

PUBLIC RECORD REQUEST POLICY AND PROCEDURE

1. Purpose/ Mission/ Scope

To establish a process for responding to public records requests that are made to the Attorney General's Office (AGO), and not to a client agency. If you have questions about how to advise your client regarding a public records request, please contact the assigned Public Records Deputy Attorney General.

2. Records Official/ Custodian/ DAG Selection

Each agency, including the AGO, must have a records official. The records official should be a Deputy Attorney General, Senior Deputy Attorney General, or Chief Deputy Attorney General. AGO management may also designate a Legal Researcher to help the records official log and respond to public records requests.

All records requests received by the AGO should be forwarded *immediately* to the AGO records official and his or her designee. The records official should then work with the Division Chief for the subject area in order to determine the timeline for the AGO's response as well as the content of the response. In handling the records request, the records official shall follow the procedure outlined below in paragraph 4.

3. What is a Public Record?

There is no Nevada statute that defines a public record. Generally, all books and records of a governmental entity are presumed to be public records and include information and other documents created or accumulated in the course of conducting public business that document the activities and business of public employees.

A public record is a "record," not simply information. If a record does not already exist, there is generally no duty to create a record in response to a public records request. *Letter to Ms. Lockard*, Op. Nev. Att'y. Gen. No. 2000-12 (April 28, 2000). See also *Public Employees' Retirement System of Nevada v. Reno Newspapers, Inc.*, 313 P.3d 221, 129 Nev. Adv. Op. 88 (Nov. 14, 2013).

A record is not available to the public if it is declared by law to be confidential. See NRS 239.010(1). A record may also be confidential if it is privileged or if a common-law balancing of the interests test shows that the public interest in disclosure is outweighed by other interests such as privacy, the ability of the agency to perform its function, or other substantial concerns. However, there is a strong presumption in favor of disclosure, so exemption, exception, or balancing tests must be narrowly construed. See NRS 239.001(3).

4. Procedures

- a. All requests for public records should be immediately forwarded to the public records official and his or her designee who will ensure that the request is logged in the Office of the Attorney General's Records Request Log.
 - i. The records official or his or her designee shall acknowledge receipt of the request in writing. If the request is received by e-mail, this acknowledgement also may be sent by e-mail.
 - ii. The records official or his or her designee will forward the request to the division in the AGO which may best be able to respond and/or where the records are maintained.
- b. The records official ensures that, within five (5) business days from receipt of the request, one of the following occurs:
 - i. The requester inspects the record or receives copies of the record, as requested;
 - ii. If the AGO does not have legal custody of the record, written notice of that fact and the name and address of the governmental entity that has legal custody of the record, if known, is provided to the requester;
 - iii. If the record has been destroyed pursuant to the AGO's records retention schedule, written notice of that fact is provided to the requester;
 - iv. If the AGO is unable to provide the record by the end of the fifth business day after the request is received, written notice of that fact and a date and time after which the record will be available for the person to inspect or copy is provided to

the requester. If this is known at the time the acknowledgment is sent to the requester, see above paragraph a(i), this information may be included with the acknowledgment sent by the records official or his or her designee; or

v. If the request must be denied because the record is confidential, written notice of that fact and a citation to the specific statute or other legal authority that makes the record confidential is provided to the requester.

c. The requestor is to be advised, in advance, of the volume or list of records encompassing the request and the potential cost to provide the records if applicable. Copies of records shall be furnished upon payment of associated fees.

i. The requestor is to be advised that reproduced materials will be held for fourteen (14) days and subsequently destroyed if not claimed.

ii. If the cost of reproduction exceeds \$25, the requestor is to be advised that advance payment in full will be required to process the request(s).

d. Extraordinary Requests

i. When the records official reviews a public record request, it may be determined that the request will require significant use of personnel or resources to produce and be designated as an Extraordinary Public Record Request.

ii. Such a request may apply to individual or multiple offices.

iii. Fees may be imposed in accordance with NRS 239.055.

iv. The requestor is to be advised if the cost of the request exceeds \$25 and that payment in full of the minimum estimated amount will be required to process the request.

v. The amount deposited by the requestor shall include the estimated manpower costs to retrieve or reproduce the record(s) and the estimated material charges to retrieve or reproduce the record(s).

vi. Data requests for electronic databases, electronic records or services that are value-added products and beyond the normal scope of the office's workload will be provided as the appropriate resources are available to fulfill the request.

vii. The criteria above are guidelines which may be expanded depending upon the circumstances of the request.

5. Fees

No fees will be charged until the total costs reach \$10. The first hour of staff time will not be charged. No cost will be assessed for inspection of existing records unless staff time to retrieve or otherwise process the records exceeds one hour.

If estimated staff time exceeds one hour, the requestor is responsible for the staff time incurred, which is due and payable before processing of the records will begin. Fees for staff time are in addition to fees for copying. Estimates of costs will be provided in advance if the costs are projected to exceed \$25.

Staff time (for review, redacting, copying or otherwise processing records requests) shall be billed as follows:**

- a. \$12/hr. per staff member (Grades 10-19)
- b. \$18/hr. per staff member (Grades 20-29)
- c. \$27/hr. per staff member (Grades 30-39)
- d. \$30/hr. per legal researcher (unclassified)
- e. \$40/hr. per deputy attorney general (unclassified)
- f. \$50/hr. per staff member (Grades 40+)
- g. \$51/hr. per senior or chief deputy attorney general (unclassified)

Copying fees:

- a. Black and white copies, up to 8.5" x 14": \$.05/per page
- b. Color, up to 8.5" x 14": \$.50/per page
- c. Compact Disc/DVD: \$5/per disc
- d. Certified true copies: \$5/per page

Court reporter transcripts:

In addition to the actual cost of the medium in which the copy of the transcript is provided, the fee charged for a copy of each page of a court reporter transcript is the fee per page set forth in the contract between the AGO and the court reporter. See NRS 239.053.

Postage:

The requestor is responsible for estimated postage.

Payment:

Payment may only be made by check or money order made out to the "Nevada Attorney General's Office."

****Fee Cap:** The fees charged for staff time may not exceed \$.50 per page. After calculated the staff time incurred, if it exceeds \$.50 per page it will be reduced to equal \$.50 per page.

6. General Policies for Processing Public Records Requests

a. All public records, unless declared by law to be confidential, must be open at all times during office hours to inspection by any person, and may be copied.

b. Original public records must not be removed from Attorney General Offices during inspection by members of the public and must be monitored by an employee while any review is being conducted.

c. Fees for inspection and copies of public records are outlined in the Fee Schedule for Requests for Public Records.

d. If a record contains information deemed confidential, a request to inspect or copy the record cannot be denied if the confidential information can be redacted, deleted, concealed or separated from the record, so the remainder of the record can be inspected or copied.

e. Electronic databases that contain the electronic mail addresses and/or telephone numbers of individuals that have provided the addresses or numbers for the purpose of or in the course of communicating with the Attorney General's Office are confidential and may not be disclosed in its entirety as a single unit unless in response to an order issued by a court. However, individual telephone numbers or electronic mail addresses of a person are not confidential and may be disclosed individually.

f. Public records must be provided in any medium in which they are readily available. The custodian of the record shall not refuse to provide a copy of the record in a readily available medium because

he/she has already prepared or would prefer to provide the copy in a different medium.

g. Public Records Requests must be responded to no later than the end of the fifth business day after the date on which the request is received by the Office. The response may include an estimate of the time it will require to provide access or a copy.

h. Public records requests may be written or verbal. However, requests involving an extraordinary use of personnel time, must be submitted in writing.

i. If the person responding in the division in the AGO where the records are maintained or which is responsible for the subject matter of the request has questions concerning inspection or reproduction of a requested document, he or she should consult the records official and/or his or her designee. Likewise, if the records official and/or his or her designee have questions concerning inspection or reproduction of a requested document, he or she should consult the chief or his or her designee in the division of the AGO where the records are maintained or which is responsible for the subject matter of the request. In some situations, the Solicitor General, the Assistant Attorney General, and/or the Chief of Staff should also be consulted. These individuals will assist with the issues of whether:

i. The item requested is actually a public record, available for review and reproduction;

ii. The item requested is a public record which some special legal considerations might dictate should not be made available for inspection and reproduction; and

iii. If a legal balancing test is to be performed, the requestor should be informed and then notified as soon as a decision has been made. Balancing tests should be performed without delay.

j. Copyrighted materials may be duplicated—without risk of infringement—when reproduction is for the specific purpose of: “criticism, comment, news reporting, teaching, scholarship, or research” (17 U.S.C.A. Sec. 107). When the custodian is aware that some other use is intended, consultation with the Deputy Attorney General assigned to the agency may be necessary to insure there is no infringement by reproduction of copyrighted material.

k. Confidential records of federal, state, and local governments shared with the AGO MUST NOT be disclosed without prior written authorization from that government agency. Further, mere possession of records or information may not mean that the AGO has legal custody or control over those records. See NAC 239.041.

l. Without prior written authorization from the governmental agency, the detail or description of work or tasks performed contained in AGO billing records must be redacted. The number of hours spent on a matter, however, is generally not confidential information.

m. Telephone numbers and/or e-mail addresses maintained in a database by the AGO for the purpose of and/or in the course of the person's communications with the AGO are confidential and are not deemed a public book or record. See NRS 239B.040.

n. The Public Records Request Form and accompanying documents and correspondence will be kept according to the appropriate state records retention schedule and may be a public record.

o. The Fee Schedule for Requests for Public Records must be posted in public view in each office of the Office of the Attorney General.

Approved:

Date: _____

By: _____