice to the person, within this five business-day period, stating the response time will be delayed and the date the records or copies will be made available.<sup>47</sup>

An agency should never delay a response time on the basis that the office is too busy or that the key records employee is on vacation or otherwise unavailable.



---

### Request Received – Day 0

The request is directed to the records official of the agency. The request should be made on the standard records request form. The request may be hand-delivered, mailed, emailed, or sent via facsimile to the agency.<sup>48</sup>

A written request is preferred, however, if an oral request, in person or by phone, is received, the agency may consider confirming the request in writing in order to eliminate any confusion regarding the request.

---

### Response – Day 1 to Day 5

---

<sup>46</sup> [NRS 239.0107](#)

<sup>47</sup> [NRS 239.0107\(1\)\(c\)](#)

<sup>48</sup> NRS 239.0107.

Not later than the fifth business day after receipt of the request, the agency must respond to the requestor. The response shall be one of the following:

1. Responsive records are made available to the requester.
2. Notice stating the agency does not have custody of the official record and providing the name and address of the appropriate agency, if known.
3. Notice stating the records are not available within the five business-day period and providing an estimated date and time the records will be made available.
4. A written notice if a fee is required.
  - a) If the agency requires prepayment: No further work on the request need be taken until the estimated fees (if applicable) have been deposited with the agency. (Note: not all agencies require prepayment of fees.)
  - b) If the estimated fee exceeds \$25: The requester must acknowledge and approve the fee in writing before the agency fulfills the request. The agency may offer the requester an opportunity to revise or narrow the request.
5. Notice stating the request for release is denied, in part or in whole, and stating the legal basis for its decision.<sup>49</sup>

## FILING A COMPLAINT FOR JUDICIAL REVIEW

If a person is denied access, in whole or in part, the person may apply to the district court in which the record is located to request that the court consider the request and the agency's objection and issue an order either upholding the denial or allowing access to the record.

If an agency fails to properly honor its public records disclosure obligations, the court may order the agency to produce the record(s) and pay the requestor's attorney's fees. The agency also may be assessed a civil penalty for willfully failing to comply with the NPRA.<sup>50</sup>

**NRS 239.011 Application to court for order allowing inspection or copying, or requiring that copy be provided, of public book or record in legal custody or control of governmental entity.**

1. If a request for inspection, copying or copies of a public book or record open to inspection and copying is denied or unreasonably delayed or if a person who requests a copy of a public book or record believes that the fee charged by the governmental entity for providing the copy of the public book or record is excessive or improper, the requester may apply to the district court in the county in which the book or record is located for an order:
  - (a) Permitting the requester to inspect or copy the book or record;
  - (b) Requiring the person who has legal custody or control of the public book or record to provide a copy to the requester; or
  - (c) Providing relief relating to the amount of the fee, as applicable.

---

<sup>49</sup> NRS 23.90107.

<sup>50</sup> For a first violation in ten years, the agency may be assessed a civil penalty of \$1,000. For a second violation in ten years, the agency may be assessed a civil penalty of \$5,000. For a third violation in ten years, the agency may be assessed a civil penalty of \$10,000. This amount must be paid by the governmental agency and will be deposited into the general fund account for the Nevada State Library, Archives and Public Records Division.

2. The court shall give this matter priority over other civil matters to which priority is not given by other statutes. If the requester prevails, the requester is entitled to recover from the governmental entity that has legal custody or control of the record his or her or her costs and reasonable attorney's fees in the proceeding.

3. If the governmental entity appeals the decision of the district court and the decision is affirmed in whole or in part, the requester is entitled to recover from the governmental entity that has legal custody or control of the record his or her costs and reasonable attorney's fees for the appeal.

4. The rights and remedies recognized by this section are in addition to any other rights or remedies that may exist in law or in equity.

However, please note that if a court determines that a governmental entity willfully failed to comply, the court must impose a civil penalty.

#### **NRS 239 Section 1**

1. In addition to any relief awarded pursuant to NRS 239.011, if a court determines that a governmental entity willfully failed to comply with the provisions of this chapter concerning a request to inspect, copy or receive a copy of a public book or record, the court must impose on the governmental entity a civil penalty of:

(a) For a first violation within a 10-year period, \$1,000.

(b) For a second violation within a 10-year period, \$5,000.

(c) For a third or subsequent violation within a 10-year period, \$10,000.

2. A civil penalty imposed pursuant to subsection 1 must be deposited in and accounted for separately in the State General Fund. The money in the account may be used only by the Division of State Library, Archives and Public Records of the Department of Administration to improve access to public records and is hereby authorized for expenditure as a continuing appropriation for this purpose.

3. The rights and remedies recognized by this section are in addition to any other rights or remedies that may exist in law or in equity.

## **SUBPOENAS**

A subpoena is not a public records request. A subpoena is part of the judicial process and should be responded to with the help of legal counsel. Legal counsel should be notified immediately upon receipt of a subpoena. Failure to respond to a subpoena appropriately and in a timely manner can result in serious legal consequences for the agency.

Every agency should have subpoena policy and procedures plan in place so served subpoenas are handled properly, consistently, and efficiently.

## **PUBLIC RECORDS LOG**

The State of Nevada holds offices accountable when fulfilling public records requests. A recommended best practice for agencies is to maintain a log of all public records requests received by their office.

The **Public Records Request Log** identifies:

- Date of request
- Date of initial response
- Date request fulfilled and/or denied, in whole or in part
- Time spent handling requests
  - reviewing
  - retrieving and refiling
  - IT programming
- Time spent redacting
- Number of pages
- Fees collected

## RETENTION

State records retention schedules are developed by the NSLAPR State Records Program, in cooperation with the requesting agency, and approved by the State Records Committee.<sup>51</sup> For more information about records retention and records destruction schedules, go to the State Records program website: <https://nsla.nv.gov/state-records>. For more information, email State Records at [records@admin.nv.gov](mailto:records@admin.nv.gov) or call 775-684-3411.

**Public Records Requests and Response Letters.** Must be retained for three calendar years after the request was fulfilled. (RDA 2015013)

**Denials.** Request documentation and denial letters, in whole or in part, are to be retained for three calendar years. (RDA 2015013) Denial letters are public records and shall be made available upon request.

**Copies.** If copies of public records were requested and the requester fails to claim the copies, the agency is not obligated to hold the copies for pick up for more than 30 days after the date the copies were made available to the requester. (NAC 239.868)

**Logs.** If a log of public records requests is maintained by an agency, the log is to be retained for three calendar years. (RDA 2015013)

## COURT DECISIONS (SELECTED)

- *Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990).
- *DR Partners v. Bd. of County Comm’rs*, 116 Nev. 616, 6 P.3d 465 (2000).
- *City of Reno v. Reno Gazette-Journal*, 119 Nev. 55, 63 P.3d 1147 (2003).
- *Reno Newspapers v. Sheriff*, 234 P.3d 922, 126 Nev. Adv. Op. 23 (July 1, 2010).
- *Reno Newspapers, Inc. v. Jim Gibbons, Governor of the State of Nevada*, 266 P.3d 623, 127 Nev. Adv. Op. 79 (Dec. 15, 2011).
- *Civil Rights for Seniors v. Administrative Office of the Courts*, 313 P.3d 216, 129 Nev. Adv. Op. 80 (Oct. 31, 2013).

---

<sup>51</sup> [NRS 239.073](#)

- *Public Employees' Retirement System of Nevada v. Reno Newspapers, Inc.*, 313 P.3d 221, 129 Nev. Adv. Op. 88 (Nov. 14, 2013).
- *Las Vegas Metropolitan Police Department v. Blackjack Bonding, Inc.*, 343 P.3d 608, 131 Nev., Adv. Op. 10 (March 5, 2015).
- *City of Sparks v. Reno Newspapers*, 399 P.3d 352 (Aug. 3, 2017).
- *Comstock Residents Association v. Lyon County Board of Commissioners*, 134 Nev. Adv. Op. 19, 414 P.3d 318 (2018).
- *Clark County School District v. Las Vegas Review-Journal*, 134 Nev. Adv. Op. 84, 429 P.3d 313 (2018).
- *Republican Attorneys General Association v. Las Vegas Metropolitan Police Department*, 136 Nev. Adv. Op. 3 (2020).

## **PUBLIC RECORD FORM SAMPLES**

---

**Public Records Request Form**

**Fulfill: Public Records Request Acknowledgement Letter Form**

**Denial: Public Records Request Acknowledgement Letter**



STATE OF NEVADA  
**Public Records Request**

Deliver, Mail, or Fax to:  
 [Agency Address]

Attention: Public Records Officer, [Name]

<b>Date of Request</b>	
<b>Requestor Contact Information</b>	
Name:	
Organization:	
Address:	
City, State, Zip:	
Phone:	
E-mail:	

<b>Records Requested:</b>
Check one: <input type="checkbox"/> Paper copies <input type="checkbox"/> Electronic copies <input type="checkbox"/> Certified copies <input type="checkbox"/> Inspection (in person)
<i>Please be specific and include as much detail as possible regarding the records you are requesting.</i>

<i>To complete an estimate, the agency will need the following information:</i>			
<input type="checkbox"/> I will pick up	<input type="checkbox"/> Please FedEx <i>Fed Ex billing number:</i>	<input type="checkbox"/> Please send USPS	<input type="checkbox"/> E-mail (if format allows)

<b>Statement</b>	
<input type="checkbox"/> I understand there is a charge for copies of public records. I understand I will receive a written estimate for production of the records indicated above if the estimated cost is expected to be over \$25.00, which I will be required to pay in full prior to inspection or reproduction. Materials will be held for 30 days.	
<b>Requester Signature</b>	_____ Signature

<b>Office Use Only</b>	
Request status:	Estimate:
Date _____ _____ _____ _____ _____ _____ _____ _____ _____	Request received Receipt acknowledgement issued Request filled Estimated completion Estimate provided Request denied in whole Other: _____
	Estimate: \$ _____ Date deposit received _____ Actual (if different): \$ _____ Date final payment received _____ Completed by _____
	<i>See "State of Nevada General Records and Retention and Disposition Schedule" for retention and disposition information</i>



**PUBLIC RECORDS REQUEST  
ACKNOWLEDGEMENT LETTER**

Requester Name \_\_\_\_\_ Date \_\_\_\_\_

This is to acknowledge receipt of your Public Records Request received on \_\_\_\_\_ (date). It is our understanding that you are requesting: (Description of public records).

Having reviewed your request, our response is as follows:

1. Enclosed are copies of all requested public records.  
\$ \_\_\_\_\_ fee, payable in at the time copies are provided.
2. We are in possession of the requested public records. We require additional time to make the public records available. The records will be available by or before \_\_\_\_\_ (date) at \_\_\_\_\_(time).  
\$ \_\_\_\_\_ fee, payable in at the time copies are provided.
3. We are in possession of the requested public records.  
Estimated fee: \$ \_\_\_\_\_  
The records will be available by \_\_\_\_\_ (date) at \_\_\_\_\_(time).  
Full payment of fees must be received before public records may be inspected or copies released.
4. We request additional information or clarification before we can search for the records and make an appropriate response. Please provide the following information:
5. We do not have the public records you requested in our custody. We suggest you submit a public records request to:
6. We need additional time to gather potentially responsive records. We are compiling and reviewing potentially responsive records and anticipate having an update of our progress by \_\_\_\_\_ (date) at \_\_\_\_\_(time).
7. These public records no longer exist. The records responsive to your request were required to be kept pursuant to Approved Schedules for the Retention and Disposition of Official State Records, RDA# \_\_\_\_\_. All records potentially responsive to your request have been destroyed pursuant to this schedule.
8. \_\_\_\_\_ (state/federal law) prohibits us from acknowledging whether the requested record exists.
9. We are in possession of the requested public records.  
Estimated fee: \$ \_\_\_\_\_ Required deposit: \$ \_\_\_\_\_  
The records will be available by \_\_\_\_\_ (date) at \_\_\_\_\_(time).  
Full payment of fees must be received before public records may be inspected or copies released.  
The estimate fees exceed \$25; therefore, we require your acknowledgement of the fee and approval to proceed with production. Please verify that these terms and amounts are agreeable and that you agree to submit payment prior to providing the requested records by signing below:

\_\_\_\_\_  
Signature of Requester

\_\_\_\_\_  
Date





**PUBLIC RECORDS REQUEST  
ACKNOWLEDGEMENT LETTER**

Date

Jane Requester  
101 Main Street  
Anytown, Nevada

Dear Ms. Requester:

This letter is to acknowledge receipt of your Public Records Request received [date]. It is our understanding that you are requesting:

1. [Description of records];
2. [Description of records];
3. [Description of records].

Having reviewed your request, we are unable to provide you with either all or part of the requested record(s). The basis for this denial is:

If you have any questions regarding your request, please contact [Insert contact person's name] on [Insert person's phone number].

Sincerely,

[Name]  
Agency Records Official