PRELIMINARY DRAFT – SUBJECT TO REVISION

PUBLIC RECORDS TASK FORCE
CONSENSUS REPORT

~~Government~~ Transparency Members' Draft

Public Records Task Force
State of Nevada

Submitted to: Director, Legislative Counsel Bureau

For Transmittal to:

- Joint Interim Standing Committee on Government Affairs
- Senate Standing Committee on Government Affairs
- Assembly Standing Committee on Government Affairs

Submission Date: November 10, 2026

Disclaimer

This report was prepared by the Task Force in compliance with Assembly Bill 128 of the 83rd regular session of the Nevada Legislature. The purpose of this report is to provide information and recommendations to the Nevada Legislature. This report is for general information only and does not have the force and effect of Nevada law, regulation or rule. While this report necessarily includes references to Nevada law and sometimes sets forth interpretations of Nevada law, no position or interpretation set forth in this report should be construed as a position or interpretation by any individual member of the Task Force or a position or interpretation of that member's employers or clients. Interested parties should be aware that the laws pertaining to public records may be amended by the Nevada Legislature and may be subject to interpretation by the courts. Interested parties should consult a qualified Nevada attorney with any legal questions regarding the Nevada Public Records Act.

Executive Summary

~~Assembly Bill 128 of the 2025 Nevada Legislative Session, created the Public Records Task Force is comprised of ten individuals.~~ Assembly Bill 128 of the 83rd regular session of the Nevada Legislature created the Public Records Task Force. The Task Force comprises ten individuals. Five members are labeled transparency advocates and five are labeled government representatives and are employed by governmental entities in Nevada. All members share a

commitment to carefully evaluate Nevada public records law and to evaluate and make recommendations for improvement.

Task Force Members:

- Benjamin Z. Lipman, Las Vegas Review-Journal (Transparency Advocate)
- Brittany L. Walker, City of Boulder City (Government Representative)
- Colleen E. McCarty, Ballard Spahr (Transparency Advocate)
- Kalie Work, Washoe County (Government Representative)
- Joshua J. Hicks, McDonald Carrano (Transparency Advocate)
- Leslie M. Nino Piro, Office of the Attorney General (Government Representative)
- Mitch Fox, Nevada Broadcasters Association (Transparency Advocate)
- Matthew C. Morris, Holland & Hart, LLP (Transparency Advocate)
- Matthew J. Christian, Las Vegas Metropolitan Police Dep't. (Government Representative)
- Staci Lindberg, Lyon County (Government Representative)

As part of its work, the Task Force heard presentations and considered recommendations from a variety of public and private sector stakeholders. Through that process, several themes became evident. These are described below through the lens of the stakeholders who have raised the concerns.

Transparency Advocate Concerns

- **Delay.** Governmental entities ~~sometimes~~ do not always respond within five business days and extend their responses repeatedly, sometimes for months.
- **Insufficient citation of the law.** Requests are denied based on overbroad exemptions or non-codified exemptions, such as a general "ongoing investigation" or "personnel records" exemption, or with boilerplate string citations that do not explain why a record is confidential.
- **Withholding instead of redaction.** At times, entire records are withheld when the law requires that confidential information be redacted and the rest produced.
- **Unwarranted fees.** ~~Transparency Advocates dispute whether fees can be charged for staff time~~Some governmental entities charge for staff time, regardless of whether the governmental entity actually incurs a cost related to a records request.
- **Inconsistency and lack of accountability.** Different agencies, and different courts, treat identical requests and identical legal questions differently, and the only remedy is litigation that is slow and costly for ordinary Nevadans.

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Governmental Representative Concerns

- **Overly Broad Requests.** Overly broad and unduly burdensome public records requests, exacerbated by requesters' use of Artificial Intelligence ("AI").
- **Privacy Interests.** Need for statutory protections of personal information and privacy interests.
- **Criminal Investigations.** Balancing the interests of public records requesters with state and federal Constitutional considerations during an active criminal investigation, particularly when a victim(s) or witness(es) are involved.
- **Insufficient Resources.** Lack of uniform public records request form and staffing to respond to public records requests .
- **Antiquated Laws**. Lack of statutory updates to reflect modern changes to records practices.

Administrative and Operational Challenges

The Task Force faced several operational challenges to begin its business. The Task Force was provided no staff. Consequently, the members of the Task Force organized its meetings, conducted research and drafted reports. The application of the Open Meeting Law, and its prohibition on a quorum deliberating outside of a public meeting, further complicated the work of the Task Force. ~~The Task Force members were never contacted as a group or given any instructions on how to complete its business. Having not heard anything beyond an initial communication letting us know individually that we had been appointed, members reached out to the Legislative Council Bureau (LCB) in late December 2025 to find out who the other members were and asked when meetings would be scheduled. LCB stated, "[t]he Legislative Counsel Bureau is prohibited by Nevada Revised Statutes 218E.205(5) from serving as primary administrative or professional staff for a committee established by a statute, concurrent resolution or order of the Legislative Commission to conduct a study or investigation, unless the chair of the committee is required by the statute, concurrent resolution or order of the Legislative Commission to be a Legislator." LCB did provide the names of the other members, but no contact information. Eventually the members contacted each other and scheduled the first meeting in February 2026. By then the Task Force only had approximately six months to complete its business. However, without staff and with the duty to comply with Open Meeting Law, the members had to also act as staff to the Task Force but could not deliberate in groups that amounted to a quorum to draft any reports outside of open meeting. We found that there was a lack of trust on the part of some members in the documents and research drafted by other members.~~ We also found that the labels of "transparency advocate" and "government representative" created "sides" when there should

not have been "sides," The lack of staff, short timeline to draft the report, coupled with the labels impeded a collaborative process to find solutions.

The Task Force identified consensus ~~concepts~~ recommendations but could not agree on the details. ~~The Government Representatives drafted a report attempting to evaluate and make recommendations pursuant to Assembly Bill 128 that included research on other states, and identification of the issues local governments face responding to public records requests and provided the draft report for the Transparency Advocates consideration at the October 5th meeting. At the October 19th meeting, the Transparency Advocates edited the Government Representatives report, adding their own sections titled "Transparency" that sought largely to discredit government perspectives rather than offering additional insight and solutions. The Transparency Advocates moved to have two separate reports, and the motion failed in a tie vote. A Government Member moved to~~Ultimately, the Task Force agreed to prepare its final report in two parts. First, ~~have~~ a consensus section describing areas of general consensus among the Task Force. Second, ~~with~~ two separate reports to be submitted as exhibits, one by the government representatives and one by the transparency representatives with greater specificity on perspectives and recommendations of each coalition. Each exhibit reflects the views of the members who prepared it and has not been adopted by the Task Force as a whole. ~~without a vote on the substances of either report, and that motion passed seven to three with three Government Representatives in opposition.~~

Public Records Task Force Consensus Recommendations

The Task Force was able to reach consensus on some issues though the Task Force differed in opinion on how these concepts should move forward.

The primary areas of Task Force consensus included:

- **Ombuds Office.** Nevada should create an Ombuds Office for Public Records to expedite the resolution of public records disputes. The Ombuds Office should provide required annual training to public information officers and ~~conduct~~collect and publish ~~annual public records surveys~~standardized annual data. However, members differed on how an Ombuds Office should be structured; their views are set forth in Exhibits 1 and 2.
- **Standardized Fee Schedule.** Nevada should implement a standardized fee schedule for public records requests applicable to all state and local governmental entities. However, (~~T~~the Task Force differed in opinion on whether charges for staff time should be allowed under a standardized fee schedule and did not reach a consensus on the

details of what items could be included in charges and ~~how much could be charged).~~how much could be charged.

- **Point of Contact.** Each governmental entity should designate a point-of-contact to help members of the public with records requests.
- **Public Records Portal.** Governmental entities should post obvious public records (such as final agency decisions and meeting minutes and exhibits) and frequently requested public records on a publicly-accessible website so that members of the public can obtain information without going through a formal public records request.
- **Training and Technology.** The Legislature should fund state-level redaction and records-management tools that local governments may also use, create a technology working group, and require training in the NPRA for records officers and the attorneys who advise them.
- **Contractor Records.** Public service contracts should require contractors to comply with the NPRA and address the preservation, production and transfer of records when a contract ends.
- **Review of Exemptions.** The statutes cross-referenced in NRS 239.010(1) should be reviewed to identify provisions that could be repealed or narrowed.

The Task Force also reached consensus on several areas of concern. Primary areas of concern include:

- **Resource Adequacy:** The process would benefit if g~~G~~overnmental entities ~~need~~ received sufficient funding and resources to respond to public records requests.
- **Expediting Requests:** Records disputes should be resolved quickly, preferably short of litigation whenever possible.
- **Modernization:** The NPRA should be updated to reflect modern records practices, including electronic records, while preserving, and where possible, increasing accessibility and transparency.

1. Background

1.1 Legislative Mandate

The Public Records Task Force ("Task Force" or "PRTF") was created by Assembly Bill 128. 2025 Nev. Stat. 1416 - 19, ch. 228. The purpose of this Task Force is to evaluate certain topics

relating to requests for public records and make certain recommendations. The bill also: (1) prescribes the membership and duties of the Task Force; and (2) requires the Task Force to submit a written report describing its work and recommendations for transmittal to the Joint Interim Standing Committee on Government Affairs and the Senate and Assembly Standing Committees on Government Affairs for the 84th Session of the Legislature. *Id.*

1.2 Objectives

The Task Force was charged with evaluating:

- Current exemptions to the Nevada Public Records Act, NRS Chapter 239 ("NPRA")
- Policies relating to public records of review boards established under NRS 289.380 and 289.383
- The impact of broad public records requests on governmental entities
- The cost, burden, and time constraints associated with redaction
- The financial burden on persons requesting public records
- Mechanisms for resolving disputes, including mediation and alternative dispute resolution
- Methods for collecting and sharing data related to public records requests.

Id. at § 7. The Task Force was further directed to make recommendations addressing these areas:

- To clarify the custodianship and control of public records
- To protect sensitive information while promoting government transparency
- To identify situations in which access to public records should be granted or denied
- For penalties to impose against governmental entities for providing delayed or incomplete responses to a request for public records
- For protocols to protect personal information and criminal investigations
- For a standardized fee schedule and
- For mechanisms to protect governmental entities from retaliatory litigation.

Id.

1.3 Methodology

First Meeting – February 26, 2026

Following initial member appointments in the fall and winter of 2025, the Task Force held its first meeting on February 26, 2026, at City Hall in Boulder City. Members attended in-person and virtually. At its first meeting, the Task Force received in-person and written public comments, unanimously elected a Chair and Vice Chair, approved a Task Force webpage hosted by the Office of the Attorney General, and discussed potential topics to be considered at future meetings.

The Task Force webpage includes meeting minutes, meeting agendas, and presentation materials accessible online at https://ag.nv.gov/Hot_Topics/Public_Records_Task_Force/. **Appendix A** of this report also contains all PRTF meeting agendas and minutes.

Second Meeting – April 27, 2026

The Task Force held its second meeting on April 27, 2026, at Washoe County Commission Chambers in Reno. Members attended in-person and virtually. The Task Force received multiple written public comment submissions. **Appendix B** of this report reproduces all PRTF meeting materials, including all public comment, presentations, and other submissions which are included in the supporting materials attached to the report. Given changes in membership that occurred following the first meeting, the Task Force unanimously selected a new Chair and Vice Chair.

At its second meeting, the Task Force received a presentation from Warren Hardy, representing Warren Hardy Strategies, on behalf of the Urban Consortium. In the presentation, Mr. Hardy ~~testified~~ stated that ambiguity in current legislation leads to inconsistent decisions and there is a need for a dispute resolution process outside of litigation, and Mr. Hardy discussed commercial requests and monetization, and possible risks associated with Artificial Intelligence. The presentation ~~stated, in particular, that~~stated that "the volume of some requests consumes disproportionate staff time and should be more specific," among other observations and recommendations for legislative action.

The Task Force also received a presentation from City of Las Vegas Chief Deputy City Clerk Pat Cabrera, on behalf of the Nevada Municipal Clerks' Association. The presentation addressed topics including burdens on public agencies associated with the redaction process, the impacts of what they see as overly broad records requests, risks associated with sensitive information disclosure, claims of vexatious requestors, fee structure challenges and payment gaps, suggested governance opportunities and related recommendations for legislative action. The presentation also addressed the use of NPRA by litigants to obtain records outside the discovery process and practical challenges associated with NPRA's response timeline, among other assertions.

Finally, the Task Force addressed the request for a status presentation to the Joint Interim Standing Committee on Government Affairs, considered the structure of the final report to the

Legislature, selected additional Task Force Meeting Dates and Locations, and addressed related administrative and housekeeping items.

Third Meeting – June 8, 2026

The Task Force held its third meeting on June 8, 2026, at the Clark County Commission Chambers in Las Vegas. Members attended in-person and virtually. The Task Force received multiple written and in-person public comment submissions, which are included in the supporting materials attached to this report. During its third meeting, the Task Force received a presentation from Glenn Cook, Executive Editor for the *Las Vegas Review-Journal*. In the presentation, Mr. Cook provided his observation that "governments routinely deny requests for information that is public," and emphasized that transparency "is an essential function of government." The presentation addressed rights of records requestors, the fees agencies impose on requesters for staff time, the legal fees taxpayers pay when agencies unlawfully withhold records, and a variety of challenges that he said present hurdles to requestors seeking access to public information, among other observations. The presentation noted specific examples involving investigative journalism being "stymied by public records denials," as well as specific examples involving "investigative stories completed thanks to access to public records." The presentation concluded with specific recommendations for reforms to the NPRA statute.

The Task Force also received a presentation from Dr. Bob Conrad, representing the publication *This is Reno* and the Nevada Open Government Coalition. The presentation addressed topics including case studies involving allegations of improperly withheld records by various government entities, the improper use of prolonged delays and failure to meet deadlines, and related observations. The presentation concluded that "public records litigation occurs because records are frequently denied and mishandled, not because of lack of NPRA clarity," and proposed various recommendations for legislative action.

Additionally, the Task Force received a presentation from Attorney Luke Busby, which noted challenges presented when public agencies' fail to timely respond to NPRA requests, when responses lack sufficient substance, and the perceived lack of clear statutory procedures for challenging a denied records request, among other topics. The presentation also included a "critique" of the Urban Consortium's and Municipal Clerks' Association presentations that had been given during the ~~April 27, 2026 meeting~~April 27, 2026, meeting.

The Task Force also received a presentation from the Electronic Frontier Foundation ("EFF"), which addressed topics including UNR's 1-credit journalism course on public records requests and related case studies involving withheld records. EFF's presentation highlighted positive examples with Washoe County's Northern Nevada Public Health district's timely responses to public records requests, and negative examples involving the Nevada Secretary of State Office's responses to public records requests, among other examples.

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Finally, the Task Force received a presentation from Washoe County Deputy District Attorney Lindsay Liddell. Ms. Liddell's presentation addressed topics including the asserted need to protect victims' rights and constitutional rights regarding fair trials, and balancing transparency concerns with avoiding exploitation of victims and witnesses, among other topics. The presentation also discussed topics relating to Marsy's Law, Nev. Const. Art. 1, Sec. 8A, including the Nevada Constitution's protections for a victim's right to be treated with fairness and respect for privacy and dignity, with emphasis on a case study involving highly publicized murders of college students in the State of Idaho.

Fourth Meeting – July 22, 2026

The Task Force held its fourth meeting on July 22, 2026. Members Lipman and Work reported on their July 9 status presentation to the Joint Interim Standing Committee on Government Affairs, at which a Committee member expressed interest in best practices from other states. No presentations were scheduled; members reviewed the draft report template section by section.

As a follow up to Lindsay Liddell's presentation at the ~~June 8, 2026 meeting~~June 8, 2026, meeting, Task Force member Matt Christian submitted four (4) articles related to law enforcement and privacy interests. These include a state-by-state access guide to law enforcement records published by the Reporters Committee for Freedom of the Press, an article published in *Vox* about how routine police stops and bodycam footage ~~become~~ are published on social media ~~fodder~~ and YouTube ~~content~~, an article published in Commlaw Conspectus about media access to criminal investigations, and an article published in the Rutgers University Law Review entitled, "*Monetizing Shame: Mugshots, Privacy, and the Right to Access*." ~~The articles provide insight into the evolving challenge of balancing transparency and police accountability with privacy and criminal justice interests in the current environment where information that may be extremely embarrassing is available on the internet indefinitely.~~

Several points of agreement among the Task Force began to emerge. ~~Members on both sides agreed that the parties need a way~~Members agreed that the statutes cross-referenced in NRS 239.010(1) should be reviewed to identify those that could be removed, and that the parties need a way to resolve disputes short of litigation (albeit with differing views on the proper structure of any alternative dispute resolution schemes). Members also agreed that "legal custody or control" should be clarified (albeit with differing opinions on the nature of the clarification) and that ~~certain~~ records such as meeting minutes should be posted online. Government representatives acknowledged that records are not always produced within five business days, ~~attributing delays to ambiguous requests and inadequate staffing.~~attributing delays to a lack of technology and staffing.

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Fifth Meeting – August 5, 2026

The Task Force held its fifth meeting on August 5, 2026. Gunita Singh, a staff attorney with the Reporters Committee for Freedom of the Press, testified that the strongest public records laws are clear about what may be exempt and provide administrative review of denials, and that Nevada's law already has some of those features. She recommended an independent, empowered ombuds office, citing Connecticut's Freedom of Information Commission and Illinois's Public Access Counselor; pointed to fixed terms with removal only for cause as a guarantee of independence; and noted that appeal processes left to attorneys general have tended to be less effective. She also urged amending NRS 289.025 so that it does not bar release of body-worn camera footage of officers performing their duties.

Sarah Bradley, Chair of the State Bar of Nevada's Public Lawyers Section, offered suggestions from the perspective of government attorneys: statutory recognition of the deliberative process privilege; consistent treatment of personnel records and workplace investigations; a statutory definition of personally identifiable information; and recovery of costs beyond "actual cost" for unusually burdensome requests. She acknowledged that fees had at times been "really high and unreasonable" and used as a barrier to providing records. She also recommended funding for training and for updating the public records manuals published by the Nevada State Library, Archives and Public Records.

Heather Hahn, Records Manager for the Nevada Department of Transportation, described NDOT's request volume, staffing and one series of requests from a single requester, discussed in Section 3.3 of the ~~government members report~~government members' report. She urged clearer rules for homeland-security records and recommended an office similar to Utah's ombudsman program.

Sixth Meeting – September 29, 2026

At its sixth meeting, on September 29, 2026, the Task Force received a presentation from John Abel of the Las Vegas Police Protective Association (LVPPA). Abel stated that peace officer personnel records and internal investigative files should remain protected from broad public disclosure for the safety and privacy of officers and their families. He said the LVPPA supports targeted transparency, such as releasing body-worn camera footage in serious incidents, final disciplinary outcomes, incident reports, and aggregate statistics.

It received a presentation from the ACLU of Nevada, which described boilerplate invocations of a general "law enforcement privilege~~,~~" without a basis in statute, a request closed by the Department of Motor Vehicles while it remained open, and fees that recover staff salaries already funded by taxpayers.

Member McCarty presented the results of identical requests for an employee directory sent to three northern Nevada law enforcement agencies, and a compilation of fee schedules showing that charges for the same work range from nothing to $89 per hour.

Throughout its work, the Task Force received written public comment from a number of individuals and organizations.

2. Overview of Nevada Public Records Law

2.1 Summary of NRS Chapter 239

The NPRA, NRS Chapter 239, governs public access to government records generally. Under the NPRA, "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." NRS 239.010(1).

2.2 Purpose and Principles of Public Records Law

The NPRA requires governmental entities to make available to the public upon request any public records within their legal custody or control so as to "foster democratic principles." NRS 239.001(1); *see also Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 878, 266 P.3d 623, 626 (2011) ("[T]he provisions of the NPRA ... promote government transparency and accountability."). The NPRA further requires that "[a]ny 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." NRS 239.001(3). The NPRA places the burden of proving confidentiality on the government, NRS 239.0113, and prohibits denying an entire record when confidential information can be redacted, NRS 239.010(3).

Public records include any book or record of a governmental entity unless declared confidential by law. NRS 239.010(1). Records qualify as confidential and exempt from disclosure only to the extent that either one of the two apply:

1. A specific statutory exemption; or
2. A specific caselaw exemption.

See Gibbons, 127 Nev. at 880, 266 P.3d at 628 (explaining that limitations on disclosure may be based on "a statutory provision" or "a broad balancing of the interests involved").

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The NPRA imposes several obligations on governmental entities in responding to requests for public records. Upon receipt of a request for records, a government entity must provide a response within five business days. ~~NRS. 239.0107(1).~~NRS 239.0107(1). The response must do one of the following:

1. Allow inspection or provide a copy of the record. ~~NRS. 239.0107(1)(a)~~NRS 239.0107(1)(a);
2. If the governmental entity does not have legal custody or control of the record, provide written notice of that fact and the name and address of the governmental entity that has legal custody or control, if known. NRS 239.0107(1)(b).~~Advise the requester that the government entity does not have "legal custody or control" of the record and the name and address of the entity that does, if known. NRS. 239.0107(1)(b).~~
3. If the government entity cannot provide a record within five business days, advise the requester of that fact and provide the earliest date and time after which it is reasonably believed the record will be available. The entity must also assist the requester to focus the request so as to maximize the likelihood the requester will receive a record. ~~NRS. 239.0107(1)(c).~~NRS 239.0107(1)(c). The statute does not set an outer limit on how long a government entity may extend its response; or
4. Deny the request ~~if the any part~~if any part of the record is confidential and provide the legal basis for doing so. *Id*. at (1)(d)(1)-(2) (requiring entities to provide the requester with a written denial that includes "citation to the specific statute or other legal authority that makes the public book or record, or a part thereof, confidential").

When only portions of a record qualify ~~'~~as confidential, a "governmental entity shall not deny a request . . . on the basis" of confidentiality "if the governmental entity can redact,~~;~~ delete,~~;~~ conceal or separate, including, without limitation, electronically, the confidential information from the [nonconfidential] information." NRS 239.010(3).

As noted above, both statutory and case law exemptions apply to a records request. For either, Nevada courts test an entity's "claims of confidentiality under the backdrop of the NPRA's" important principles. *Gibbons*, 127 Nev. at 880, 266 P.3d at 628. Courts analyze claims of confidentiality "with a presumption in favor of disclosure." *Pub. Emps.' Ret. Sys. of Nev. v. Reno Newspapers, Inc. (PERS)*, 129 Nev. 833, 837, 313 P.3d 221, 223–24 (2013). The governmental entity bears the burden to prove, under a preponderance standard, that the requested records qualify as confidential." *Gibbons*, 127 Nev. at 880, 266 P.3d at 628; *see also* NRS 239.0113. The entity does not satisfy its burden by making "a non-particularized showing, or by expressing hypothetical concerns." *Gibbons*, 127 Nev. at 880, 266 P.3d at 628 (citation omitted). Government entities and c~~C~~ourts adhere to the NPRA's mandate to liberally construe any provisions that facilitate access to public records; conversely, government entities and courts narrowly construe any exemptions or

balancing tests that limit access to public records. NRS 239.001(2)-(3); *see also Clark Cnty. Office of Coroner / Med. Exam'r v. Las Vegas Review-Journal (Coroner's Office)*, 136 Nev. 44, 45, 458 P.3d 1048, 1050–51 (2020). Any ambiguity must be resolved by a production of the record or portion of the record in question. NRS 239.001(3), (5).

As for statutory exemptions, NRS 239.010(1) lists hundreds of statutes. The NPRA "yields to" these statutes. *Republican Attys. Gen. Assoc. v. Las Vegas Metro. Police Dep't,* 136 Nev. 28, 34, 458 P.3d 328, 333 (2020). The list is not exhaustive. There may be statutes that provide for confidentiality found anywhere in the NRS that are not listed in NRS 239.010(1). *City of Reno v. Reno Gazette-Journal*, 119 Nev. 55, 63 P.3d 1147 (2003). As stated above, Nevada law provides that "[a]ny 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. NRS 239.001(3). And a listed statute is not a categorical exemption: it protects only specific information if any is made confidential, and the rest of the record must be produced. *State, Dep't of Emp., Training & Rehab. v. Sierra Nat'l Corp.*, 136 Nev. 98, 460 P.3d 18, 21–22 & n.3 (2020).

As for common law exemptions, there are two currently recognized by the Nevada Supreme Court. The first is a general balancing test. It requires the governmental entity to "prove that its interest in nondisclosure clearly outweighs the public's interest in access." ~~*Gibbons*, 127 Nev. at 881,~~*Gibbons, 127 Nev. at 880,* 266 P.3d at 628. Since the 2007 amendments to the NPRA, courts must apply this test "to favor the public's interest in access over the governmental entity's interest in nondisclosure," and weighing the interests equally is an abuse of discretion. *Las Vegas Review-Journal, Inc. v. Las Vegas Metro. Police Dep't* (*Apgar*), 139 Nev. 69, 80, 526 P.3d 724, 735–38 (2023).

The second common law exemption is specific to non-trivial privacy interests. If the governmental entity establishes that there is a "personal privacy interest that is nontrivial or . . . more than ~~[]~~ ~~*de minimus*~~*de minimis*," then the burden shifts to the requester to "show that the public interest sought to be advanced is a significant one and that the information [sought] is likely to ~~advance those interests. *Clark*~~advance those interests." Clark *Cnty. Sch. Dist. v. Las Vegas Review-Journal*, 134 Nev. 700, ~~707–08~~707–08, 429 P.3d 313, 320 (2018) (quoting ~~*Cameranesi vs.*~~*Cameranesi v. U.S. Dep't of Defense*, 856 F.3d 626, 637 (9th Cir. 2017)). The Nevada Supreme Court equates such interests with those protected by common law privacy torts, which include invasion of privacy for unreasonable intrusion upon the seclusion of another. *Id*. ~~Privacy interests include information~~Privacy interests may include information about medical conditions, sexual orientation, drug or alcohol addiction, and mental illness. *Clark Cnty. Office of the Coroner/Medical Exam'r*, 136 Nev. at 56, 458 P.3d at 1058. ~~Shame, embarrassment, stigma, and harassment give rise to privacy interests.~~ However, the Court has since emphasized that the privacy

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test does not support withholding merely because information is, "in the abstract, 'personal' or 'intimate;'" that, even when a privacy concern is properly invoked and overcomes the public's right of access to information in public records, the ordinary remedy is redaction; and that the Court has "never permitted a governmental entity to use individual personal privacy interests as a shield against accountability." *Apgar*, 526 P.3d at 737–38.

Under the NPRA, a requester can file suit in district court if a governmental entity denies or unreasonably delays a request or charges an excessive or improper fee. NRS 239.011(1). The court must give the matter priority. NRS 239.011(2). If the requester prevails, the governmental entity must pay the reasonable attorneys fees and costs incurred by the requester. *Id*. The Nevada Supreme Court has described this provision as "both one-sided and mandatory," designed to give the government an incentive to honor public records requests without litigation. *Las Vegas Review-Journal v. Clark Cnty. Office of the Coroner/Med. Exam'r*, 138 Nev. 813, 815, 521 P.3d 1169, 1173 (2022). A governmental entity's good faith is not a defense to an award of fees. *See Coroner's Office*, 136 Nev. at 60–61, 458 P.3d at 1060–61. If the governmental entity willfully violates the NPRA, then additional monetary penalties apply. NRS 239.340.

2.3 Key Definitions and Concepts

The NPRA provides very few definitions. Many terms are defined in Nevada Administrative Code (NAC) Chapter 239. However, administrative regulations cannot modify or limit the scope of the NPRA. *Comstock Residents Ass'n v. Lyon Cnty. Bd. of Comm'rs*, 134 Nev. 142, 147, 414 P.3d 318, 322 (2018); *Clark Cty. Sch. Dist. v. Las Vegas Rev.-J.*, 134 Nev. 700, 703 n.2, 429 P.3d 313, 317 n.2 (2018).

The NPRA does not define the term "public record." However, the NPRA and NAC provide an analytical framework for determining what is a public record in certain contexts. For state agencies, the terms "official state record" and "record" are used synonymously and defined as:

> 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.

NAC 239.705(1).[1] Excluded from the NAC's definition is "nonrecord materials," which includes but is not limited to:

[1] The NPRA expressly defines an "Official state record" to 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.

NAC 239.705(2). There is tension as to the applicability of this regulation to state agencies, as a regulation cannot modify or limit the scope of the NPRA.

> For local government entities, "Record of a local governmental entity" or "record" means:
>
> information that is created or received pursuant to a law or ordinance, or in connection with the transaction of the official business of any office or department of a local governmental entity, including, without limitation, all documents, papers, letters, bound ledger volumes, maps, charts, blueprints, drawings, photographs, films, newspapers received pursuant to NRS 247.070, recorded media, financial statements, statistical tabulations and other documentary materials or information, regardless of physical form or characteristic.

NAC 239.101.

However, the Nevada Supreme Court has refused to apply the NAC definition of "nonrecord materials" to determine whether records sought fall under the NPRA. The Court noted that these are "administrative regulations pertaining to local government records management programs, and do not determine the overall scope of the NPRA…" *Comstock Residents Ass'n*, 134 Nev. at 147, n.1, 414 P.3d at 322, n. 1. Governmental entities thus lack a clear definition as to ~~what is a records versus~~what is a record versus a nonrecord for purposes of processing records requests. The lack of a statutory definition has led to disagreement as to whether information in the possession of a government entity that was not generated by that government entity is subject to the NPRA.

~~No statutory definition often leads to the assertion that private information that happens to be in the mere possession of a governmental entity is subject to the NPRA. For instance, an~~

> (a) Papers, unpublished books, maps and photographs;
>
> (b) Information stored on magnetic tape or computer, laser or optical disc;
>
> (c) Materials that are capable of being read by a machine, including, without limitation, microforms and audio and visual materials; and
>
> (d) Materials that 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.

NRS 239.005(6).

~~employee may email a doctor or spouse from work about a matter that does not concern governmental business. A private person may send an email to a government employee with an email signature that contains their home address and personal phone number. `Law enforcement regularly obtains cell phones and surveillance video from private parties, either through their consent or via a search warrant. That property is not owned by the law enforcement agency, will likely contain private information, and does not by itself shed any light on government transparency or accountability.~~

Appendix

- Exhibit 1 – Government Members' Evaluations and Recommendations
  - Exhibit 1A – Government Members' NPRA Exception Chart
  - Exhibit 1B – Government Members' 50-State Survey of Criminal Statutes
  - Exhibit 1C – Government Members' Summary and Analysis of Survey of Government Entities
  - Exhibit 1D - Government Members' Survey of Government Entities Regarding Public Records Requests
  - Exhibit 1E – Government Members' Survey – Full Written Responses
  - Exhibit 1F – Government Members' Fee Schedules
  - Exhibit 1G – Government Members' Examples of Overbroad and Burdensome Public Records Requests
  - Exhibit 1H – Government Members' Law Enforcement Survey
- Exhibit 2 – Transparency Members' Evaluations and Recommendations
- Appendix A – Meeting Agendas and Minutes
- Appendix B-1 – Agendized Presentation Materials
- Appendix B-2 – Written Public Comment
- Appendix B-3 – Supporting Materials
- ~~Government Members' Appendix C – NPRA Exception Chart -~~
- ~~Government Members' Appendix D – 50 State Survey of Criminal Statutes~~
- ~~Government Members' Appendix E – Government Member's Summary and Analysis of Survey of Government Entities~~
  - ~~E-1 - Survey of Gov Entities re PRRs~~

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- ~~E-2 - Full Written Responses~~
- ~~E-3 - Fee Schedules~~
- ~~E-4 - Example PRRs Overbroad-Burdensome~~
- ~~Government Members' Appendix F – Law Enforcement Survey~~

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