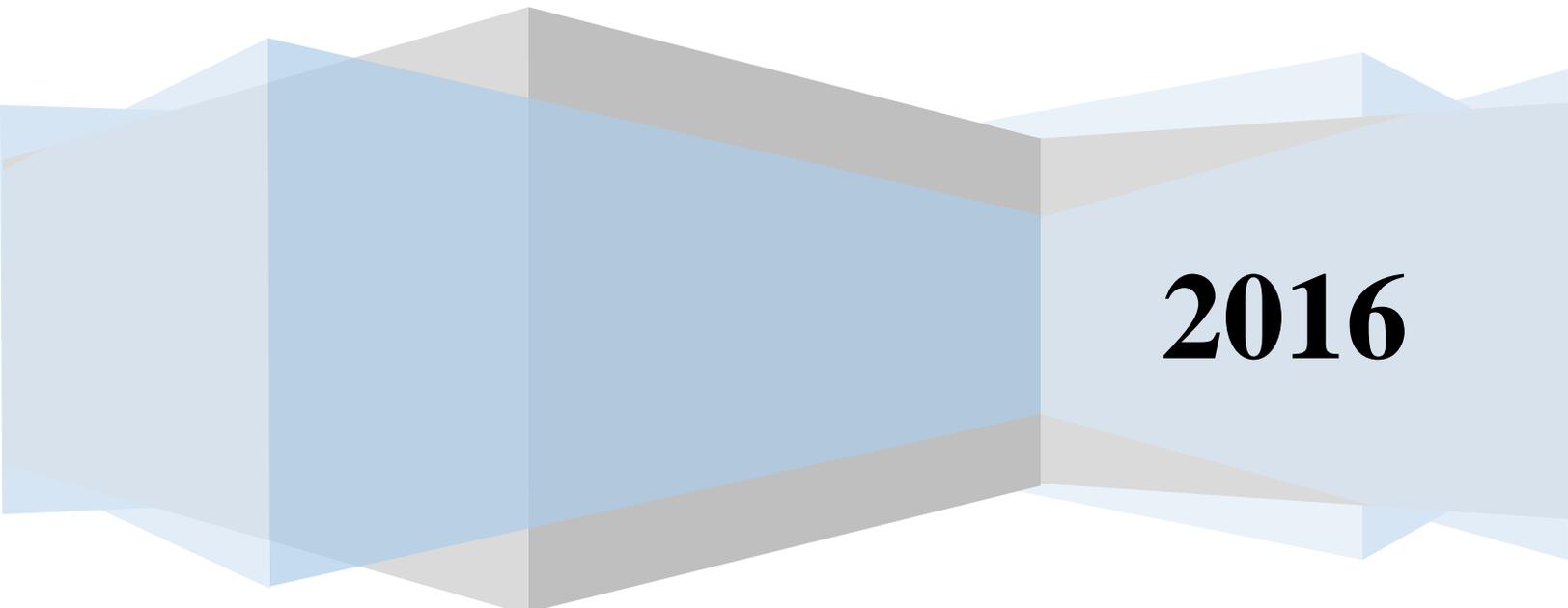


**Nevada State Library, Archives and Public Records**

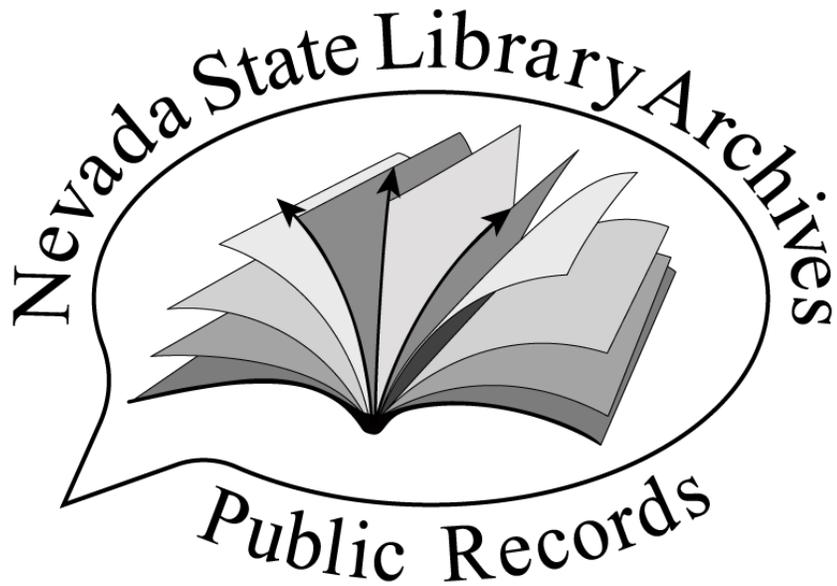
**Nevada Public Records Act:  
A Manual for State Agencies**

**Bulletin No. 3 rev.**

**State Records Program**



**2016**



**Jeffrey Kintop, Administrator**

**Adopted by Reference, in accordance with NAC 239.869**

**2016**

# 2016

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

## NEVADA'S PUBLIC RECORDS ACT

The Public Records Act (Act) is found in NRS Chapter 239. Nevada's Public Records Law was enacted to ensure that government documents 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 access to inspect and copy 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
4. The use of private entities in the provision of public services must not deprive members of the public access to inspect and copy 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.

Nevada's Public Records Act<sup>1</sup> (the Act) 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." The records "must be open at all times during office hours to inspection by any requester, and may be fully copied." Also, "A person may request a copy of a public record in any medium<sup>2</sup> in which the public record is readily available."<sup>3</sup>

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

Each agency is required to establish and maintain the records used in carrying out the agency's transaction of public business<sup>4</sup>, therefore, each agency is required to permit public inspection of records and provide copies of the public records to those who request these records.

**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;

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

<sup>2</sup> [NAC 239.861](#) "Readily available medium" interpreted

<sup>3</sup> [NAC 239.860](#) "Readily available" interpreted

<sup>4</sup> [NAC 239.696](#)

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
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.

## SCOPE OF PUBLIC RECORDS MANUAL

This Manual presents guidelines for agencies to use in determining which documents are subject to public access under 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 policy of Nevada with respect to public inspection of public records seeks to increase public access to government information and to make government agencies accountable and transparent to the public. This Manual is designed to reduce costs and make the public records request process more uniform and timely, increasing an agency's public accountability, openness and transparency.

The purpose of this Manual is to provide a single source for rules by which an agency implements and ensures compliance with the provisions of the Public Records Act. 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,
- Prevent unreasonable invasions of privacy,
- Protect public records from damage or disorganization, and
- Prevent excessive interference with essential government functions.

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### Who is Subject to this Manual?

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 state agencies. Agencies therefore receive and process the public records requests for the records managed by that 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's Public Records Act. For more information on FOIA, see the US Department of Justice, Office of Information Policy.<sup>5</sup>

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<sup>5</sup> <https://www.justice.gov/oip>

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## 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 with the law. If the requester (person) prevails, it will result in a court ordering the agency to produce the records and to pay the requester's attorney's fees and damages.<sup>6</sup>

The purpose of the Act 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 Act.*

**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, 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; or
  - (b) Requiring the person who has legal custody or control of the public book or record to provide a copy to the requester, 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 his or her costs and reasonable attorney's fees in the proceeding from the governmental entity whose officer has custody of the book or record.

**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.

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## Good Faith Response

A good faith decision by a public agency to release or not to release a public record relieves the agency from liability arising from the disclosure or the refusal to disclose information. Good faith compliance is best demonstrated by consulting with the Office of the Attorney General whenever there is any doubt whether the information can be disclosed.

**NRS 239.012 Immunity for good faith disclosure or refusal to disclose information.** A public officer or employee who acts in good faith in disclosing or refusing to disclose information and the employer of the public officer or employee are immune from liability for damages, either to the requester or to the person whom the information concerns.

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<sup>6</sup> [NRS 230.011](#)

## MANAGING RECORDS

As required by the Act, agency heads have an explicit responsibility to create and preserve records which contain adequate and proper documentation of the organizational functions, policies, decisions, procedures, and essential transactions of the agency, also known as the official records of the agency. This includes records designed to furnish information necessary to protect the legal and financial rights of the government and of its citizens.

**To facilitate broader access to its public records, all agencies are to organize and maintain public records in a manner which makes the records available in accordance with the Act.** For example, move official e-mails records and electronic records off of email repositories and user drives to an agency electronic records management system to make the records accessible to “need to know” agency staff and to secure and protect the records.<sup>7</sup>

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### What is an Official Record?

Official Record is defined in [NRS 239.005\(6\)](#)<sup>8</sup>:

**NRS 230.005(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.

**By regulation<sup>9</sup> in NAC 239.705**, the Nevada State Library, Archives and Public Records (NSLAPR) has interpreted the definition of official record, public record and record:

**NAC 239.705 “Official state record” and “record” interpreted.**

1. For the purposes of [NRS 239.080](#) and as used in [NAC 239.570](#) to [239.750](#), inclusive, “official state record” or “record” means information created or received by a state agency under authority of law, regulation or other legal mandate or in connection with the transaction of public business that is maintained by the state agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the state agency, including, without limitation, all papers, maps, photographs, financial statements, statistical tabulations, recorded media and other documentary materials, regardless of physical form or characteristics.

2. The phrase does not include nonrecord materials. Nonrecord materials include, without limitation, published materials printed by a governmental printer, informal notes, unused blank forms except ballots, brochures, newsletters, magazines, catalogs, price lists, drafts, convenience copies, ad hoc reports, reference materials not relating to a specific project and any other documentation that does not serve as the record of an official action of a state agency.

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<sup>7</sup> For more information on managing email records, see [Bulletin No.1 - Guidelines for Developing an Agency Email Policy](#)

<sup>8</sup> [NRS 239.005](#)

<sup>9</sup> [NRS 378.255\(1\)](#)

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

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## 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 in 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. Agency records retention schedules are made readily available to agencies and to the public on the Nevada State Library, Archives and Public Records’ website.

[http://nsla.nv.gov/Records/State/Agency\\_Main/](http://nsla.nv.gov/Records/State/Agency_Main/)

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 alteration, damage and degradation.<sup>10</sup>

Records can occur in any media 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. State Records and Disposition Schedules apply to records in any media.

Agencies are advised to systematically 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 [NSLAPR], each agency, board and commission shall develop a schedule for the retention and disposition of each type of official state record.
3. [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 Retention and Disposition Schedule and the record is included in a public records request, the record must be retained until the request is fulfilled. Failure to cease the destruction of relevant records could result in penalties.<sup>11</sup>

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## Failure to properly manage Official Records

Records created or received in connection with the transaction of public business are official records and are owned by the State of Nevada. Records document the conduct of government business and must be filed in a

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<sup>10</sup> [NAC 239.699](#)

<sup>11</sup> [NRS 239.310](#)

way that allows for easy access to these records over time. Records cannot be prematurely destroyed or retained long past the retention period.

The 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:

**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.

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### 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 Act or subject to discovery in litigation.

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

## PUBLIC RECORDS

The Act 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.” *Public Record* is not a statutorily defined term. Public records are retained by each agency to document the discharge of that agency’s official duties.

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### Is it a Public Record?

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

- Did the agency require creation or submission and maintenance of the record?
- Was the record used to conduct or facilitate agency business?
- Was the record distributed to other offices or agencies for formal approval or reporting purposes?
- Does the record document official business action, such as: what happened, what was decided, what advice was given, who was involved, when it happened, and/or the order of events and decisions?

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### Request must be for an identifiable record

A public record is any record that is prepared, used, or maintained by any state 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. An identifiable record is a contract, an invoice, a letter, a final report, etc.

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## Not required to create a public record

The Act 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 doesn't 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.

**NAC 239.867 No requirement to create public record that does not exist.** If a person requests to inspect, copy or receive a copy of a public record that does not exist, a records official or an agency of the Executive Department is not required to create a public record to satisfy the request.

An agency is not required to provide access to records that were 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 were never asked for.

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## 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 Act. 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.

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## Computer software is not a public record

Computer software developed by the government is not a public record, but the computer software may generate public records.<sup>12</sup> The software can generate public records which are deemed to exist so long as a computer is already programmed to generate these records.

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## Role of the Attorney General

It is reasonable for an agency to consult with legal counsel when presented with extraordinary or legally complex requests for public records. And it is very important to consult with legal counsel when an agency receives a request for public records that the agency believes may be pertinent to a potential or pending legal claim or litigation against the agency.

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## Transitory records

Certain records, including certain email, known as transitory (temporary) records, may be public records, but because of their limited value, they do not have to be retained. These Transitory records are created primarily for the informal communication of information and do not require an official action. Transitory records do not set policy, establish guidelines or procedures, discuss a business matter, discuss a decision, certify a transaction, or act as evidence of receipt. Transitory records may be treated as having routine or short-term value that ends

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<sup>12</sup> Nevada Attorney General Opinion No. 89-1 Public Records; Computer Programs; Wildlife

when the reference or business purpose of the record is complete. Transitory records may be destroyed when the value of the record ends. *However, if a public records request is received for a transitory record before that transitory record has been destroyed, that transitory record must be released.*

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## Nonrecord material

For retention purposes, these documents are not official records and do not have a recordkeeping requirement, including:

- Routing slips or routing emails that contain no pertinent information or approvals.
- Unofficial, incomplete and extra copies, such as duplicate or convenience copies held for ease of reference and/or accessibility.
- Reading files, tickler files or chronological (chron) files. (Chron files typically contain outgoing correspondence arranged chronologically by date sent).
- Blank forms and office supplies.
- Unofficial notices, unsolicited announcements, invitations, or other materials that are not filed as evidence of official agency business.
- Personal items which pertain solely to an individual's affairs and do not relate to or have an effect on the conduct of agency business, such as professional association documents, personal correspondence or business, personal political and/or campaign documentation.

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## Nonrecord retention guidelines

Nonrecord materials should not be interfiled with official records. Records without a recordkeeping requirement should be destroyed when no longer needed for reference. An approved schedule is not required to destroy such materials. When it is difficult to decide whether certain files are records or nonrecord materials, the records official should treat them as records.

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### CONVENIENCE COPIES

For retention purposes, convenience copies are duplicates of official records and are not treated as official records. There is no requirement to retain duplicates. They may be treated as having a reference value and they may be destroyed when this value ends.

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### DRAFTS

For retention purposes, drafts of future records are not considered official records and there is no requirement for retention. They may be treated as having a reference or administrative value that ends and they may be destroyed when a new or final (official) version is created or when their reference value ends. Agency staff should consult with legal counsel about the public record status of a draft prior to denying inspection of these copies. To avoid misunderstandings that can sometimes arise from drafts, consider labeling the drafts with "DISCUSSION DRAFT ONLY" in the header or footer or as a watermark.

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### REFERENCE FILES

Reference files are non-record copies of articles, periodicals, reports, studies, vendor catalogs, and similar materials that are needed for reference and information but are not part of the office's records. They are also called information copies. There is no requirement to retain reference files. They may be treated as having a reference value only and they may be destroyed when this value ends.

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## PERSONAL PAPERS

Some information accumulated by staff and officials does not qualify as public records. These materials are considered personal papers (i.e., private property) if they relate only to an individual's personal affairs and do not affect the conduct of agency business. Personal papers maintained in an office should be filed separately from agency records and should be destroyed when no longer needed for reference.

Examples include:

- Papers accumulated by an official before joining governmental service
- Materials relating solely to an individual's private affairs, such as benefit and retirement information, professional affiliations, or private political associations
- Diaries, journals, or other personal notes that are not prepared or received in the process of transacting governmental business. Using personal funds to purchase work items, such as an appointment book or journal that is used to document work activities, does not make the item personal
- Campaign materials

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## 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>13</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.

## CONFIDENTIAL AND RESTRICTED RECORDS

The Nevada Revised Statutes (NRS) identifies many statutes that declare records to be confidential or restricted and, therefore, are not publicly accessible. Having timely access to accurate information is central to an agency being able to fulfill its 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>14</sup> to the records, in whole or in part.

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<sup>13</sup> [NRS 239.010\(1\)](#), [NRS 239.010\(2\)](#)

<sup>14</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; certain medical,

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## NRS Confidential Citations

The Nevada Revised Statutes (NRS) are the current codified laws of the State of Nevada. Within each chapter of NRS are the specific provisions of the law. Statutes that reference confidential or restricted records which are “declared by law to be confidential” are cited in NRS 239.010 and are therefore exempt from public access. 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/>

### **NRS:**

1.4683, 1.4687, 1A.110, 41.071, 49.095, 62D.420, 62D.440, 62E.516, 62E.620,62H.025, 62H.030, 62H.170, 62H.220, 62H.320, 75A.100, 75A.150, 76.160, 78.152, 80.113, 81.850, 82.183, 86.246, 86.54615, 87.515,87.5413, 87A.200, 87A.580, 87A.640, 88.3355, 88.5927, 88.6067, 88A.345, 88A.7345, 89.045, 89.251, 90.730, 91.160, 116.757, 116A.270,116B.880, 118B.026, 119.260, 119.265, 119.267, 119.280, 119A.280, 119A.653, 119B.370, 119B.382, 120A.690, 125.130, 125B.140, 126.141,126.161, 126.163, 126.730, 127.007, 127.057, 127.130, 127.140, 127.2817, 130.312, 130.712, 136.050, 159.044, 172.075, 172.245, 176.015,176.0625, 176.09129, 176.156, 176A.630, 178.39801, 178.4715, 178.5691, 179.495, 179A.070, 179A.165, 179A.450, 179D.160, 200.3771,200.3772, 200.5095, 200.604, 202.3662, 205.4651, 209.392, 209.3925, 209.419, 209.521, 211A.140, 213.010, 213.040, 213.095, 213.131,217.105, 217.110, 217.464, 217.475, 218A.350, 218E.625, 218F.150, 218G.130, 218G.240, 218G.350, 228.270, 228.450, 228.495, 228.570,231.069, 231.1473, 233.190, 237.300, 239.0105, 239.0113, 239B.030, 239B.040, 239B.050, 239C.140, 239C.210, 239C.230, 239C.250,239C.270, 240.007, 241.020, 241.030, 241.039, 242.105, 244.264, 244.335, 250.087, 250.130, 250.140, 250.150, 268.095, 268.490, 268.910,271A.105, 281.195, 281A.350, 281A.440, 281A.550, 284.4068, 286.110, 287.0438, 289.025, 289.080, 289.387, 289.830, 293.5002, 293.503,293.558, 293B.135, 293D.510, 331.110, 332.061, 332.351, 333.333, 333.335, 338.070, 338.1379, 338.16925, 338.1725, 338.1727, 348.420,349.597, 349.775, 353.205, 353A.049, 353A.085, 353A.100, 353C.240, 360.240, 360.247, 360.255, 360.755, 361.044, 361.610, 365.138,366.160, 368A.180, 372A.080, 378.290, 378.300, 379.008, 385A.830, 385B.100, 387.626, 387.631, 388.1455, 388.259, 388.501, 388.503,388.513, 388.750, 391.035, 392.029, 392.147, 392.264, 392.271, 392.850, 394.167, 394.1698, 394.447, 394.460, 394.465, 396.3295, 396.405,396.525, 396.535, 398.403, 408.3885, 408.3886, 408.3888, 408.5484, 412.153, 416.070, 422.2749, 422.305, 422A.342, 422A.350, 425.400,427A.1236, 427A.872, 432.205, 432B.175, 432B.280, 432B.290, 432B.407, 432B.430, 432B.560, 433.534, 433A.360, 439.840, 439B.420,440.170, 441A.195, 441A.220, 441A.230, 442.330, 442.395, 445A.665, 445B.570, 449.209, 449.245, 449.720, 450.140, 453.164, 453.720,453A.610, 453A.700, 458.055, 458.280, 459.050, 459.3866, 459.555, 459.7056, 459.846, 463.120, 463.15993, 463.240, 463.3403, 463.3407,463.790, 467.1005, 480.365, 481.063, 482.170, 482.5536, 483.340, 483.363, 483.575, 483.659, 483.800, 484E.070, 485.316, 503.452, 522.040, 534A.031, 561.285, 571.160, 584.583, 584.655, 587.877, 598.0964, 598.098, 598A.110, 599B.090, 603.070, 603A.210, 604A.710, 612.265,616B.012, 616B.015, 616B.315, 616B.350, 618.341, 618.425, 622.310, 623.131, 623A.353, 624.110, 624.265, 624.327, 625.425, 625A.185,628.418, 628B.230, 628B.760, 629.047, 629.069, 630.133, 630.30665, 630.336, 630A.555, 631.368, 632.121, 632.125, 632.405, 633.283,633.301, 633.524, 634.212, 634.214, 634A.185, 635.158, 636.107, 637.085, 637B.288, 638.087, 638.089, 639.2485, 639.570, 640.075,640A.220, 640B.730, 640C.400, 640C.745, 640C.760, 640D.190, 640E.340, 641.090, 641A.191, 641B.170, 641C.760, 642.524, 643.189,644.446, 645.180, 645.625, 645A.050, 645A.082, 645B.060, 645B.092, 645C.220, 645C.225, 645D.130, 645D.135, 645E.300, 645E.375,645G.510, 645H.320, 645H.330, 647.0945, 647.0947, 648.033, 648.197, 649.065, 649.067, 652.228, 654.110, 656.105, 661.115, 665.130,665.133, 669.275, 669.285, 669A.310, 671.170, 673.430, 675.380, 676A.340, 676A.370, 677.243, 679B.122, 679B.152, 679B.159, 679B.190,679B.285, 679B.690, 680A.270, 681A.440, 681B.260, 681B.410, 681B.540, 683A.0873, 685A.077, 686A.289, 686B.170, 686C.306, 687A.110,687A.1

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psychiatric or psychological data about an individual; Homeland Security interests; open and ongoing civil and criminal investigations; etc.

15, 687C.010, 688C.230, 688C.480, 688C.490, 692A.117, 692C.190, 692C.3536, 692C.3538, 692C.354, 692C.420, 693A.480, 693A.615, 696B.550, 703.196, 704B.320, 704B.325, 706.1725, 706A.230, 710.159, 711.600, sections 35, 38 and 41 of chapter 478, Statutes of Nevada 2011 and section 2 of chapter 391, Statutes of Nevada 2013 and unless otherwise declared by law to be confidential

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## Role of the Attorney General

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

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

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## Balancing test analysis

In those instances when the legislature has not specified a particular record to be confidential, the Nevada Attorney General has determined that a balancing test must be applied to determine whether a record is a public record subject to the provisions of the Act. This test balances the interest and justification of the agency, or the public in general, in maintaining the confidentiality of the document against the interest or need of the public to review the document. The Nevada Supreme Court adopted the balancing test approach in 1990.<sup>15</sup> The test favors open government, but recognizes the existence of policy or privacy reasons for nondisclosure of public records. The test should be done by legal counsel in full consultation with the agency.

## EACH AGENCY MUST ADOPT A POLICY

Each public agency must adopt a policy which conforms to NRS Chapter 239 and to this Manual. The policy should include the basic procedural requirements, such as identifying the public records official, outlining the agency's response process, and the agency's fee structure.

The following information shall be posted at each agency and, if the agency maintains an Internet website, on the agency's Internet website:<sup>16</sup>

- Policies and procedures for accessing public records. NRS 239.008(4)
- A form which may be used to file a request. NRS 239.008(4)
- And explanation of fees and 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.

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<sup>15</sup> Donrey of Nevada v. Bradshaw, 106 Nev. 630, 798 P.2d 144 (1990)

<sup>16</sup> NRS 239.008

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## Agency Responsibilities

Each agency has the responsibility to:

- Establish reasonable procedures for inspecting or copying public information and inform requesters of these procedures<sup>17</sup>
- Be informed about public records and records management laws
- Appoint a records official
- Make a form for requesting public records easily available to all requests. The form is to be available on the agency website and in person at the agency
- Treat all requesters uniformly and shall give to 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

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## Agency Records Official

The head of each public agency shall designate one or more records official(s).<sup>18</sup> An alternate records official may be designated by an appointing authority to act when the designated records official is absent or otherwise unavailable to act.

The records official 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 this Manual and the Act. If the head of a state agency does not appoint a records official, the head of the state agency is the ex officio records official of the state agency.

The contact information for the records official must be posted conspicuously in the office, including on the agency's website, if available. If the agency does not have regular office hours, the name and telephone number of the records official must be posted in a conspicuous public place and at the office of the agency, if an office exists.

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
- Create agency procedures for public records requests

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.

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<sup>17</sup> [NRS 239.008\(4\)](#)

<sup>18</sup> [NRS 239.008\(1\)](#)

**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 a public book or record of the agency.

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## Records Request Form

Each agency shall adopt a Public Records Request Form. While requests for records may be made verbally, in person, it is preferable to make the request in writing. Anyone may request public records directly from the records official.

The Act does not specify a specific form, but according to the Act, the contents of the form must identify:<sup>19</sup>

1. Contact information of the person submitting the request
2. The date of the request
3. A title or description of the public record that is sufficient to identify the record
4. Type of access requested: inspect (view only), copy or receive a copy of the public record
5. Type of medium requested: paper, electronic, certified, etc.
6. Preferred delivery: by mail, facsimile machine, electronic mail and the applicable (internet or physical) address information
7. An affirmation that the person understands:
  - a. There may be a fee to receive a copy of a public record, which must be paid in full before receiving the copy; and
  - b. If the copy fees exceed \$25, a written cost estimate will be produced

**Records officials are to customize this form to conform to their specific agency and to make the form readily available for use on the agency website or in person at the agency office locations.**

**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;
  - (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

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<sup>19</sup> [NRS 239.008](#), [NAC 239.863](#)

- (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.

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## Posting on the Agency Website

The Act 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 Act 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 are 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>20</sup> If the request is extraordinary, according the Act, the records official shall require the request to be submitted in writing.<sup>21</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.

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## Readily available records

Records should be organized and maintained so they are available for inspection and copying when requested, known as readily available upon request and made available in the requested readily available medium. This is particularly true of frequently requested records.

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<sup>20</sup> [NRS 239.0107](#)

<sup>21</sup> [NRS 239.055](#)

**NAC 239.860 “Readily available” interpreted.** For the purposes of NRS 239.0107, as applicable to an agency of the Executive Department, a public record is “readily available” if:

1. The public record is easily retrievable by an officer, employee or agent of the agency who has legal custody or control of the record;
2. The public record does not contain any confidential information; and
3. The nature of the public record is such that an officer, employee or agent of the agency who has legal custody or control of the record is not required to review the record to determine whether the record includes confidential information.

**NAC 239.861 “Readily available medium” interpreted.** For the purposes of NRS 239.010, as applicable to an agency of the Executive Department, “readily available medium” means any format in which a public record exists with the agency at the time that a person requests to inspect, copy or receive a copy of the public record.

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## 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. 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:

- Ask why the individual is requesting a public record.
  - 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.

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## 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 should consult with the records personnel who manage those records in an effort to locate the records.

When an extraordinary 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 wants, while the burden on the agency in complying with the request is reduced.

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### ROLE OF THE ATTORNEY GENERAL

It is reasonable 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 notice to the person:

- **Disclosure:** Permit access to the record
- **Redaction:** Disclose the record in redacted form
- **Denial:** Withhold the record completely

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### Disclosure

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

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#### 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>22</sup>

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#### REQUEST A COPY OF PUBLIC RECORDS:

A person may request a copy of a public record in any medium in which the public record is readily available. 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 a readily available medium 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>23</sup>

The agency may not dictate to the requester which type of access must be used; that is the requester's decision. 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 readily available medium requested.

Inspection shall occur at a time mutually agreed upon by the requester and the agency. 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 person. The agency may charge a fee to recover actual costs to deliver records by mail or by other means.

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<sup>22</sup> NRS 239.010(1)

<sup>23</sup> NRS 239.010(4)

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>24</sup>

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## 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>25</sup> but the remainder of the record must be released. Every redaction shall be considered to be an “in part” denial of the request.<sup>26</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.<sup>27</sup> The notice of denial must contain:

- A description of the information which is redacted, and
- The legal citation and text of the statute or other provision(s)<sup>28</sup> which is the basis for denying access to the information.

The agency is required to redact all personal identifying information<sup>29</sup>, proprietary information<sup>30</sup>, information about on-going criminal investigations<sup>31</sup>, the names of victims of crimes<sup>32</sup>, and other personal information, as required by statute.

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

Because it is time consuming to redact confidential information does not override the requirement to do it. In the event the information which remains after confidential information has been redacted would be of little or no value to the requester, the agency may deny release of the record in whole.

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## 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

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<sup>24</sup> [NAC 239.868\(2\)](#)

<sup>25</sup> [NRS 239.010\(3\)](#)

<sup>26</sup> See also, [Denials](#)

<sup>27</sup> [NRS 239.0113](#)

<sup>28</sup> For example, a court rule or federal statute may require redaction.

<sup>29</sup> [NRS 603A.040](#)

<sup>30</sup> [NRS 333.335](#)

<sup>31</sup> [NRS 199.520](#)

<sup>32</sup> [NRS 178.5691](#)

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 person, 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.

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## Denials

The Act 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.

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.<sup>33</sup>

The notice of denial must contain:

- A description of the record(s) to which access is being denied, and
- The legal citation and text of the statute or other provision(s)<sup>34</sup> which is the basis for denying access to the requested records.

**NRS 239.0113 Burden of proof where confidentiality of public book or record is at issue.** Except as otherwise provided in [NRS 239.0115](#), if:

1. The confidentiality of a public book or record, or a part thereof, is at issue in a judicial or administrative proceeding; and
2. The governmental entity that has legal custody or control of the public book or record asserts that the public book or record, or a part thereof, is confidential the governmental entity has the burden of proving by a preponderance of the evidence that the public book or record, or a part thereof, is confidential.

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## Destruction Hold

All records pertaining to a reasonably foreseeable or existing public records request must not be destroyed, damaged or altered until the inspection of the public record 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 is stopped and the record is produced for inspection. Destruction can be reinitiated following completion of the inspection.

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<sup>33</sup> [NRS 239.0113](#)

<sup>34</sup> For example, a court rule or federal statute may require denial.

**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>35</sup> Providing copies of public records to the public is deemed part of the agency's regular duties.

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

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 Act contains no provision for a fee to be imposed in connection with the inspection of records. The exception is if confidential information within the record must be redacted and then copied for inspection or an extraordinary use of personnel or technological resources is necessary to produce the records for inspection, a fee may be charged.

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### **ROLE OF THE ATTORNEY GENERAL**

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

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<sup>35</sup> NRS 239.052(1)

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## 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>36</sup> and on the agency's website, if applicable. The agency's list of fees must also include the per-page fee for court reporter transcripts, if applicable.<sup>37</sup>

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## Actual costs

The Act 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, and postage.<sup>38</sup>

An agency can charge for:

- 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.

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 public record.
- Searching for or retrieving documents, unless otherwise allowed by statute. (Exception: see [Extraordinary Use Fees](#))
- Staff time for complying with a public records request. (Exception: see [Extraordinary Use Fees](#))
- 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.

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## 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 will not fulfill the public records request until the person makes a deposit in an amount of the estimated fee.

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<sup>36</sup> [NRS 239.052\(3\)](#)

<sup>37</sup> [NRS 239.005\(1\)](#), [NRS 239.053\(2\)](#)

<sup>38</sup> [NRS 239.052\(1\)](#)

**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.

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### Payment before 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.

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### Waiving fees

Agencies have the discretion to waive or reduce their copy fees. Should an agency choose to waive a portion or 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.<sup>39</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 copy without charge.

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### Extraordinary Use Fees

In addition to any other fee authorized pursuant to the Act, an agency may charge for extraordinary use of personnel or technological resources. The Act specifically states, this fee is *not to exceed 50 cents per page*. The request must be made in writing, and upon receiving such a request, the agency must submit to the requester a written estimate of the fee before preparing the requested information.<sup>40</sup>

**NRS 239.055 Additional fee when extraordinary use of personnel or resources is required; limitation.**

1. Except as otherwise provided in NRS 239.054 regarding information provided from a geographic information system, if a request for a copy of a public record would require a governmental entity to make extraordinary use of its personnel or technological resources, the governmental entity may, in addition to any other fee authorized pursuant to this chapter, charge a fee not to exceed 50 cents per page for such extraordinary use. Such a request must be made in writing, and upon receiving such a

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<sup>39</sup> NRS 239.052(2)

<sup>40</sup> NRS 239.055

request, the governmental entity shall inform the requester, in writing, of the amount of the fee before preparing the requested information. The fee charged by the governmental entity must be reasonable and must be based on the cost that the governmental entity actually incurs for the extraordinary use of its personnel or technological resources. The governmental entity shall not charge such a fee if the governmental entity is not required to make extraordinary use of its personnel or technological resources to fulfill additional requests for the same information.

2. As used in this section, “technological resources” means any information, information system or information service acquired, developed, operated, maintained or otherwise used by a governmental entity.

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## Extraordinary Use must be defined in Policy

If an agency charges extraordinary use fees, then the agency must define extraordinary use. *This fee is to be documented within the agency’s public records policy and the fee is to be clearly explained.*

The fee for extraordinary use must be reasonable and must be based on the cost that the agency *actually* incurs for the extraordinary use of its personnel or technological resources, not with the intent of excluding persons from access to records.

Extraordinary use is extensive use of information technology resources or extensive use of staff time. What is reasonable will vary from agency to agency, depending upon the agency’s staffing levels and the ready availability of technological resources. A “busy office” is not an extraordinary situation.

Examples of extraordinary use:

- The request is for a voluminous quantity of records containing a substantial number of records;
- The request requires the agency to review a large number of records to locate the records requested;
- Redacting confidential information that the requester is not entitled from information that the requester is entitled requires extensive copying;
- Locating records that the requester is entitled requires computer programming.

There is no statutory-defined time established for extraordinary use, such as any request taking more than X minutes to fulfill. What may be voluminous for one agency may be standard operations for another. Agencies with fewer resources, such as small independent boards and commissions with fewer than 4 FTE, for example, may set a 30 minute threshold. The larger the agency, the more IT resources and FTE available, the longer the threshold should be considered, such as one hour or even up to four hours.

***Sample policy statement:*** *A request that is reasonably estimated to take more than 2 hours of staff time is deemed extraordinary. This estimate shall not include the time spent for locating, retrieving, or refiling a requested public record.*

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## Additional Extraordinary Request for the same record

The Act specifically states, if a second request is made for the same records, the agency cannot charge a second extraordinary fee for the second request if extra personnel or technological resources are not needed to fulfill a second request.<sup>41</sup>

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## Geographic Information System (GIS)

In NRS 239.054, the Act makes provisions for additional reasonable costs for GIS systems. Agencies may recover cost related to:

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

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## 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 copying 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.

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## Minutes and recordings of public meetings

Minutes and audio recordings of meetings of public bodies are routine requests for public records which are to be satisfied immediately and at no charge.<sup>42</sup> Minutes must be retained and made available to the public by the public body for the first five years after the meeting and thereafter are to be made available to the public in the State Archives.

Drafts of minutes are to be made available to the public at no charge within 30 working days after the adjournment of the meeting and until the official meeting minutes are approved by the public body. Audio recording must be retained and made available to the public for one year after the meeting.

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<sup>41</sup> NRS 239.055

<sup>42</sup> NRS 241.035

## 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-day response period starts with the first calendar day after the date of receipt.<sup>43</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 the requested records from off-site areas, separate from the office or if the request is excessively voluminous for the size of the agency. If a local agency requires additional response time beyond the initial five-day period, it must provide a written notice to the person, within this five-day period, stating the response time will be delayed and the date the records or copies will be made available.<sup>44</sup>

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



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### 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>45</sup> If the request is extraordinary, according the Act, the records official shall require the request to be submitted in writing.<sup>46</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.

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<sup>43</sup> [NRS 239.0107](#)

<sup>44</sup> [NRS 239.0107\(1\)\(c\)](#)

<sup>45</sup> [NRS 239.0107](#)

<sup>46</sup> [NRS 239.055](#)

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## Response – Day 1 to Day 5

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

1. Readily available records are made available for inspection or copying.
2. A written notice stating the agency does not have custody of the official record. The notice shall state the name and address of the appropriate agency.
3. A written notice stating the records are not available within this five-day period and state the 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 pre-payment 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.
  - c) If the agency determines the request requires extraordinary use of personnel or technological resources. The notice shall explain and estimate the cost of this fee. <sup>47</sup>The agency may offer the requester an opportunity to revise or narrow the request.
5. A written notice stating the request for release is denied, in part or in whole, and state the legal basis for its decision not to fully comply with the request. <sup>48</sup>

## APPEALING DENIALS

If a person is denied access, in whole or in part, to a public record that is less than 30 years old, the person may apply to the district court in which the record is located to request that the court issue an order allowing access to the record.

If an agency fails to properly honor its public records disclosure obligations, it may result in a court ordering the agency to produce the records and to pay the requester's attorney's fees and damages.

**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, 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; or
  - (b) Requiring the person who has legal custody or control of the public book or record to provide a copy to the requester, 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 his or her costs and

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<sup>47</sup> [NRS 239.055](#)

<sup>48</sup> [NRS 239.0107](#), [NRS 239.0113](#)

reasonable attorney's fees in the proceeding from the governmental entity whose officer has custody of the book or record.

The burden of proving that a records is confidential, and not subject to inspection or copying, rests with the agency.

**NRS 239.0113 Burden of proof where confidentiality of public book or record is at issue.** Except as otherwise provided in [NRS 239.0115](#), if:

1. The confidentiality of a public book or record, or a part thereof, is at issue in a judicial or administrative proceeding; and
2. The governmental entity that has legal custody or control of the public book or record asserts that the public book or record, or a part thereof, is confidential,  
↳ the governmental entity has the burden of proving by a preponderance of the evidence that the public book or record, or a part thereof, is confidential.

## 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 biennial 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
- FTE time spent handling requests
  - reviewing
  - retrieving and refiling
  - IT programming
- FTE time spent redacting
- Number of pages
- Fees collected

## RETENTION

State Records Retention Schedules 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>49</sup> For more information about records retention and records destruction schedules, go to the State Records program website for Agency retention schedules can be accessed [online](#). For more information, email State Records at [records@admin.nv.gov](mailto:records@admin.nv.gov) or call 775-684-3411.

**Requests Request forms and response letters.** To be retained for (3) 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 (3) 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 (3) calendar years. (RDA 2015013)

## COURT DECISIONS

- *Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990).
- *DR Partners v. Board of County Commissioners*, 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 Nevada, 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).
- *Public Employees' Retirement System of Nevada v. Reno Newspapers, Inc.*, 313 P.3d 221, 129 Nev. Adv. Op. 88 (Nov. 14, 2013).
- *LVMPD v. Blackjack Bonding*, 131 Nev. Adv. Op. 10 (Mar. 5, 2015)

## SUMMARY

- The audience for this manual is executive branch agencies, boards and commissions. Nevada System of Higher Education (NSHE) and local government entities are exempt from this manual.
- NRS does not define a public record.
- Confidential records are exempt from public records access. If only a portion of the record contains confidential information then the agency must redact the confidential information and release the records.
- Records shall be organized and easily accessible. Agencies shall follow the General and the agency-specific retention schedules.
- Public records requests must be for identifiable records. An agency does not need to create a record for a request.

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<sup>49</sup> [NRS 239.073](#)

- Each agency shall develop a Public Records policy.
- Each agency shall appoint a records official (RO) and a backup official in the event the RO is out of the office.
- Each agency shall post in an easily accessible location in the office and on the agency website the applicable fees, the contact information for the RO, and an electronic version of the request form.
- Fees for actual costs of making the records available are allowed. This includes paper, ink, toner, media, mailing costs, etc. An agency fee shall not include staff time.
- Each agency shall develop and post in the office and on the website the extraordinary use fee rule that applies to the agency. An agency may charge up to \$.50 additionally per page.
- The RO must respond to a request within 5 business days following the date of the request.

Teri J. Mark, CRM, CPM - Editor

## **PUBLIC RECORD FORM SAMPLES**

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**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

Office Use Only	
Request status:	Estimate:
Date	
_____ Request received	Estimate: \$ _____
_____ Receipt acknowledgement issued	Date deposit received _____
_____ Request filled	Actual (if different): \$ _____
_____ Estimated completion	Date final payment received _____
_____ Estimate provided	Completed by _____
_____ Request denied in whole	
_____ Other:	
	<i>Retain request form for 90 days following completing of request. RDA 2009047</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 possession. We suggest you submit a public records request to:
6. This public record is not readily available. We are compiling and reviewing the 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 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.

\_\_\_\_\_  
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