

**Nevada Public Records Act**  
NAC 239.860-869

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

- ▶ Availability and Inspection
- ▶ Procedures
- ▶ *Nevada Public Records Act: A Manual for State Agencies*

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**AVAILABILITY AND INSPECTION OF PUBLIC RECORDS**

**"Readily Available"**

**NAC 239.860 "Readily available" interpreted. (NRS 239.008, 378.255) 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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**AVAILABILITY AND INSPECTION OF  
PUBLIC RECORDS**  
"Readily Available Media"

▶ **NAC 239.861 "Readily available medium" interpreted.** (NRS 239.008, 378.255) 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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**AVAILABILITY AND INSPECTION OF  
PUBLIC RECORDS**  
"Public records to be made available by agency on Internet"

**NAC 239.862 Certain information concerning availability of public records to be made available by agency on Internet.** (NRS 239.008, 378.255) 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 NAC 239.863 to request to inspect, copy or receive a copy of a public record.

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**AVAILABILITY AND INSPECTION OF  
PUBLIC RECORDS**  
"Form"

**NAC 239.863 Form to inspect, copy or receive copy of public record.** (NRS 239.008, 378.255)

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
  - (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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**AVAILABILITY AND INSPECTION OF PUBLIC RECORDS**

**"Fees"**

**NAC 239.864 Fee for providing copy of public record: Estimate of fee; deposit. (NRS 239.008, 378.255)** 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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**AVAILABILITY AND INSPECTION OF PUBLIC RECORDS**

**"Requesting Clarification"**

**NAC 239.865 Records official authorized to request additional information or clarification relating to request to inspect, copy or receive public record. (NRS 239.008, 378.255)** 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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**AVAILABILITY AND INSPECTION OF PUBLIC RECORDS**

**"Requirements for Inspection"**

**NAC 239.866 Requirements for inspection of public record. (NRS 239.008, 378.255)**

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.

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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**AVAILABILITY AND INSPECTION OF PUBLIC RECORDS**

**"Requirements for Inspection"**

**NAC 239.867** No requirement to create public record that does not exist. (NRS 239.008, 378.255) 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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**AVAILABILITY AND INSPECTION OF PUBLIC RECORDS**

**"Suspend Disposition"**

**NAC 239.868** Agency prohibited from disposing of requested public record; disposal of unclaimed copy of public record. (NRS 239.008, 378.255)

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.
2. If a person who requests to receive a copy of a public record does not claim the copy, the records official may dispose of the copy if the person does not:
  - (a) Claim the copy from the agency; or
  - (b) Notify the agency of when the person will claim the copy, within 30 days after the copy is reproduced.

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**WHAT IS A RECORD?**

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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### WHAT IS A 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.**
- ▶ 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.
- ▶ 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.

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### WHAT IS A NON-RECORD?

- ▶ Convenience Copies
- ▶ Drafts
- ▶ Reference Files
- ▶ Transitory Records
- ▶ Personal Papers
- ▶ Databases

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### IS IT A RECORD OR NON-RECORD?

- ▶ When in doubt, use the balance test. 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.**

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**IS IT A RECORD OR A NON RECORD?**

- ▶ Remember that when using personal devices to conduct state business, the documents produces are still state records and must be produced for public records requests.
- ▶ Your personal devices can be "Discoverable" if the documents are requested through litigation.

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**PROCEDURES**

- ▶ An acknowledgement must be sent no later than the 5<sup>th</sup> business day after receipt of the request.
- ▶ The "clock" does not begin until the 1<sup>st</sup> business day after receipt.
- ▶ The records do not have to be provided by the 5<sup>th</sup> day.

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**PROCEDURES**

-Day 0-

- ▶ The request may be hand-delivered, mailed, emailed, or sent via facsimile to the agency or received orally.
- ▶ Request shall be delivered to the Records Officer
- ▶ If it is an oral request, the Records Officer may wish to confirm the request in writing to avoid confusion.

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**PROCEDURES**  
-DAY 0-

- ▶ Review the request to determine if:
  - Enough information was provided
  - A call to the requestor is necessary
  - The request is extraordinary
  - The request can be granted in whole or in part
  - The request contains any confidential information
- ▶ Date stamp the request and enter the information into a Public Records Inspection Log

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**PROCEDURES**  
-Day 0-

- ▶ The retention for public records was just updated to simplify the retention

**2015013 Administrative: Public Records Requests**  
**Description:** Records document requests for public records and provide a record of agency responses. Records may include but are not limited to request logs and/or request forms and response letters; legal citations for redaction or denial; orders to grant or deny request; and related correspondence. **Excludes copies of the records which are the subject of the public records request.**

**Retention:** Retain for three (3) calendar years from the end of the calendar year in which the response was completed.

**Disposition:** Destroy

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**PROCEDURES**  
-DAYS 1 TO 5-

- ▶ Determine what if any public records exist
- ▶ Determine if there will be any associated costs and make an estimate
- ▶ Ensure the request is acknowledged and/or fulfilled within 5 business days.
- ▶ The acknowledgement MUST be in writing.

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**PROCEDURES**

-Days 1 to 5-

- ▶ The acknowledgement must be issued by a records official or under his/her authority and MUST include:
  - A date and time the records will be available if the agency cannot fulfill the request within the first five days
  - Inform the requestor if the agency is not the custodian of the record and furnish the name and location of the records official of the appropriate agency.
  - Notify the requestor if the record does not exist.

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**PROCEDURES**

-DAYS 1 TO 5-

- ▶ If it is determined that the agency has responsive records:
  - Ensure the acknowledgement includes any estimate of fees.
  - If the estimated fees exceed \$25, the requestor must acknowledge and approve the fees in writing.
  - If the requestor believes the fees are excessive, work with the requestor to narrow the scope of the request.
  - No fees may be charged for searching or retrieval of the documents
  - The agency may recover costs of shipping but shall not exceed the actual cost
  - The fees for extraordinary use must be reasonable, must be based on the actual cost to the agency, and cannot exceed 50 cents per page.

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**PROCEDURES**

-Days 1 to 5-

- ▶ Not all agencies require payment before providing the requested records
- ▶ Agencies may request a deposit
- ▶ Agencies must determine internal procedures for when and how fees will be assessed and collected.

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### Procedures

-Days 1 to 5-

- ▶ Once fees have been paid, if applicable, the records official shall organize the records for inspection or prepare the records in the requested media format for transmittal
- ▶ Inform the requestor of any cost increase changes to the original estimate or refund any amount in excess to the amount paid.

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### Procedures

-Days 1 to 5-

- ▶ When denying a request, either in whole or in part, the agency must provide written notice of denial. The notice of denial MUST include:
- ▶ 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.
- ▶ Do not be vague about the reason(s) for denial

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### PROCEDURES

-Days 1 to 5-

**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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### PROCEDURES

-Days 1 to 5-

- ▶ Just because a record contains confidential information does not mean the record "in whole" can be denied.
- ▶ The agency can "redact, delete, conceal or separate" confidential information but the remainder of the record must be released. Every redaction shall be considered to be an "in part" denial of the request.
- ▶ The agency is required to redact all personal identifying information, proprietary information, information about on-going criminal investigations, the names of victims of crimes, and other personal information, as required by statute.
- ▶ See NRS 603A.040 for "Personal information" definitions

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### PROCEDURES

Appeals

- ▶ 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.

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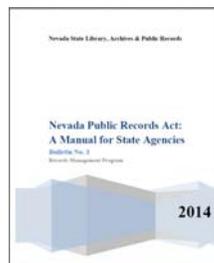
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### AVAILABILITY AND INSPECTION OF PUBLIC RECORDS

"Manual"

- ▶ *Nevada Public Records Act: A Manual for State Agencies.*



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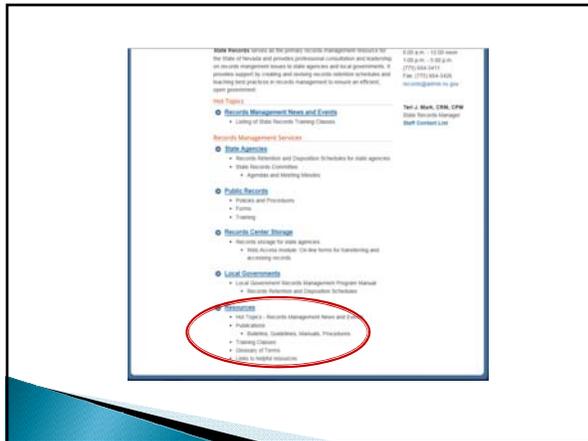
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