



# Nevada Public Records Act (NPRA) Overview

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2018 Training

# AGENDA

- ▶ What is a public record?
- ▶ The Nevada Public Records Act (NPRA) - NRS 239
- ▶ Response Requirements
- ▶ Costs and Fees
- ▶ Judicial Review
- ▶ Q & A

# What is a Public Record?

- All state agency records are public unless declared confidential by law. NRS 239.010.
- Under the NPRA, information is by default public record unless specific confidentiality restrictions apply.
- ▶ The NPRA allows both written and verbal requests for public records. *See NRS 239.0107(1)*.
  - ▶ E.g. - A request for an agenda or supporting material at an open meeting of a public body.

# Nevada Public Records Act (NPRA)

- ▶ Codified in NRS Chapter 239.
- ▶ General framework to use when handling public record requests.
  - ▶ Confidentiality requirements per statute; and
  - ▶ Public interest regarding the information where specific confidentiality statutes are non-existent.

# General Premise of NPRA

- The NPRA favors:
  - Transparency in government;
  - Open access to agency records; and
  - Liberal construction of statutory text in order to maximize the public's right of access to agency records.

# General Premise of NPRA

- ▶ “The Legislature has declared that the purpose of the NPRA is to further the democratic ideal of an accountable government by ensuring that public records are broadly accessible.” *Reno Newspapers, Inc. v. Jim Gibbons, Governor of the State of Nevada*, 127 Nev. Adv. Op. 79, at 5 (2011) (citing NRS 239.001(1)).
- ▶ Records requested must be identifiable and requests must not be overbroad. *See State ex re. Zidonix v. Columbus State Community College*, 976 N.E.2d 861, 866-67 (Ohio 2012).
- ▶ Records should be presumed to be public unless a specific statute provides for confidentiality.

# *Bradshaw* Balancing Means

- “Weighing” the agency’s interests in non-disclosure against the general policy in favor of open government and the requestor’s “*fundamental right*” to access public records.
- The burden is upon the agency to explain why the records requested should not be furnished, with specific evidence justifying the withholding of the records.
- Government interest in withholding must “clearly” outweigh the public interest in disclosure.

# Denying Request or Withholding Records

- Regulatory and Statutory Confidentiality Provisions
  - State Statute
    - NRS 239.010
  - State Regulation
  - Federal statute
  - Case law
- If none of the above, then *Bradshaw* balancing test.

# A Written Response is Required

- An agency must respond in writing to records requests by not later than the end of the *fifth business day* after the request is received. NRS 239.0107(1).
- If a public book or record is readily available, in lieu of a written response the agency shall allow the requestor to inspect or copy or receive a copy of the record.
- Do you have a public records policy and procedure to ensure that you are meeting this timeframe?

# 5th Business Day Written Response

- Three Options
  - Provide the records requested either by giving a copy to the requester or allowing the requester to inspect the records;
  - Provide the date when the records will be available; or
  - Inform the requester that the agency does not have the requested records, and provide the name and contact information for the government entity that does have the records, if known.

# Extraordinary Requests **MUST** be in writing.

- All extraordinary requests must be in writing. See NRS 239.055.
- What is “extraordinary” will vary based on the request, the size of your agency, and other factors. See NSLA Manual.
  - Non-extraordinary requests may be oral and may not be ignored or required to be submitted in writing.
- Does your public records policy and procedure define “extraordinary”?
  - It should! See NSLA Manual.

# When Denying the Request and/or Withholding the Record

- The agency must provide a written response and a citation to statute or other legal authority making the record confidential. NRS 239.0107(d).
- The agency generally must provide a log to the requestor (upon request) describing each individual withheld record. Gibbons, 127 Nev. Adv. Op. at 12.
  - The agency may be exempt from providing a log to the requestor if the agency can demonstrate that the requestor has sufficient information to meaningfully contest the claim of confidentiality without a log.

# Recover Actual Costs

- An agency may recover its actual costs in providing a copy of a public record to the requestor. NRS 239.052.
- Providing copies of public records to the public is deemed part of the agency's regular duties. Thus, these costs generally may include only actual costs incurred in responding to the records request, such as those for toner, paper, and postage, and not employee time in responding to the request, unless the request is extraordinary.

# Extraordinary Use

- ▶ These charges are in addition to actual costs.
- ▶ The fee for extraordinary use may not exceed 50 cents a page.
- ▶ You must define “extraordinary use” in your public records policy to recover extraordinary use costs when responding to a public records request.
- ▶ Does your policy address this?

# No Charge for Minutes and Recordings of Meetings

- Minutes of public meetings are public records. Minutes or audiotape recordings of the meetings must be made available for inspection by the public within 30 working days after the adjournment of the meeting and a copy of the minutes or audio recordings must be made available to a member of the public upon request at no charge. NRS 241.035(2).
- All agencies must have five years of minutes; the remainder may be sent to State Archives. See NRS 241.035(2).

# List of Fees

- The agency must prepare and maintain a list of its fees for providing public records, which should be posted in a conspicuous place in each of its offices. NRS 239.052(3).
- If applicable, the agency's list of fees must also include per page fee for court reporter transcripts. NRS 239.053(2).

# District Court Review

- Pursuant to NRS 239.011, if a public records request is denied by the agency, the requestor may apply to the district court in the county where the book or record is located for an order:
  - Permitting the requestor to inspect or copy the book or record; or
  - Requiring the agency who has legal custody or control of the public book or record to provide a copy to the requestor.

# Record Retention and Archiving

- ▶ At the appropriate time according to your Records Retention Schedule:
  - ▶ Destroy securely or
  - ▶ Send to State Library and Archives
- ▶ For more information:
  - ▶ <http://nsla.nv.gov/>, click on “Records Management” at the top, then “State Agencies,” and then look for the retention schedule you need.

# Q & A

