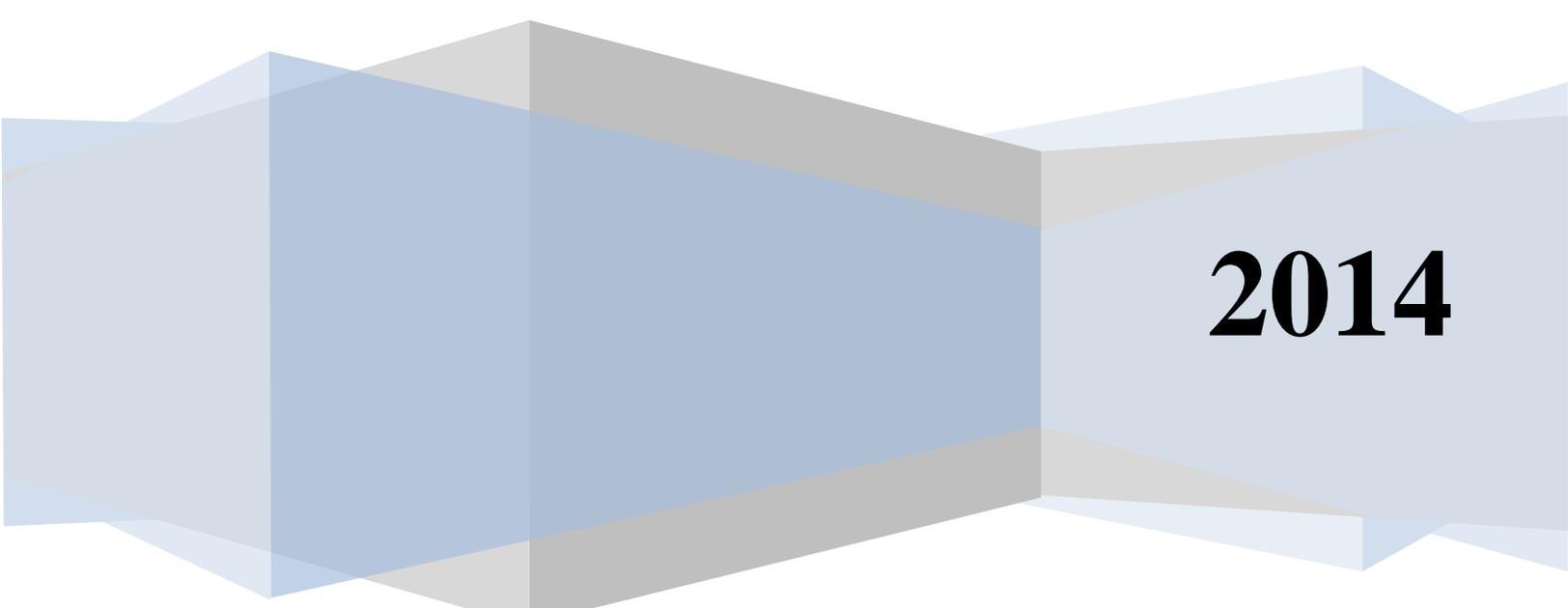


**Nevada State Library and Archives**

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

**Bulletin No. 3**

**Records Management Program**



**2014**

# 2014

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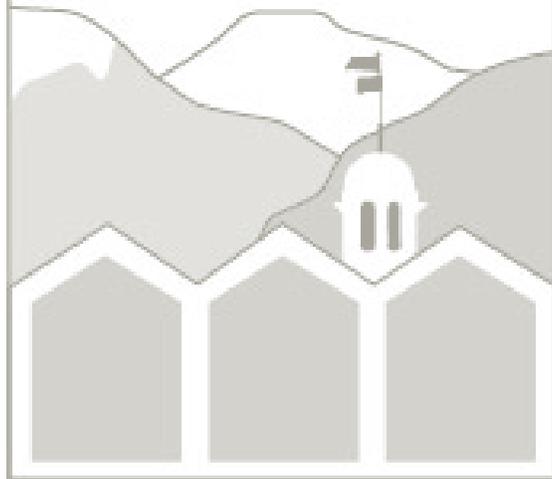
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Please contact your assigned deputy attorney general for more information about the Public Records Act.

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## 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.

Nevada's Public Records 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 person, and may be fully copied." Also, "A person may request a copy of a public record in any medium in which the public record is readily available."<sup>1</sup>

**The presumption is, all [agency records](#) are open to public inspection and copying, unless they are specifically declared confidential by law.**

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## 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 is set forth in NRS 239.010: "Unless otherwise declared by law to be confidential, all public books and public records of a governmental entity must be open at all times during office hours to inspection by any person". This public records statute seeks to increase public access to government information and to make government agencies accountable and transparent to the public.

The purpose of this Manual is to provide rules by which an agency implements and ensures compliance with the provisions of Public Records Act for the agency's public records. The provisions of this Manual

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

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?

All Agencies of the Executive Department are subject to this Manual.

**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 an agency's public records. FOIA only applies to requests for public records maintained by the federal government.

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### Consequences of Non-Compliance

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 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>2</sup>

**NRS 239.011 Application to court for order allowing inspection or copying, or requiring that copy be provided, of public book or record in legal custody or control of governmental entity 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 (a) 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>2</sup> [NRS 230.011](#)

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

A person responsible for public records access who fails to give reasonable access to or inspection of public records as required by the Act may be disciplined in accordance with the agency's *Prohibitions and Penalties*, up to and including dismissal.

The purpose of the law is to foster open government by making open government an obligation of public service. Agencies should be cautioned that a deliberate concealment of public records could result in a risk of criminal conviction, should they be accused of violating the Act.<sup>3</sup>

**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 an attorney 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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### What Is a Public Record?

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. The only definition for record in NRS Chapter 239 is for Official Record in NRS 239.080(4). This definition is intended, however, only to define those categories of materials "made or received by a state agency and preserved by that agency " which may be disposed of only in accordance with a

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<sup>3</sup> [NRS 239.310](#)

schedule for retention and disposition which is approved by the Committee to Approve Schedules for the Retention and Disposition of Official State Records (State Records Committee or Committee).

As used in the Act, the term “all public books and public records” includes everything within in the definition of official records in [NRS 239.080\(4\)](#), with the exception of those official records which are explicitly declared confidential by law.

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

1. An official state record may be disposed of only in accordance with a schedule for retention and disposition which is approved by the Committee.
2. In cooperation with the Division<sup>4</sup>, each agency, board and commission shall develop a schedule for the retention and disposition of each type of official state record.
3. The Division shall submit the schedules described in subsection 2 to the Committee for final approval.
4. As used in this section, “official state record” includes, without limitation, any:
  - (a) Papers, unpublished books, maps and photographs;
  - (b) Information stored on magnetic tape or computer, laser or optical disc;
  - (c) Materials which are capable of being read by a machine, including microforms and audio and visual materials; and
  - (d) Materials which 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 in [NAC 239.705](#), the Nevada State Library and Archives (NSLA) has interpreted the definition of official record, public record and record:

**NAC 239.705 “Official 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 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.

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.**

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<sup>4</sup> “Division” means the Nevada State Library and Archives of the Department of Administration, [NRS 239.005\(4\)](#)

- A request for information is not a public records request and is not subject to the Act.
- Computer software developed by the government is not a public record, but the computer software may generate public records.<sup>5</sup>
- An agency is not required to organize data to create a record that doesn't exist at the time of the request, but may do so at the discretion of the agency if doing so is reasonable.

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?

### **Role of the Agency Deputy 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.

### **Non-Records**

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

- Routing slips or routing emails that contain no pertinent information or approvals
- Duplicate or convenience copies held for ease of reference and accessibility
- Reading files<sup>6</sup>
- 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.

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<sup>5</sup> Nevada Attorney General Opinion No. 89-1 Public Records; Computer Programs; Wildlife

<sup>6</sup> Also called chronological (chron) or day files. Outgoing correspondence records arranged chronologically by date sent.

### **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.

### **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.

### **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.

### **Transitory records**

Transitory records are public records, but because of their limited value, they do not have to be retained. 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 a reference or administrative value that ends when agency staff no longer needs the information in the record. Transitory records may be destroyed when the reference or administrative 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.

### **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. Examples include:

- Papers accumulated by an official before joining governmental service
- Materials relating solely to an individual's private affairs, such as outside business pursuits, 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
- Campaign materials

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.

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## **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>7</sup> to the records, in whole or in part.

### **Role of the Agency Deputy 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.

### **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>8</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.

### **Exceptions**

Statutes that reference confidential or restricted records which are "declared by law to be confidential" are cited in [NRS 239.010](#):

[NRS1.4683](#), [1A.110](#), [49.095](#), [62D.420](#), [62D.440](#), [62E.516](#), [62E.620](#), [62H.025](#), [62H.030](#), [62H.170](#), [62H.220](#), [62H.320](#), [76.160](#), [78.152](#), [80.113](#), [81.850](#), [82.183](#), [86.246](#), [86.54615](#), [87.515](#), [87.5413](#), [87A.200](#), [87A.5](#)

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<sup>7</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, psychiatric or psychological data about an individual; Homeland Security interests; open and ongoing civil and criminal investigations; etc.

<sup>8</sup> *Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990)

80, 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, 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, 218E.625, 218F.150, 218G.130, 218G.240, 218G.350, 228.270,228.450, 228.495, 228.570, 231.069, 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, 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.440, 281A.470, 281A.550, 284.4068,286.110, 287.0438, 289.025, 289.080, 289.387, 293.5002, 293.503, 293.558, 293B.135, 293D.510, 331.110, 332.061, 332.351, 333.333, 333.335, 338.070, 338.1379,338.1725, 338.1727, 348.420, 349.597, 349.775, 353.205, 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, 386.655, 387.626, 387.631, 388.5275, 388.528, 388.5315, 388.750, 391.035, 392.029, 392.147, 392.264, 392.271, 392.652,392.850, 394.167, 394.1698, 394.447, 394.460, 394.465, 396.3295, 396.405, 396.525, 396.535, 398.403, 408.3885, 408.3886, 412.153, 416.070, 422.290, 422.305, 422A.320,422A.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, 439.270, 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, 453.1545, 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, 467.137, 481.063, 482.170, 482.5536, 483.340, 483.363, 483.800, 484E.070, 485.316, 503.452, 522.040, 534A.031, 561.285, 571.160, 584.583, 584.655, 598.0964, 598.0979, 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, 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, 637A.315, 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.280, 683A.0873, 685A.077, 686A.289, 686B.170, 686C.306, 687A.110, 687A.115, 687C.010, 688C.230, 688C.480, 688C.490, 692A.117, 692C.190, 692C.420,693A.480, 693A.615, 696B.550, 703.196, 704B.320, 704B.325, 706.1725, 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.**

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## Agency Policy

Each public agency must adopt a policy which conforms to NRS Chapter 239 and to this Manual. The following information shall be posted at each agency and, if the agency maintains an Internet website, on the agency's Internet website:<sup>9</sup>

- A form which may be used to file a request. NRS 239.008(4)
- Regulations, policies and procedures of the agency relating to accessing public records. NRS 239.008(4)

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 239, all such requests shall be handled as expeditiously as possible.

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## Agency Responsibilities

All agencies have the responsibility to:

- Appoint a [Records Official](#);
- Establish reasonable procedures for inspecting or copying public information and inform requesters of these procedures;<sup>10</sup>
- 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;
- Be informed about public records and records management laws.

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## Agency Records Official

The head of each public agency shall designate one or more records officials.<sup>11</sup> An alternate records official shall be designated by each appointing authority to act when the designated records officer 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 Public Records 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.

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<sup>9</sup> [NRS 239.008](#)

<sup>10</sup> [NRS 239.008\(4\)](#)

<sup>11</sup> [NRS 239.008\(1\)](#)

The records official is typically a chief administrative officer, chief information officer, or any other 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 recordkeeping requirements of the agency.

The head of each state agency may designate a new records official officer at any time; and shall notify NSLA, in writing, when the records official is replaced. See [Records Official Designation](#) form.

**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.
3. The State Library and Archives Administrator, pursuant to [NRS 378.255](#) and in cooperation with the Attorney General, shall prescribe:
  - (a) The form for a request by a person to inspect or copy a public book or record of an agency of the Executive Department pursuant to [NRS 239.0107](#);
  - (b) The form for the written notice required to be provided by an agency of the Executive Department pursuant to paragraph (b), (c) or (d) of subsection 1 of [NRS 239.0107](#); and
  - (c) By regulation the procedures with which a records official must comply in carrying out his or her duties.
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 and Archives Administrator and the Attorney General pursuant to subsection 3.

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## Managing Public 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.<sup>12</sup> This includes records designed to furnish information necessary to protect the legal and financial rights of the government and of its citizens.

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<sup>12</sup> [NRS 239.080](#)

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 and Archive's webpage. [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 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>13</sup>

**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.**

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.

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## 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>14</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

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<sup>13</sup> [NAC 239.699](#)

<sup>14</sup> [NRS 239.052\(1\)](#)

(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 the copy of the record is released for inspection or if [extraordinary use](#) of personnel or technological resources is necessary to produce the records for inspection.

The agency must prepare and maintain a list of its fees for providing public records, which must be posted in a [conspicuous](#) place in [each](#) of its offices.<sup>15</sup> In lieu of posting the list of fees for providing public records request, the agency may post the location where a list of each fee that the agency accesses may be obtained, such as the agency's website. The agency's list of fees must also include the per-page fee for court reporter transcripts, if applicable.<sup>16</sup>

Unless otherwise provided by statute, these costs generally may include only actual costs incurred in responding to the records request, such as those for toner, paper, and postage.<sup>17</sup> It should be noted that these fees are not a revenue-generating operation of an agency.

- No fee may be imposed for an agency's review of a record to determine whether the record is a public record.
- No fee may be charged for searching for or retrieving documents, unless otherwise allowed by statute.<sup>18</sup>
- An agency may not charge staff time for complying with a public records request.
- No fee may be charged to recoup the original cost of developing or producing the records.
- If the requester asks for the documents in some other medium, such as disk, audio tape, microfilm, etc., the agency may charge the actual cost of the media provided.

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<sup>15</sup> [NRS 239.052\(3\)](#)

<sup>16</sup> [NRS 239.053\(2\)](#)

<sup>17</sup> [NRS 239.052\(1\)](#)

<sup>18</sup> [NRS 239.052\(1\)](#)

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

**Waiving fees.**

Agencies have the discretion to waive or reduce their copy fees. Should an agency chose 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>19</sup> All fees waivers must be standardized by a written policy and evenly applied.

**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>20</sup>

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 or effect of excluding persons from access to records. 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.

Extraordinary use is extensive use of information technology resources or extensive clerical or supervisory assistance, or if producing the record in the medium requested results in a greater use of information technology resources than that established by the agency for reproduction of the volume of information requested.

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 to inspect from information that the requester is entitled to inspect requires extensive editing;
- Extracting information that the requester is entitled to inspect requires computer programming.

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<sup>19</sup> [NRS 239.052\(2\)](#)

<sup>20</sup> [NRS 239.055](#)

If an agency charges extraordinary use fees, then the agency must define extraordinary use. 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: The fees charged shall not include the first 2 hours of staff time associated with complying with a request to inspect or copy a public record and shall not include the costs of locating, retrieving, or refiling a requested public 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>21</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 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.

**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

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

make the copies, the agency may require the requester to pay the cost of the entire copying job, as billed by the copying service, unless specific statute or regulation requires the agency to provide the copy without charge. The use of an outside copying service must be standardized by policy and evenly applied.

### **Minutes 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>22</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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### **What is the Procedure for Inspecting a Public Record?**

Records may be inspected at an agency during its regular office hours.<sup>23</sup> Providing access is a statutory duty of all records officials.

#### **NRS 239.0107 Requests for inspection or copying of public books or records: Actions by governmental entities.**

1. Not later than the end of the fifth business day after the date on which the person who has legal custody or control of a public book or record of a governmental entity receives a written or oral request from a person to inspect, copy or receive a copy of the public book or record, a governmental entity shall do one of the following, as applicable:

(a) Except as otherwise provided in subsection 2, allow the person to inspect or copy the public book or record or, if the request is for the person to receive a copy of the public book or record, provide such a copy to the person.

(b) If the governmental entity does not have legal custody or control of the public book or record, provide to the person, in writing:

(1) Notice of that fact; and

(2) The name and address of the governmental entity that has legal custody or control of the public book or record, if known.

(c) Except as otherwise provided in paragraph (d), if the governmental entity is unable to make the public book or record available by the end of the fifth business day after the date on which the person

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<sup>22</sup> [NRS 241.035](#)

<sup>23</sup> [NRS 239.010\(1\)](#)

who has legal custody or control of the public book or record received the request, provide to the person, in writing:

(1) Notice of that fact; and

(2) A date and time after which the public book or record will be available for the person to inspect or copy or after which a copy of the public book or record will be available to the person. If the public book or record or the copy of the public book or record is not available to the person by that date and time, the person may inquire regarding the status of the request.

(d) If the governmental entity must deny the person's request because the public book or record, or a part thereof, is confidential, provide to the person, in writing:

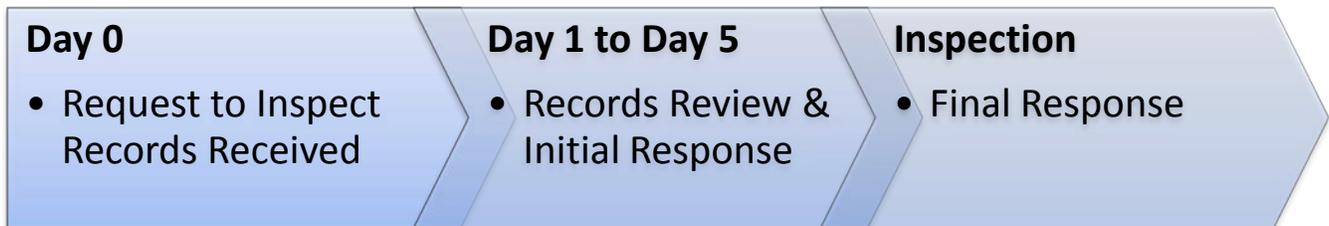
(1) Notice of that fact; and

(2) A citation to the specific statute or other legal authority that makes the public book or record, or a part thereof, confidential.

2. If a public book or record of a governmental entity is readily available for inspection or copying, the person who has legal custody or control of the public book or record shall allow a person who has submitted a request to inspect, copy or receive a copy of a public book or record.

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## Procedures



### **Request to Inspect Records Received – Day 0**

- 1) The request shall be 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 or received orally.<sup>24</sup>
  - a. If an oral request is received, the agency may wish to consider confirming the request in writing in order to eliminate any confusion regarding the request.
  - b. If the request is extraordinary, the records official is to require the request to be submitted in writing.<sup>25</sup>

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<sup>24</sup> [NRS 239.0107](#)

<sup>25</sup> [NRS 239.055](#)

- 2) 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.
- 3) To assist in identifying the record, the agency may 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.
- 4) 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, the records official must contact the requester in an effort to clarify and/or narrow the request. An agency cannot deny a request for access to public records because it is not specific enough or is too broad.
- 5) A requester may request a copy of a public record in any medium in which the public record is readily available.<sup>26</sup>
- 6) If requested records are available online, either on your agency's website or another available website, an agency may respond to a request by notifying the requester in writing that the record is available through publicly accessible electronic means. The agency is not required to provide access to online resources, such as computer terminals or internet access. If the requester is unwilling or unable to access the record online, the requester may submit a written request to the agency to have the record converted to another medium.
- 7) Date stamp and log into the [Public Records Inspection Log](#) all public records requests so that the agency has a record of the date of receipt of the request, as well as which specific records are being requested.

#### **Records Review and Initial Response – Day 1 to Day 5**

- 1) The records official shall conduct a review to determine what public records, if any, exist which are responsive to the request and if any records are confidential and, therefore exempt from disclosure. No fee may be imposed for an agency's review of a record to determine whether the record is a public record.

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<sup>26</sup> [NRS 239.010\(4\)](#)

- 2) Once it is determined whether any responsive public records exist, the records official shall make an estimate of the expected costs in complying with the request.
- 3) All requests for public records must either be fulfilled or be acknowledged in writing within five business days after the receipt of the request. The clock starts the day after the request is received by the records official during regular business hours.
- 4) The written acknowledgement must be issued by a records official or under his or her authority. The acknowledgement<sup>27</sup> must include one of the following responses:
  - If the agency cannot fulfill the request within the first five business days, notify the requester the earliest date and time the record will be available.
  - Inform the requester the agency is not the custodian of record. If the agency which receives the request does not have custody or control of the record requested, the agency must notify the requester and furnish the name and location of the records official of the appropriate agency.
  - Notify the Requester the record doesn't exist. If a record is not in existence at the time of the request, the agency is not required to prepare one in order to respond to the request. If the requested record was destroyed according to the approved retention timetable prior to receiving the request, the agency must notify the requester in writing of the circumstances and cite the appropriate retention schedule. (Note: if a public records request is received for a public record which is due or past due for destruction, but the record has not yet been destroyed, the record must be produced upon request.)
- 5) The written acknowledgement must inform the requester of estimated fees.
  - An agency may require pre-payment of the fees.
- 6) If the records are to be mailed or shipped to the requester, the agency can recover these costs. Postage fees shall not exceed the actual cost of mailing.
- 7) 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.)
- 8) No fee may be charged for searching for or retrieval of documents. An agency may not charge staff time for complying with a public records request, unless otherwise allowed by statute.<sup>28</sup>

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<sup>27</sup> [NRS 239.0107](#)

<sup>28</sup> [NRS 239.054](#), [NRS 378.270](#)

- 9) If the estimated fee exceeds \$25, then 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.
- 10) If the agency determines the request requires [extraordinary use of personnel or technological resources](#) the agency may, in addition to any other [fee](#) authorized pursuant to the Act, charge a fee not to exceed 50 cents per page for such extraordinary use.<sup>29</sup>
- The agency must submit a written estimate of the fee to the requester before preparing the requested information.<sup>30</sup> The requester must acknowledge and approve the fee in writing before the agency fulfills the request.
  - The agency is to encourage open communication and negotiation to resolve disputes over large requests; ask if the requester can narrow the scope of the request or if the agency can offer the documents in batches, as they become available.
- 11) The fee for extraordinary use must be reasonable for the size and availability of resources of the agency and must be based on the cost the agency actually incurs for the extraordinary use of its personnel or technological resources.<sup>31</sup>

## **Inspection**

- 1) When the estimated fees have been paid (if applicable), the records official shall proceed to prepare the original public records for inspection, or have photocopies made of the records if copies were requested.
- a. The agency must inform requesters of any cost increase changes to the original estimate.
  - b. Any estimated funds collected in excess of the actual cost must be refunded to the requester, in accordance with Office of the State Controller's *Accounting Policies and Procedures*. [http://intra.ktl.nv.gov/IFS\\_Files/Acctg\\_Policies\\_&\\_Procedures.pdf](http://intra.ktl.nv.gov/IFS_Files/Acctg_Policies_&_Procedures.pdf)
- 2) The agency shall permit access to a government record in the medium requested if the public agency maintains the record in that medium. If the agency does not maintain the record in the medium requested, the agency shall either convert the record to the medium requested or provide a copy in some other mutually agreed upon medium.

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<sup>29</sup> [NRS 239.055](#)

<sup>30</sup> [NRS 239.055](#)

<sup>31</sup> [NRS 239.055](#)

- 3) The agency must grant access to a government record by any method of delivery requested by requester. The agency may charge a fee to recover actual postage costs to deliver records by mail.
- 4) 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 altered or destroyed. If the agency does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the agency's records must be posted in a conspicuous public place and at the office of the agency, if an office exists.

**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.

- 5) 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.

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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>32</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) which is the basis for denying access to the requested records.

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<sup>32</sup> [NRS 239.0113](#)

**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.

**Redaction.**

When a record contains confidential information, it does not mean that the record “in whole” may be denied. Rather, the rule is that the agency can “redact, delete, conceal or separate” confidential information<sup>33</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>34</sup>

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

*The loss of 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 and 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.

If a requester wishes to inspect rather than receive a copy of a record and the record contains both public and confidential information, the agency shall redact the confidential information. An agency may not charge the requester for the redaction. However, the Agency may charge for the copies it must make of the redacted material in order for the requester to view the public record. The agency should estimate this cost in advance, if it is going to charge such costs, and notify the requester in

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<sup>33</sup> [NRS 239.010\(3\)](#)

<sup>34</sup> See also, [Denials](#)

<sup>35</sup> [NRS 603A.040](#)

<sup>36</sup> [NRS 333.335](#)

<sup>37</sup> [NRS 199.520](#)

<sup>38</sup> [NRS 178.5691](#)

advance 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 pages.

Whenever a record is redacted, the agency is to provide the requester with a written basis for redaction when the redacted records are provided to the requester. Do not be vague about the reason. The response should provide the requester with sufficient information about the reasoning behind the denial.<sup>39</sup> The notice of redaction also must contain:

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

### **Appealing denials**

If a requester is denied access to a public record, in whole or in part, that is less than 30 years old, the requester may apply to the district court in which the record is located to request that the court issue an order allowing access to the public 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 reasonable attorney's fees in the proceeding from the governmental entity whose officer has custody of the book or record.

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<sup>39</sup> [NRS 239.0113](#)

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## 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.

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## Public Records Accountability

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

The **Public Records Inspection 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
- Monies collected

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## Records Retention

**Requests** Request forms and response letters are to be retained for one calendar year after the request was fulfilled. (RDA 2009047)

**Denials** Request documentation and denial letters, in whole or in part, are to be retained for three (3) calendar years. (RDA 2009048) Denial letters are public records and shall be made available upon request.

**Destruction holds** Agencies must immediately cease the destruction of all relevant records if they receive a public records request, even if destruction is authorized by an approved Retention and Disposition Schedule. Failure to cease the destruction of relevant records could result in penalties.<sup>40</sup>

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<sup>40</sup> [NRS 239.310](#)

**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

**State Records Retention Schedules** Records retention schedules are developed by the NSLA Records Management program, in cooperation with the requesting agency, and approved by the State Records Committee.<sup>41</sup> For more information about records retention and records destruction schedules, go to the Records Management program website at the [Nevada State Library and Archives](#). Agency retention schedules can be accessed [online](#). For more information, contact Records Management at [records@admin.nv.gov](mailto:records@admin.nv.gov) or call 775-684-3411.

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### 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).

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<sup>41</sup> [NRS 239.073](#)

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**Public Record Form Samples**

**Public Records Request form**

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

**Denial: Public Records Request Acknowledgement Letter**

**Records Official Designation form**





## 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