

Special Problems in Public Records in Nevada

Presented by:
James C. Smith J.D. CPCU
(c) 2014

1

Introduction

- A Sense of History, a Tale of two Recorders
- Thanks
- Chapter 239 of NRS, The Public Records Act
- Routine Requests for Public Records; Applications to Court, NRS 239.011, and Burden of Proof
- The Changing Nature of Public Records
- Professional Education
- The Risk Challenges of New Technology and Legislative Responses
- Regulatory Law
- Statutory Requirements
- The Changing Nature of Government Structure and Functions
- Matrix of Interests

Confidential Records

- Categories of Confidential Records. The 2013 Legislative Enactment of AB 31, amending NRS 239.010.
- Personal Identifying Information. Chapter 603A of NRS; and NRS 205.461 et seq.
- Financial Records
- PERS vs. Reno Newspapers 129 Nev. Adv. Op. 88
- Personal Health Information; HIPAA
- Legal Privileges
- Government Benefits
- Licensing Boards
- Insurance Examinations
- Investigations
- Trade Secrets NRS 49.325; 333.333; Chapter 600 of NRS
- Social Security Numbers NRS 239.030 and NRS 205.4605
- Gaming Control Board
- Taxation
- Records Retention Schedules: Authorized Disposition (secure manner, NAC 239.722)

NERC, EEOC and Employer Liability

- Duty to Maintain Records/Litigation Hold
- NRS 233.190
- Adverse inference
- Employment Practices Liability

Alternative Dispute Resolution

- Arbitration: the American Arbitration Association; Public Works Contracts. NRS 338.150
- Orders to Protect Data in Arbitration NRS 38.233(5)
- Arbitration of Public Employee Disputes. NRS 288.210
- Mediation

Records Requests and Subpoenas

- The Positive Duty of Government
- Records Requests NRS 239.010
- Duties of the Custodian of Records and Designation of Records Official
- Fees
- Archival Records
- Subpoenas
- Discovery of Records Containing Confidential Data
- Assertion of Claims of Privilege

OPEN MEETING LAW

- Public Records within the Open Meeting Law
- Agendas and Posting of Notice
- Copy of Records Available for the Public at the Meeting
- Minutes of the Meeting
- Litigation Meetings-Records of Litigation Decisions, Settlement Negotiations and Agreements, Records Retention Considerations

EMERGING ISSUES

- Risk Management: Preservation and Protection of Public Records
- BYOD-Bring Your Own Device
- Stolen, Lost or Misplaced Laptops
- Improper Disclosure of Confidential Records
- Sale of Public Records
- Liability for Unauthorized Disclosure
- Records of Insurance: Policies, Claims, Rates
- Cyber Liability: Pii and PHI-Chapter 205 and 603A of NRS

RECORDS ARE INFRASTRUCTURE

- A Records Retention Schedule is a Fiduciary Duty of the Responsible Officials, the State Records Committee and Senior Management-what records to keep, for how long and authorized disposition
- Professional Records Manager: Education, Training and Experience
- State Archives
- SHRAB-State Historical Records Advisory Board
- Best Practices: Record Keeping; Electronic Records; Preservation of Unique Records; Emergency Procedures
- Local Government Records: Maintenance, Use, Disposition
- Training and Education

Repositories of Records

- Quality Assurance: State Records Center; Archives; Regulatory Agencies; Legislature; Regents
- Local Government Records Act: Chapter 239 of NRS and NAC
- Cities; Special Districts; Interlocal Agreements and General Improvement Districts

E-DISCOVERY

- Electronic Discovery and Evidence-ESI
- Records Retention Schedules
- E Discovery: Litigation Hold and Records that are Born Digital
- Practical Considerations
- Discovery: Meet and Confer

ETHICS AND ETHICAL CONSIDERATIONS

- Ethics-the Challenges to Government; Matrix of Interests
- The reality of Francis Deane; Arthur Anderson; Sandy Berger; current events
- Training
- Criminal Penalties for Records Violations
- Social Media and Texts

PRACTICE CONSIDERATIONS

- **Matrix of Interests**
- Residents
- Tax Payers
- Vendors
- Customers
- Regulated Entities
- Licensees
- Claimants
- Contractors
- Bidders
- Competitors
- Local Governments
- Licensed Professionals-Attorneys, Accountants, Physicians, Architects,
- Law Enforcement
- Insurers
- investigators
- Employees and employers
- Legislators
- Non Profits
- Courts and Alternative Dispute Resolution
- Lobbyists
- Medical billing-provider payer relationships
- Victims of cyber liability