

Public Records Management and Procedures

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Outline

- Recent Legislation: AB31 and SB74
- New Regulations for State Agencies NAC 239
- Defining Public Records for State Agencies
- Life Cycle Management of Records

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2013 Legislation

Assembly Bill 31

Senate Bill 74

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AB 31

- AN ACT relating to public records; revising provisions governing requests for books and records of certain agencies of the Executive Department of the State Government; and providing other matters properly relating thereto.

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AB 31

- Requires the head of each agency, bureau, board, commission, department, division to designate one or more employees to act as **records official** for the agency, whose duties relate to handling requests for public books or records of the agency.
- Requires the State Library and Archives Administrator, in cooperation with the Attorney General, to prescribe:
 - (1) the form for requesting to inspect a copy of a public book or record of such an agency;
 - (2) the form to be used by such an agency to respond to such a request; and
 - (3) the procedures with which a records official is required to comply in carrying out his or her duties.
- Requires each such agency to make those forms and procedures available on any website maintained by the agency on the Internet.

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AB 31

- Requires each such agency to make those forms and procedures available on any website maintained by the agency on the Internet.
- Compiles all the statutory provisions that prohibit the disclosure of or specifically declare public books and records confidential.

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AB 31 - Rulemaking

- LCB File No. R107-13
 - A REGULATION relating to public records; interpreting certain statutory terms relating to public records; setting forth requirements for a form to request to inspect, copy or receive a copy of certain public records; setting forth certain procedures for records officials; making various other changes relating to public records; and providing other matters properly relating thereto.

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AB 31 - Rulemaking

- State Agencies
 - Records Official
 - Procedural Guide
 - Forms
 - Training

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AB 74

- AN ACT relating to public records;
 - requiring the person who has legal custody or control of a public record, under certain circumstances, to prepare a copy of the public record rather than requiring the person who has requested the copy to prepare the copy;
 - requiring copies of public books and records to be made available upon request in certain circumstances;
 - limiting the fee which may be charged for a copy of a public record in the custody of a law library operated by a governmental entity;
 - requiring a copy of minutes or audio recordings of public meetings to be made available to a member of the public upon request at no charge;
 - reducing the fee a county clerk charges for copying records, proceedings or papers or for searching records or files in the office of the county clerk; and
 - providing other matters properly relating thereto.

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AB 74

- NRS 241.035 A copy of the minutes or audio recordings must be made available to a member of the public upon request at no charge.

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AB 74

- NRS 239.055 [I]f 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.
- Upon such a request must be made in writing, and upon receiving such a 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

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What is a Record?

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What is a Record?

- Did an event ever happen if there is no record and no memory of it?



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What is a Record?

- Records provide continuity for the ongoing operations of the agency



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What is a Record?

- Do we know a record when we see it?
 - Information
 - Data
 - Non record
 - Document
 - Working file
 - Record
 - Official record
 - Electronically stored information (ESI)
- We don't all see the same thing

What is a Record?

- State Agencies and NSHE
 - Official Record
 - Public Record
 - Record

What is a Record?

- Recorded Information in any format
- Created in the normal course of business
- Received for action
- Needed to document agency activities

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What is a Record?

- **NRS 239.080** An Official State Record includes without limitation any: papers, unpublished books, maps, photographs, electronic information, and other materials made or received by a state agency as evidence of the organization, operation, policy or activity of that organization.

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Official State Record Law

- An official state record may be disposed of only in accordance with an approved schedule for retention and disposition
- In cooperation with NSLA, each agency, board and commission shall develop a schedule for the retention and disposition of each type of official state record

NRS 239.080

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Records Management Laws and Regulations

- **State Law**
 - Nevada State Library and Archives (NSLA) has records management authority and responsibilities
 - **NRS 378.255**
 - The State Library and Archives Administrator may adopt regulations and establish standards, procedures and techniques for the effective management of records

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New Regulations for State Agencies

NAC 239

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NAC 239

- **Definitions**

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NAC 239

- Sec. 2. For the purposes of NRS 239.055, as applicable to an agency of the Executive Department, “extraordinary use of its personnel or technological resources” means that it is reasonable to believe that it will take an officer, employee or agent of an agency more than 30 minutes to retrieve or reproduce a public record.

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NAC 239

- Sec. 3. 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.

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NAC 239

- Sec. 4. 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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NAC 239

- **Procedures**

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NAC 239

- Sec. 5. A 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:
 1. The address and regular office hours of the principal office of the agency;
 2. The name of each records official of the agency;
 3. An explanation of any fees the agency charges for providing a copy of a public record;
 4. An explanation of how a person may request to inspect, copy or receive a copy of a public record; and
 5. A link to the form described in section 6 of this regulation to request to inspect, copy or receive a copy of a public record.

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NAC 239

- Sec. 6. 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;

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NAC 239

Sec. 6. Cont...

- (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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NAC 239

Sec. 6. Cont...

- (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.

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NAC 239

Sec. 6. Cont...

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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NAC 239

- Sec. 7. 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.

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NAC 239

- Sec. 7. Cont...
 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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NAC 239

- Sec. 8. A records official may request additional information or clarification from a person who has requested to inspect, copy or receive a copy of a public record to determine which public record the person is requesting to inspect, copy or receive a copy of, as applicable.

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NAC 239

- Sec. 9. 1. A records official of each agency of the Executive Department shall ensure that the agency provides a suitable space for a person to inspect a public record in a manner that does not cause excessive interference with the essential functions of the agency.
- 2. A records official shall ensure that an employee of the agency observes the inspection of a public record.

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NAC 239

- Sec. 9. Cont...
- 3. A person who requests to inspect a public record shall not:
 - (a) Remove a document from the space provided pursuant to subsection 1; or
 - (b) Disassemble or alter the public record.
- 4. A records official may provide access to inspect a public record in installments if the person who requested to inspect the record agrees and the record is large enough that it would be reasonably practicable to provide access to the record in installments.

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NAC 239

- Sec. 10. 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.

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NAC 239

- Sec. 11. 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 that possesses the record shall ensure that the agency does not dispose of the record until the agency has complied with the request.
2. If a person requests to receive a copy of a public record, a records official may dispose of the copy 30 days after the copy is reproduced if the person who requested the copy does not:
 - (a) Obtain the copy from the agency; or
 - (b) Notify the agency of when the person will obtain the copy.

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NAC 239

- 239.705

Definition

Official Record

Public Record

Record

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NAC 239

- 239.705 1. For the purposes of NRS 239.080 and as used in NAC 239.570 to 239.764, inclusive, and sections 2 to 11, inclusive, of this regulation, “**official state record**,” “**public record**” or “**record**”...

means...

...information created or received by an agency of the Executive Department or the Nevada System of Higher Education under authority of law, regulation or other legal mandate or in connection with the transaction of public business...

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NAC 239

- 239.705 Cont...

...that is maintained by the agency or the Nevada System of Higher Education, or its legitimate successor , as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the agency or the Nevada System of Higher Education,...

...including, without limitation, all papers, maps, photographs, financial statements, statistical tabulations, recorded media and other documentary materials, regardless of physical form or characteristics.

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NAC 239

- 239.705 Cont...

2. The phrase “official state record,” “public record” or “record” **does not include nonrecord materials.**

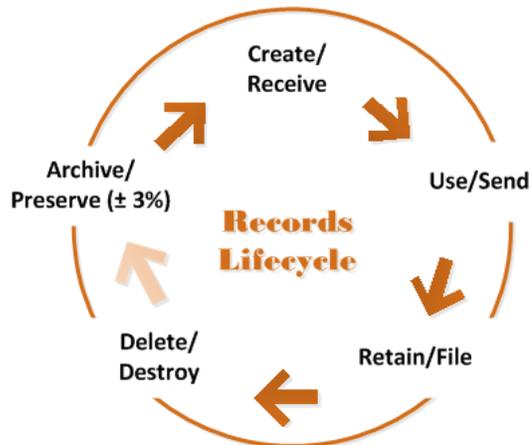
Nonrecord materials include, without limitation , published materials, informal notes, unused blank forms except ballots , brochures, newsletters, magazines, catalogs, price lists, drafts, convenience copies, ad hoc reports, work papers, reference materials not relating to specific projects and any other documentation **that does not serve as the record of an official action of an agency** of the Executive Department or the Nevada System of Higher Education.

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Lifecycle Management of Records

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Life Cycle Management



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Records Retention

- Records must be made available throughout the entire life cycle of the record
- Record retention requirement periods are based on state and federal regulatory requirements, statute of limitations, and best business practices
- Records should be destroyed soon after retention requirements are met
- Consistent and systematic retention of records demonstrates a good faith effort to comply with retention requirements

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Balancing Assets And Liabilities

- Effectively managing information scattered across the enterprise and harnessing information for business requires **Information Lifecycle Management**

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Balancing Assets And Liabilities

- What constitutes an official record (i.e., an information asset you want to keep)
- When does the information become obsolete (i.e., a liability you want to destroy)

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An Asset or a Liability?

Records are Assets when they are:

- Easy to find when you need them
- Readable when you find them
- Secure and protected
- Verifiably authentic
- Gone after their retention period is over
- Consistently managed
- Occupy as little space as necessary



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An Asset or a Liability?

Records are LIABILITIES when they are:

- Inconsistently managed
 - Legal challenges - can't produce records
 - Court assumes malicious destruction or contempt
- Difficult to locate
 - An average employee spends 11 hours/week looking for records
 - Unresponsive public records requests
- Unreadable
 - Damaged records
 - Obsolete electronic medium



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An Asset or a Liability?

Records are a LIABILITY when they are:

- Not protected from unauthorized access
 - Authenticity becomes questionable
 - Information may be released inappropriately
- Kept beyond their retention period.
 - Subject to Disclosure
 - Location and Reproduction Time, Effort, Costs
- HOARDED



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Questions?

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