STATE OF NEVADA
PUBLIC RECORDS TASK FORCE

EXHIBIT 2

TRANSPARENCY MEMBERS' EVALUATIONS AND RECOMMENDATIONS

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Introduction

The Public Records Task Force's consensus report describes the Task Force's mandate, its meetings and presentations, current Nevada public records law, and the areas on which the Task Force reached consensus. As that report explains, the Government members and the Transparency members address the remaining topics assigned by Assembly Bill 128 in separate exhibits. This exhibit presents the evaluations and recommendations of the Transparency members.

The Transparency members' recommendations start from principles the Legislature has already adopted. The Nevada Public Records Act ("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). NRS 239.001 declares that the purpose of the NPRA is "to foster democratic principles," that its provisions "must be construed liberally to carry out this important purpose," and 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(1)–(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).

Reform should make those principles easier to enforce, not harder. The record before the Task Force—including the government members' own survey—shows that most requests are handled promptly and that the serious problems requesters face are delay, denials without a lawful basis, withholding of entire records instead of redaction, and fees the law does not authorize. It does not document a systemic burden that would justify new restrictions on access.

Summary of the Transparency Members' Recommendations

The Transparency members' principal recommendations are to (1) make the NPRA's deadlines enforceable; (2) confirm that fees are limited to actual cost and exclude staff time; (3) reject categorical exemptions for criminal investigative records and protect access to body-worn camera footage; (4) create a requester-controlled ombuds mediation process; and (5) fund records staff, redaction technology and training.

- **Exemptions (3.1).** Direct a comprehensive review of the provisions cross-referenced in NRS 239.010(1) to update, narrow or repeal any that go further than necessary or are obsolete.
- **Review boards and internal investigations (3.2).** Keep Citizen Review Board findings and recommendations, including officer names, public, and, if the Nevada Supreme Court makes it necessary, amend NRS 289.080 and 289.387 so that records of completed internal investigations are public, subject to redaction of information a specific statute makes confidential.
- **Broad requests (3.3).** Avoid "vexatious requester," request-closure, mandatory-identification or "bot request" provisions. Any definition of "vexatious requester" should adhere to models requiring a demonstrated history of abusive or duplicative requests with a specific intent to harass or threaten.
- Strengthen the existing duty to affirmatively and meaningfully assist requesters to focus their requests, require rolling production, and require frequently requested records and datasets to be published online.
- **Redaction (3.4).** Fund state-level redaction and records-management tools that local governments may also use, create a technology working group, and require NPRA training.
- **Fees (3.5 and 4.6).** Adopt a single, uniform fee schedule that every governmental entity must use and that operates as a ceiling. Confirm that fees are limited to actual cost and exclude staff time, including time spent searching for, reviewing and redacting records, with no exemptions for individual entities.

- **Dispute resolution (3.6).** Create an independent Ombudsperson or Ombuds Panel similar to Connecticut's model, that offers free, prompt mediation that the requester controls, with the burden on the governmental entity and no effect on statutory deadlines or the requester's right to sue or obtain attorney's fees.
- **Data (3.7).** Require every governmental entity to report annually, on a standard form, its request volume, response times, extensions, denials, fees and disputes.
- **Custody and control (4.1).** Clarify that a record held by a governmental entity does not lose its public character because it came from another entity, a contractor or a member of the public, or because it is kept on a personal device or account, and reject the "incidental custody" proposal. Require public records clauses in public service contracts and published public records contacts.
- **Personal information and bulk data (4.2).** Define a narrow category of personal identifying information; codify the privacy test with guardrails that keep the burden on the government; create no general personnel-records exemption and no categorical exemption for victim-related records; and do not create a separate "bulk data" category, dissemination agreements, purpose affidavits or authority to demand records from persons in "illegal possession" of them.
- **Denials (4.3).** Codify the Nevada Supreme Court's standards for written denials, and do not allow denials based on suspected data scraping or require affidavits of purpose.
- **Deadlines and penalties (4.4).** Make the NPRA's deadlines enforceable, with an outer limit for production, deemed denials, no fees when an entity is late, a definition of "willful" and protection of requested records from destruction.
- **Criminal investigations and body-worn cameras (4.5).** Do not enact a categorical exemption for investigative records; codify the existing standard, which allows withholding only on a particularized showing of harm. Provide that recordings and images of officers performing official duties are not confidential, and prohibit fees for reviewing, redacting or blurring body-worn camera recordings.
- **Retaliatory litigation (4.7).** Clarify and/or enhance existing immunity provisions such that the good-faith release of a public record is not actionable unless a statute specifically prohibits disclosure, and encourage prompt records production by restricting suits by the subjects of records to block their release.
- **Records without a request (4.8).** Post frequently requested records, final agency decisions and meeting materials online.

3. Findings and Evaluation

3.1 Current Exemptions to Chapter 239 of NRS

NRS 239.010(1) cross-references approximately 600 statutory provisions, many of which declare information confidential or otherwise affect access. The expansive scope of these exemptions is too voluminous for the PRTF to review in its limited time frame, but the provisions should be reviewed to determine which go too far providing for government secrecy.

The Government members have submitted a chart summarizing these provisions (Exhibit 1A). The chart describes its own summaries as "AI Generated Content – For Illustrative Purposes Only" and "Not a legal conclusion." The Transparency members checked 187 of its 593 entries against the statutes; of the 179 that could be verified, 118 were inaccurate, including entries that describe provisions requiring disclosure—such as NRS 239.0113, which places the burden of proof on the government—as confidentiality provisions. The chart should not be relied on as a description of Nevada law.

Recommendation: The Legislature should direct a comprehensive review of the provisions cross-referenced in NRS 239.010(1), with public notice and comment, to update, narrow or repeal any that go further than necessary or are obsolete. Any confidentiality provision retained or enacted should identify the specific information it protects, rather than whole records, and the harm that disclosure would cause.

3.2 Policies Relating to Review Boards (NRS 289.380 & 289.383)

Under Nevada law, any municipality may create a review board to receive citizen complaints against peace officers and to make certain recommendations about whether the officer has violated policies and, if so, whether the officer should be disciplined. To the best of the Transparency members' knowledge, only the City of Las Vegas and Clark County have created a review board, which is exclusively for the Las Vegas Metropolitan Police Department (LVMPD). This review

board is called the Citizen Review Board (CRB). Despite the unique nature of the CRB, the Task Force was asked to make recommendations regarding it. The Transparency members are concerned that this review of the CRB may be used to further undermine the already challenging environment of ensuring transparency regarding alleged misconduct by law enforcement.

By way of background, the CRB has limited ability to investigate claims of misconduct on its own. Therefore, any complaint received by the CRB is first sent to LVMPD and given to its own Internal Affairs Bureau (IAB). IAB gathers evidence, which typically includes interviews of both the officer accused of misconduct and any witness officers. Both types of officers must comply or face a claim of insubordination. Once IAB completes its investigation, if IAB issues a conclusion that a policy has been violated, LVMPD implements discipline according to its collective bargaining contracts. IAB also forwards its investigatory file to the CRB. At that point, the CRB can initiate its own hearings and eventually issue its own findings and recommendations.

According to NRS chapter 289, "[t]he findings and recommendation of a panel of the review board are public records unless otherwise declared confidential by state or federal law." NRS 289.387(9). The CRB publishes its findings and recommendations, which include the name of the officer.

Given the importance of public understanding of and oversight of police misconduct and how it is handled, the law should not be changed to make the process less transparent to the community.

Internal Affairs Investigations

Meaningful oversight by the CRB, and by the public, depends on access to the results of internal investigations. Importantly, arguments that municipal ordinances, collective bargaining agreements or anything other than a state statute can be used to create confidentiality not created by statute has been rejected by the Nevada Supreme Court. *See Comstock Residents Ass'n v. Lyon Cty. 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). This bedrock principle of Nevada transparency law should not be undermined.

Earlier in 2026, a three-justice panel of the Nevada Supreme Court held that NRS 289.080, "when read as a whole," makes information in a peace officer's internal investigative file confidential under the NPRA, "at least absent a law enforcement agency recommending adverse employment action." *ACLU of Nev. v. Clark Cnty. Sch. Dist.*, 142 Nev. Adv. Op. 24 (Mar. 26, 2026). Transparency advocates strongly disagree that the panel decision was correct, and many argued as amici that the en banc court should, therefore, reconsider the case. The en banc court has since granted that reconsideration. Nevertheless, law enforcement agencies are already citing

the panel's no-longer precedential decision to withhold internal affairs records wholesale. If the Nevada Supreme Court does not overturn the panel's incorrect decision, the Transparency members recommend that the Legislature make clear that these records are public.

The national trend is in the opposite direction from the one the government members support. For instance, since 2018, California (Penal Code § 832.7, as amended by SB 1421 and SB 16), New York (repeal of Civil Rights Law § 50-a in 2020), Maryland (Anton's Law, 2021) and Colorado have opened records of police misconduct and use of force to the public. Courts elsewhere have likewise rejected categorical officer-privacy objections to the release of disciplinary records. E.g., *WP Co. v. District of Columbia*, No. 2023-CAB-000951 (D.C. Super. Ct. Sept. 14, 2023) (ordering release of an officer's disciplinary file); *Human Rights Def. Ctr. v. U.S. Park Police*, No. 23-5236 (D.C. Cir. Jan. 24, 2025) (ordering release of names of officers involved in excessive-force settlements over "generic and conclusory" privacy objections).

Recommendation: Amend NRS 289.080 and NRS 289.387, if the Nevada Supreme Court makes it necessary, to provide that (1) the provisions governing an officer's access to an investigative file do not make that file confidential under the NPRA; (2) records of completed internal investigations of peace officers—including the complaint, the findings and any discipline imposed—are public records, subject to redaction of information made confidential by a specific statute; and (3) CRB findings and recommendations, including officer names and badge numbers, are public, as NRS 289.387(9) and the Nevada Supreme Court have recognized.

3.3 Impact of Broad Public Records Requests

During the Public Records Task Force meetings there were several government presenters that shared the sentiment that vague and overbroad requests unduly burden government, including the Urban Consortium, Nevada Municipal Clerks Association, Nevada Department of Transportation (NDOT), and each of the Task Force Government Representatives. Pat Cabrera, Chief Deputy Clerk, City of Las Vegas representing the Nevada Municipal Clerks Association, a statewide organization, explained that historically records were paper based, and today records are distributed amongst various e-databases, and cloud systems. This creates millions of records that did not exist before technological advances. Documents used to have to be hand-typed and stored in a physical filing cabinet organized by a topic, or document number and were formalized. Today, much communication takes place informally over email, and each is a record, or there are databases containing millions of datapoints of information that must be produced as a record if a query can produce it as a record. As an example, a requestor might ask for "all records related to X", which she claimed now requires a labor intensive search across, email, texts, and possibly tens if not hundreds of databases to search for all records that contain X to identify responsive records.

Heather Hahn from the Nevada Department of Transportation also presented about what

she says is the burden of overbroad and vexatious requests, claiming that some records requests severely hamper an agency's ability to respond to all records requests. Ms. Hahn claimed that vexatious requesters intentionally ask for broad, excessive, and repetitive records in an effort to overwhelm agencies known at the federal level as FOIA bombing. She did not identify any request as vexatious; the one series she described, 34 requests from a single requester (about 2% of NDOT's requests), was supported only by oral estimates. Ms. Hahn reported that between 2023 and 2025 NDOT experienced a 34% increase in records requests. NDOT projects 1680 requests in 2026 which represents 56% increase over 4 years without additional staffing or resources. Ms. Hahn stated that more and more requests appear to be written by AI where the approach is an over-broad format.

During the Task Force's meetings, none of the government presenters documented their sentiments with data or with requests the Task Force could examine. No discussion by the government presenters addressed the extent to which electronic searches for records are easier and more efficient than searches through paper copies. No specific evidence was provided of increased complexity, much less anything showing that the existence of electronic records and the fact that they are requested by the public increases any risks. Nothing in the NPRA conditions access on how a request was drafted, and a clearly written request—whatever tool was used to write it—is easier, not harder, to fulfill.

AB 128 directed the Task Force to evaluate "[t]he impact of broad requests for public records on governmental entities." During the Task Force's meetings, government presenters offered only oral estimates of that impact. After presentations closed, the Government members submitted a survey of 92 self-selected government entities (Exhibit 1C) and about 110 example requests (Exhibit 1G). Those materials confirm that most requests are routine. By the survey's own summary, "most requests are handled quickly": 71% of responding entities often give a final response within five business days, and 57% often handle requests in under an hour. Only 13 of the 92 entities track the staff hours they spend on public records; request volumes were reported in broad ranges, and 76 of the 92 reported no change in their range from 2023 to 2025. None of the example requests documents the staff hours spent responding to it.

The examples are instructive. Many are specific requests—a defined date range, named custodians, a single event—that agencies answered within days, and several were narrowed as soon as the agency asked, as NRS 239.0107(1)(c)(2) already requires. At least eight are not public records requests at all, but complaints, court filing notices and litigation-hold letters. A substantial share come from a handful of repeat requesters or from parties in litigation with the agency, using the NPRA in place of discovery. The Transparency members do not dispute that some requests are genuinely overbroad; the examples include a few. But a small number of outliers, drawn from entities that together handle many thousands of requests each year, is not a basis for new authority to deny, close or charge for requests—particularly when the existing duty

to assist, rolling production and the mediation process recommended in Section 3.6 address them.

In September 2026, after the Task Force had finished receiving presentations, the Government members designed a survey of government entities and a separate survey of law enforcement agencies and distributed them through the Office of the Attorney General. The questions were not reviewed by the Task Force in a public meeting, and no corresponding survey of requesters was conducted. The surveys are self-selected (recipients were "encouraged to further disseminate" them), so no response rate can be calculated; half of the 92 entity respondents are state agencies and only six are municipal. Most figures are estimates. The survey asked agencies about the burdens they experience and about proposals that would expand their own discretion, but not about missed deadlines, denials later found unlawful, or the fees they collect. The Transparency members welcome data—it is why the Transparency members recommend uniform reporting in Section 3.7—and have cited the survey's findings throughout this exhibit. But its results should be weighed by the same standard as any other evidence: requests counted, hours documented and specific examples identified.

The government presenters' own materials point the other way. The Urban Consortium—representing Las Vegas, Reno, Henderson, North Las Vegas and Sparks—told the Task Force that "[i]n our experience, a majority of public records requests are fulfilled quickly and at little to no cost" and that Nevada "has an effective public records law that functions as intended." Urban Consortium Presentation, slide 2. NDOT identified its real constraint as a lack of resources: "many agencies lack dedicated staff," and there is "[n]o enterprise-wide solution or shared resource at the state level." NDOT Presentation, slide 4.

The one controlled test presented to the Task Force shows that delay is driven by agency practice, not by the breadth of requests. On or about April 23, 2026, identical requests for an existing internal employee directory—expressly excluding personal contact information—were sent to three northern Nevada law enforcement agencies. One agency produced the directory in 18 days; it cited grounds for redaction, but no redactions appeared in the records it produced. A second took 75 days and four extensions to produce a directory that had been printed before the request was made. The third sent automated 30-day extension notices from an unmonitored email account for 96 days, then stated that it had no responsive records. McCarty Presentation (Sept. 29, 2026). A staff directory is the paradigm of a narrow request.

Other examples in the record are similar. A request to the Nevada Department of Administration for a single presentation and one month of emails of three employees went unfulfilled for more than 80 days through a series of missed, self-imposed deadlines. Conrad Presentation, slide 7. A university demanded that a student requester supply search terms and the names of custodians because it "employs over 8,000 individuals," and then reported that it had no responsive financial reports, contracts, minutes or agendas. EFF Presentation, slides 18–20. By contrast, Northern Nevada Public Health routinely fulfills students' requests for health

inspection records "before class is over." Id., slide 12. The difference is not the law; it is how agencies choose to comply with it.

Two of the three written comments submitted by governmental agencies were prepared in response to a June 1, 2026, request from the Office of the Attorney General, which circulated the government representatives' April materials to state agencies and solicited their input; one response stated that it had been generated with an artificial-intelligence tool "based strictly on the three documents you provided." These submissions restate the government representatives' position; they do not independently corroborate it.

Asserted problem	Evidence provided to the Task Force	What the record shows
Request volume is rising and overwhelming agencies	NDOT: 34% increase (2023–2025). Government survey: volumes reported in ranges; from 2023 to 2025, 15 of 92 entities moved to a higher range, 1 to a lower range, and 76 were unchanged.	Urban Consortium: most requests are "fulfilled quickly and at little to no cost." Survey: 71% of entities often respond within five business days.
Broad or "vexatious" requests require new controls	About 110 example requests submitted after presentations closed (Exhibit 1G). None documents staff hours; at least eight are not records requests.	Many examples were answered within days or narrowed on request. NRS 239.0107(1)(c)(2) already requires agencies to help focus requests.
Redaction is too costly without cost recovery	Estimates only; 13 of 92 surveyed entities track hours; about 75% redact by hand or in standard PDF software.	Charges range from $0 to $89 per hour for the same task; 75% of surveyed entities never charge for staff time; tools that cut redaction time are available.
Litigation is a significant burden	Oral assertions.	43 of 60 reporting entities had no petitions since 2023; none identified a retaliatory suit.
The five-day deadline is unrealistic	None.	Documented delays of 75, 80 and 96 days for simple, existing records.
Commercial and AI-driven "bulk" requests threaten privacy	$282 million figure describing revenue state DMVs earned by selling personal data—not public records requests.	No Nevada example of harm from a bulk request.
Releases harm victims and fair trials	One out-of-state case study.	Asked whether any Nevada conviction had been overturned because of records-based reporting, the presenter answered, "not that I'm aware of." No reported Nevada reversal for pretrial publicity.

The Transparency members therefore find no evidentiary basis for new authority to deny, close or charge for requests based on their breadth, on the identity or motive of the requester, or on the method used to draft them. Proposals to define and restrict "vexatious" requesters would invite denials based on who is asking, contrary to NRS 239.010(1)'s guarantee of access to "any person," and would give agencies a new tool for the very noncompliance documented above.

Recommendation: Avoid overly broad "vexatious requester," request-closure, mandatory-identification or "bot request" provisions. Instead, strengthen the existing duty to affirmatively

and meaningfully assist requesters to focus their requests: when an entity believes a request is unclear or unusually broad, require it to contact the requester within five business days, describe how the relevant records are kept, and propose specific search parameters; require rolling production of records as they are located; and provide that a request may not be denied, closed or deemed abandoned because of its size. The Legislature should also require each governmental entity to publish frequently requested records and datasets online, which reduces request volume at its source—a step the Municipal Clerks' Association itself recommended.

3.4 Cost, Burden, and Time Constraints for Redaction

Nevada law permits certain information to be kept confidential. Where it does, a governmental entity may not withhold the entire record; it must redact only that information and produce the rest. NRS 239.010(3). Redaction thus limits withholding; it does not require an entity to redact information it may lawfully release. Far too often, as discussed elsewhere, entities instead rely on legal bases that might permit redaction of particular information as an excuse to withhold records in their entirety. A number of government presenters said review and redaction is the most labor-intensive process in broad or complex records requests.

Recommendation: The Legislature should (1) appropriate funds for state-level redaction and records-management tools that local governments may also use; (2) create a technology working group of technology experts, public records staff, members of the public and members of the media to evaluate systems already in use, systems available for purchase, and opportunities to use government purchasing discounts; and (3) require training in the NPRA for records officers and the attorneys who advise them.

Government presenters also expressed concern about potential liability for releasing records. Nevada law already addresses that concern: "[a] public officer or employee who acts in good faith in disclosing or refusing to disclose information and the employer of the public officer or employee are immune from liability for damages, either to the requester or to the person whom the information concerns." NRS 239.012.

Government presenters asserted that redaction—particularly of video—is labor-intensive. The government members' survey confirms that most of this work is done by hand: about 75% of responding entities redact by hand or in standard PDF software, almost none use automated tools, and half have no employee whose primary duty is public records (Exhibit 1C, pp. 4, 8). Only 13 of the 92 entities track the staff hours they spend, so the time figures are estimates. Respondents themselves priced the tools that would help—request-tracking software at $7,500 to $35,000 a year and AI-assisted video redaction at about $50,000 for two licenses (id. p. 8)—and the vendor report the government members submitted states that AI-powered video redaction can "[c]ut processing time by up to 90%" (Granicus, 2025 Public Records Complexity Benchmark Report, p. 17). The one measured per-request figure in the written materials came from a national magazine article about a New Jersey town that received over 1,500 requests in one month requiring more than 300 hours of review—roughly 12 minutes per request. Jack Meserve, How routine police stops are becoming viral social media fodder, Vox (Nov. 28, 2025). The constraints the government presenters actually described are a lack of dedicated staff and modern tools. The answer to those constraints is investment—dedicated records staff, modern redaction software purchased at state volume pricing, and training so that governmental entities understand the law governing transparency—not shifting the cost of the government's legal obligations onto the public that owns the records.

3.5 Financial Burden on Requestors

Nevada does not provide a standardized fee schedule for public records requests. Different governmental entities have enacted their own fee schedule. Nevada law limits fees to the "actual cost" of providing a copy of a public record. NRS 239.052(1). "Actual cost" means "the direct cost incurred by a governmental entity in the provision of a public record," such as ink, toner, paper, media and postage, and does not include costs the entity incurs regardless of whether a request is made—such as the salaries of its employees. NRS 239.005(1).

The Task Force discovered that while some governmental entities do not charge for public records requests, others do and specific amounts and types of charges vary. Several law enforcement agencies charge hourly rates of up to $89 to review and redact body-worn camera footage, while other agencies charge nothing for the same work.

Perspectives and Recommendations on this issue are set forth below and under Standardized Fee Schedule in Section 4.

The fee survey compiled for the Task Force shows Nevada agencies charging hourly rates for research, review and redaction, including $89 per hour for body-worn camera redaction by LVMPD (LVMPD automatically charges 4 hours of review time at $89/hour for every 1 hour of BWC time), $75 per hour by Henderson, $45 per hour by Lyon County and $40 per hour by the North Las Vegas Police Department, while Boulder City charges nothing for body-worn camera redaction and $25 per hour only when requested research is extensive. LVMPD's schedule, as reported in 2022, listed research charges ranging from $40 to $288 per hour. A requester was reportedly quoted $2,000 to redact body-worn camera footage in Reno. The ACLU of Nevada reported that LVMPD bills requesters "thousands of dollars to cover[] the salaries of agency staff, an expense that LVMPD would incur whether or not the request was made." ACLU of Nevada Presentation, slide 11. The range—from nothing to $89 per hour for the same task—shows that these charges reflect policy choices, not actual cost.

The government members' own survey points the same way. Of 92 responding entities, 69 (75%) never charge for staff or attorney time and 43 (47%) charge no fees at all (Exhibit 1C, pp. 8–9); 12 of 14 law enforcement respondents never charge for staff time on body-worn camera requests (Exhibit 1H, p. 11). The fee schedules the government members submitted show charges for the same work ranging from nothing to $89 an hour, and per-page copy charges from one cent to one dollar (Exhibit 1F, pp. 3, 6, 8, 26, 38, 59, 71, 79). One agency still uses the 50-cents-per-page "extraordinary" fee the Legislature repealed in 2019 (id. p. 82), and one law enforcement respondent stated that agencies "need to charge enough to … generate revenue for the agency" (Exhibit 1H, p. 23)—precisely what the actual-cost limit forbids.

Government representatives' own statements support these points. The Office of the Attorney General does not charge fees for public records. LVMPD's representative explained that its $89 hourly charge reflects the cost of the commissioned personnel the department assigns to redact body-worn camera footage—a cost the agency incurs whether or not a particular request is made, and one NRS 239.005(1) therefore excludes. He also said that charging is important "to contain the number of requests," and acknowledged that many agencies charge for staff time after five to ten hours, a charge the NPRA does not authorize. The Chair of the State Bar of Nevada's Public Lawyers Section acknowledged that fees had at times been "really high and unreasonable."

The public has already paid for its records and for the salaries of the employees who keep them. Fees should be limited to the actual cost of the medium and delivery, as discussed under Standardized Fee Schedule below.

3.6 Dispute Resolution Mechanisms

Judicial intervention is the only dispute resolution mechanism presently contemplated under the NPRA for public records disputes. There are currently no alternative dispute resolution mechanisms discussed in NRS Chapter 239. The PRTF discussed multiple options for alternative dispute resolution mechanisms.

The PRTF heard a presentation from the Reporters Committee for Freedom of the Press which explained that about half of the states, the District of Columbia and the federal government have created an administrative appeal process, and recommended an independent, impartial, and empowered ombuds-office to administratively review records request disputes. The Reporters Committee pointed to Connecticut and Illinois as notable examples.

Below are examples in other states:

Arizona: An independent ombudsman, a legislative agency independent of the Governor and Attorney General's Office. *See* Arizona Ombudsman-Citizen's Aide, Arizona Public Records Law Booklet (June 2025), *available at* https://www.azoca.gov/wp-content/uploads/2025-Public-Records-Law-Booklet.pdf. The Ombudsman is statutorily authorized to investigate complaints relating to public access laws, request testimony or evidence, issue subpoenas, conduct hearings, make recommendations, and report misconduct. *Id.* at 51.

Connecticut: Freedom of Information Commission (FOIC) is a public body comprising nine members. Conn. Gen. Stat. § 1-200 *et. seq*. One member is appointed by the President Pro Tempore of the Senate, one by the Minority Leader of the Senate, one by the Speaker of the House of Representatives, and one by the Minority Leader of the House of Representatives. These members serve two-year terms. Conn. Gen. Stat. § 1-205. The remaining five members are appointed by the Governor, with the advice and consent of either house of the General Assembly to four-year terms. *Id.* The Commission handles complaints, conducts hearings, issues binding decisions, and can order agencies to release records. Conn. Gen. Stat. § 1-206.

Iowa: Iowa Public Information Board (IPIB) is an independent board consisting of nine members created specifically to oversee open meetings and records compliance. Iowa Code § 23.1 et seq. Members are appointed by the governor and confirmed by the senate, with representatives from media, government, and the public. Iowa Code § 23.3. Members serve four-year terms and at the call of the chair. *Id.* Most complaint investigations are handled by IPIB's Executive Director and staff attorneys. It investigates complaints, issues advisory opinions, and can enforce compliance, provides training and mediates disputes. Iowa Code § 23.6.

Ohio: Public Records Mediation Program (Ohio Court of Claims). Ohio essentially has a mandatory mediation for public records lawsuits that has a low fee. Ohio Rev.Code. § 2743.75;

Ohio Court of Claims, Public Records Frequently Asked Questions, *available at* https://ohiocourtofclaims.gov/public-records/. If mediation does not resolve the dispute, the complaint is assigned to a special master for a formal legal ruling. *Id.*

Oregon: Public Records Advocate & Public Records Advisory Council. The PRAC consists of twelve bipartisan public records experts representing state and local governments, the media, the public, and public sector workforce. Ore. Rev. Stat. § 192.481. Most members are appointed by the Governor with Senate confirmation. *Id.* Agency and legislative members are appointed by their respective leaders. *Id.* The PRAC then appoints an Advocate for a four-year team. O.R. S. § 192.461. The Advocate acts as a neutral mediator between agencies and requesters, reviews disputes, advises agencies, and oversees training. *Id.*

Utah: State Records Committee (recently replaced by an ombudsman). The State Records Committee was established in 1992 and consisted of volunteer members who had two purposes: reviewing retention schedules for approval and hearing record access appeals. *See* Rebecca Shaw, Division of Archives and Records Services, The State Records Committee Through the Years (May 7, 2025), *available at* https://archives.utah.gov/2025/05/07/the-state-records-committee-through-the-years/. In 2013, the Government Records Ombudsman was created, and in 2015, the Open Records Portal was launched which created a central place records request submissions. *Id.* In 2025, legislation replaced the Committee with a new office led by a director and staffed by an attorney housed within the Division of Archives and Records Service. *Id.*

Illinois: Public Access Counselor. Office within the Attorney General's Office that works to ensure compliance with Illinois open meeting and public records laws. 5 Ill. Comp. Stat. § 140/9.5, *See Public Access Counselor*. The Public Access Counselor mediates public records disputes, issues binding opinions, and provides training and education. *Id.*

Tennessee: "If a person makes a request to view or copy a public record with the intent to disrupt government operations, the records custodian charged with fulfilling the request may petition a court of record of competent jurisdiction for an order to enjoin the person from making records requests. Tenn. Code Ann. § 10-7-503(a)(7)(C).

The concept of an Ombudsperson or Ombuds Panel carries great promise to expedite the resolution of public records request disputes. The manner in which any Ombuds office is established is important, and includes fiscal impacts that are best addressed by the Legislature. The structure is even more important. If an ombuds system is put in place, it must be done in a manner that does not provide governmental entities the ability to delay the provision of records, increase the cost of receiving records, drag requesters into court or limit the available court remedies for requesters who choose to go to court, whether before, during or after the ombuds process.

Under current law, a member of the public who believes a governmental entity has improperly denied, delayed, redacted or overcharged for public records has no practical recourse other than a lawsuit. That

remedy is expensive and slow for requesters, and it is expensive for governmental entities as well. Both requesters and governmental entities asked the Task Force to recommend a path short of litigation.

Drawing on other systems already operating, the Transparency members recommend a small, independent office that would work as follows:

- **Mediation Focus**. The office should provide an opportunity to mediate public records disputes in a neutral forum. Mediations should occur expeditiously with a goal of reaching a mutually satisfactory result on any public records disputes.
- **Voluntary for the requester; mandatory for the government.** A requester may seek mediation of a denial, excessive redaction, unreasonable delay, incomplete production, improper fee or any dispute over access. Once a requester invokes the process, the governmental entity must participate. The process is free to the requester, the requester may end the process at any time, and no requester is required to use it or complete it before going to court. The burden remains on the governmental entity to justify its positions.
- **Protection for fees and deadlines.** Participation does not extend any deadline under NRS 239.0107, waive or reduce the requester's right to attorney's fees and costs under NRS 239.011, or start or run any limitations period.
- **Fast.** The governmental entity must provide its legal and factual justifications within 5 business days; the requester may respond but is not required to. The Ombudsperson should hold a mediation within 10 business days of the request to mediate. The parties to a mediation may mutually agree to treat the result of the mediation as binding. If the dispute is not resolved to the requester's satisfaction, the requester may proceed with litigation or invoke any rights the requester may have.
- **Independent.** The Ombudsperson or Ombuds Panel should consist of a Nevada attorney or attorneys appointed by the Justices of the Nevada Supreme Court. The office should be based within the judicial branch of the state government. Appointees should serve 6 year terms with removal only for good cause.
- **Additional duties.** The Ombudsperson would also provide training and guidance, adopt the uniform fee schedule and reporting form recommended in this report, and publish an annual report on compliance.

The principal feature distinguishing this model from those in other states is requester-controlled finality: the requester decides whether to use the process and whether to accept its result. That design ensures the process cannot become another source of delay, preserves the requester's right to go to court with fee-shifting intact, and is consistent with the NPRA's intentional design of and Nevada's commitment to favoring requesters and transparency.

3.7 Methods for Collecting and Sharing Data Related to Public Records Requests

Currently, the NPRA does not require governmental entities in Nevada to collect or share data related to public records requests, such as request volume, response times, denials, or fees.[2] The

lack of reporting is consistent with a majority of other states. However, multiple states and the federal government provide models for various types of data collection and reporting.

Texas: School districts must post the cost of responding to requests exceeding 200 pages in a 90-day period and report annually to the Texas Education Agency. V.T.C.A., Education Code § 11.1512.

Washington: To improve best practices for dissemination of public records, annual legislative reports are required for agencies with at least $100,000 in annual staff and legal costs for records requests. Smaller agencies may voluntarily report. 15 statutory performance metrics are identified for reporting, including:

- The number of requests where the agency provided the requested records within five days of receiving the request.
- The number of requests where the agency provided a time estimate for providing responsive records beyond five days after receiving the request.
- The average and median number of days from receipt of request to the date the request is closed.
- The number of requests where the agency formally sought additional clarification from the requestor;
- The number of requests denied in full or in part and the most common reasons for denying requests;
- The number of requests abandoned by requestors;
- To the extent the information is known by the agency, requests by type of requestor, including individuals, law firms, organizations, insurers, governments, incarcerated persons, the media, anonymous requestors, current or former employees, and others;
- Which portion of requests were fulfilled electronically compared to requests fulfilled by physical records;
- The number of requests where the agency scanned physical records electronically to fulfill disclosure;

- The total estimated agency staff time spent on each individual request;

[2] The NPRA requires annual reporting to the Legislative Council Bureau of records deemed confidential because they contain personally identifiable information collected online. NRS 239.014.

- The estimated costs incurred by the agency in fulfilling records requests, including costs for staff compensation and legal review, and a measure of the average cost per request;
- The number of claims filed alleging a statutory violation involving the agency, categorized by type and exemption at issue, if applicable;
- The costs incurred by the agency litigating claims alleging a violation of public records statutes in the past year, including any penalties imposed on the agency;
- The costs incurred by the agency with managing and retaining records, including staff compensation and purchases of equipment, hardware, software, and services to manage and retain public records; and
- Expenses recovered by the agency from requestors for fulfilling public records requests, including any customized service charges.

West Virginia: Each public body reports the result of every request to the Secretary of State's public online database. Reporting includes the nature of the public body's response, whether the request was granted, and if not, the exemption asserted to deny the request, the time-frame was necessary to comply with the request; and the amount of reimbursement charged to the requester. W. Va. Code § 29B-1-3, § 29B-1-3a.

Indiana: Public agencies are required to coordinate with a public access counselor to track and report the volume and nature of public records requests received; and identify patterns or sources of excessive, automated, phishing related, or data scraping based public records requests. Ind. Code § 5-14-4-10. To timely identify such patterns or sources, public agencies report within seven days of receipt any public records request that is suspected by the public agency of being: (1) automated; or (2) data scraping or phishing activity.[3] Ind. Code § 5-14-3-11. Notably, Indiana law permits a public agency to decline responding to a request when it suspects the request is data scraping or phishing activity, or when it suspects that responding electronically could expose its electronic systems or data to unauthorized access or alteration, or otherwise jeopardize their security. Ind. Code § 5-14-3-3.3(b).

Montana: To document the impacts and process associated with compliance with public records requests, the executive, legislative, and judicial branches report quarterly to a legislative committee the number of requests, requester identity, information requested, date, and status. Mont. Code § 5-12-209 (2025). For completed requests, the report includes compliance date,

[3] Indiana law defines "data scraping" as "use of an automated system to extract data from websites and other Internet accessible sources." Ind. Code § 5-14-3-2(d). "Phishing" is defined as:

> a method of obtaining information through fraud in which the sender of a communication intentionally misrepresents the identity of the sender in order to induce the recipient of the communication to: (1) divulge the information to the sender; or (2) take an action that allows the sender access to the information.

Ind. Code § 5-14-3-2(p).

hours, and costs charged. *Id*. Open requests carry forward to later reports. *Id*. Requests about specific persons or property, and requests for information already online, are excluded. *Id*. State agencies other than local governments must also publish statistics online annually, including: number of requests, response times, and the requests and responses themselves. Mont. Code § 2-6-1006(e) (2025).

Massachusetts: A supervisor of public records takes necessary measures to put government records in the condition required by law and to secure their preservation. Mass. Gen. Laws Ch. 66 § 1. Each records access officer documents uniform criteria for every request:

- the nature of the request and the date;
- the dates on which a request was received, a response is provided to the requestor, and a public record is provided to the requestor;
- the number of hours required to fulfill the request;
- fees charged to the person making the request, if any;
- agency petitions to the supervisor of public records seeking to charge for time spent segregating or redacting, or to charge in excess of $25 per hour if the request is (A) for a "commercial purpose," or (B) the fee is necessary, proposed in good faith, and not designed to limit, deter or prevent access to requested public records;
- requester petitions to the supervisor of public records for a determination that an agency violated public records laws;
- the time required to comply with supervisor of records orders; and
- the final adjudication of any court proceedings.

Mass. Gen. Laws Ch. 66 § 6A. The Secretary of the Commonwealth collects the data annually, posts it online, and reports it to the House and Senate clerks. *Id*.

District of Columbia: Annual agency reports include: the number of requests received and processed; denials and reasons; appeals, results, and reasons; median processing days; counts processed in 15 days or less, 16–25 days, and 26+ days; fees collected and fees waived; staff hours and total cost; number of times each exemption was invoked; names and titles of officials responsible for denials; and employees convicted of records-law misdemeanors. D.C. Code § 2-538.

Federal Government: Each federal agency is required to submit an annual report to the Attorney General and the Director of the Office of Government Information Services by February 1, covering the preceding fiscal year. The comprehensive report must include information including:

- The number of requests received and processed.
- The number of determinations to deny records requests and the reasons for each.
- The number of administrative appeals, their outcomes, and reasons for any denials.

- The number of times requests were denied under law enforcement exclusions.
- The average, median, and range of days to respond to requests and provide records.
- The number of full-time staff devoted to processing requests and the total amount expended for staff time.
- The total amount of fees collected for processing requests.
- The number of fee waiver requests granted or denied, and the time taken to decide them.

Recommendation: The Legislature should amend the NPRA to require each governmental entity in Nevada to report annually on how it handles public records requests, using one standard form. The Nevada State Library, Archives and Public Records or the public records ombudsperson should adopt the form after public notice and comment, review it at least annually, and publish the reports it receives in one place online. The form should require, at a minimum:

- **Volume:** the number of requests received and the number processed during the reporting period.
- **Timeliness:** the average, median and range of days to respond to requests and to provide records.
- **Extensions:** the number of requests for which the entity extended its response beyond five business days, the number extended more than once, and the number for which records were not provided by the date the entity first gave.
- **Clarification:** the number of requests for which the entity formally sought clarification from the requester.
- **Denials:** the number of requests denied in full or in part, and the most common legal grounds relied on.
- **Abandoned requests:** the number of requests abandoned by requesters.
- **Staffing and cost:** the number of full-time-equivalent staff who process requests, and the total amount spent on staff time.
- **Fees:** the total amount of fees collected, and the number of fee-waiver requests granted and denied, along with the time taken to decide them.
- **Requester type:** to the extent the entity knows it, requests by type of requester, including individuals, law firms, organizations, insurers, governments, incarcerated persons, the media, anonymous requesters, current or former employees, and others.
- **Disputes:** the number of matters submitted to the Ombudsperson or Ombuds Panel, the number of petitions filed under NRS 239.011, the outcome of each, and the amount of attorney's fees and costs paid to requesters and spent on outside counsel.

The designated body should also define the terms used on the form, including the reporting period, when a request is "received" and when it is "closed," whether days are counted as

business days or calendar days, and what makes a request "abandoned," so that entities report consistently.

The government members' survey illustrates the need: only 13 of 92 responding entities track staff hours, and 74 identified metrics that would help them manage their own work (Exhibit 1C, pp. 2, 12). Because many entities report they would need new systems or staff to report (id. p. 12), the requirement should be phased in and funded, beginning with entities above a request threshold, as Washington does.

- Indiana's practice of declining requests it suspects are data scraping should not be copied; any reporting of request types should serve data collection only, never as a basis to delay or deny a request.

4. Recommendations

4.1 Clarification of Custodianship and Control

NPRA requires the governmental entity with "legal custody or control" of a record to respond to a requestor, NRS 239.0107, but Chapter 239 does not provide a supply a definition of "legal custody or control". The Nevada Administrative Code, which cannot be used to reduce the scope of the NPRA (*see Comstock Residents Ass'n v. Lyon Cty. 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)) defines "legal custody" as "all rights and responsibilities of access to and maintenance of a record which are vested in" an office or department of a local governmental entity or state agency "and with the official or head" of the department or state agency "charged with the care, custody and control of that record." NAC 239.041, 239.620. Under that definition, a record is in the legal custody of a governmental entity, if, among other things, the governmental entity has the right to access the record, the responsibility to access the record, the right to maintain the record or the responsibility to maintain a record. The Nevada Supreme Court has held that a government entity is not deprived of "legal control" over records even when the entity contracts with a private company to provide public services and the contract indicates the company could generate the requested records and provide them to the entity for disclosure. *Las Vegas Metro. Police Dep't v. Blackjack Bonding, Inc*., 131 Nev. 80, 86–87, 343 P.3d 608, 613 (2015); *see also Comstock Residents Ass'n v. Lyon Cnty. Bd. of Comm'rs*, 134 Nev. 142, 147–48, 414 P.3d 318, 323 (2018) ("a record within the possession of a private entity may still constitute a public record subject to disclosure upon request") (citing NRS 239.001(4)). And, as seen from

the quote above from *Comstock Residents Ass'n v. Lyon Cnty. Bd. of Comm'rs*, the Nevada Supreme Court equates possession with custody and control, which is consistent with the approach suggested by the NAC.

The definition of "custodian of records" as it is used in NRS 239.121 includes any person authorized to have the care, custody and control of any documents, instruments, papers, books, pamphlets or any other records or writings of a local governmental entity.

Even though, as the authority above shows, governmental entities cannot avoid providing records in their possession to which they have access, governmental entities routinely claim they will not provide the records because those records may also be in the possession of or may have originated from some other governmental entity. Thus, while the law is clear, the recalcitrance of governmental entities suggests greater clarity from the Legislature would be beneficial to ensuring transparency of Nevada government.

Recommendations

- The Legislature should amend the NPRA to clarify that each governmental entity in possession, custody or control of a record must provide it upon request unless a statutory exemption or balancing test applicable to that entity makes it confidential, and that a record does not lose its public character because it was received from another governmental entity, a contractor or a member of the public (or any other source for that matter), or because it is kept on a personal device or account. When records may exist on an officer's or employee's personal device or account, the entity should be required to obtain a sworn statement describing the search.

- The Transparency members do not support the "incidental custody" proposal: a record does not cease to be a public record of the entity that holds it because it was received as a courtesy copy or "belongs to another governmental entity or person."

Government Contractors

Nevada law does not currently address contract requirements for individuals, partnerships, corporations, or business entities who enter into a contract for services with a public agency responsible for public records.

Recommendation: Nevada law should require public service contracts to include a provision that requires the contractor to comply with Nevada public records law, and address preservation, transparency, production and transfer of records when a contract ends.

Public Records Act Compliance Coordination

It's often unclear who is behind an online public records request portal. When citizens are unsure how to submit a request, or which office to physically go to for inquiries, they want to speak to an employee of the agency.

Recommendation: Nevada law should require every governmental entity to provide:

- The name and title of its public records officer, and a backup contact
- The officer's contact information
- The agency's physical office location to make public records requests, in addition to its online submission method
- A description of the types of records the agency maintains, so that requesters can identify the correct agency

4.2 Protection of Personally Identifying Information and Transparency

NRS 239.001 declares that public records law must be liberally construed to promote prompt access, places the burden of proving confidentiality on the government, and prohibits denying an entire record when confidential information can be redacted. Any reform should preserve and strengthen these principles.

Recommendations

- **Definition of Personal Identifying Information**. The Legislature should establish a uniform statewide definition of "personal identifying information" that addresses the few categories of information that may be universally withheld. Other data will still be protected to the extent necessary by targeted, specific legislation rather than blanket secrecy.
- **Codify a Privacy Test**. As discussed in Section 2.2, the *CCSD* privacy test was intended to "cohere[]" with NRS 239.0113's placement of the burden on the government, but in practice it has been invoked to shift that burden to requesters on the strength of an unsupported assertion that a privacy interest exists. The Legislature can restore the balance it struck in NRS 239.001 and 239.0113 without disturbing genuine privacy protections by codifying the privacy test with the following guardrails: (1) a governmental entity asserting a privacy interest must first prove, with particularized evidence, that disclosure of specific information would cause a significant invasion of personal privacy; (2) a public interest in understanding the operations of government or the conduct of public officers and employees satisfies the requester's showing, if one is necessary; (3) the entity bears the ultimate burden of proving that the privacy interest clearly outweighs the public interest, both the presumed interest and any additional ones relevant to the particular records in question, consistent with NRS 239.0113 and *Gibbons*; (4) the remedy is redaction of the specific information, never withholding of the entire record; and (5) public officers and employees have no protectable privacy interest in their names, titles, compensation, work contact information, official conduct, or any misconduct or allegations of misconduct.
- **Personnel Records**. Nevada has no general "personnel records" exemption, and an agency's internal regulations cannot create one. *CCSD*, 134 Nev. at 704, 429 P.3d at 318. The Transparency members do not recommend creating one. Specific sensitive information within personnel files is already protected by specific statutes or by redaction under a balancing test, while records of official conduct, investigations and discipline are exactly what the public needs in order to evaluate its government.
- **Victims of Crime**. The NPRA already provides the tools to protect the privacy of victims:

information that would identify or locate a victim, and graphic images whose release would cause a significant invasion of personal privacy, may be redacted under a balancing test when necessary, see NRS 239.010(3), and specific statutes protect particular categories of victim information. The Task Force received no evidence of any instance in which a release under the NPRA harmed a victim in Nevada.

Moreover, the assertion that Marsy's Law, Art. 1, § 8A of the Nevada Constitution established new restrictions to public access to investigative and court records is simply misplaced. Section 1(d) of Marsy's Law expressly prohibits the disclosure of records to the defendant which could be used to locate or harass the victim or the victim's family. It does not, nor was it intended to, circumvent the NPRA. Indeed, the Marsy's Law website specifically addresses this point under Frequently Asked Questions. In a video titled, "Does Marsy's Law Impact Court Records Being Made Public?," Former Federal Judge Paul Cassell explains that other than a victim's name or locating information, "records involving the crime and involving the case are generally available as they had been before Marsy's Law." See https://www.marsyslaw.us/faqs.

Do not create new categorical exemptions for victim-related records, which would sweep in records of how law enforcement handled victims' cases.

Bulk Data Requests

Historically, a public record would be available at a government agency counter. The public could inspect the record, journalists could investigate it, and residents could hold officials accountable. However, more and more agencies are digitizing public records. Technical advances make information discoverable from great distances at speed and scale, thus increasing transparency and the ease and reduced expense of obtaining public records.

Recommendations

Bulk and dataset requests are among the most valuable uses of the NPRA. Examples in the Task Force record include the Reno Gazette-Journal's analysis of Public Employees' Retirement System data, which showed that the practice of "double-dipping" was more widespread than believed; the Nevada Policy Research Institute's request for PERS database information, which the Nevada Supreme Court held must be produced, *PERS v. Nev. Policy Research Inst.*, 134 Nev. 669, 429 P.3d 280 (2018); five years of autopsy reports of children who died in Clark County, which revealed deaths of children under the supervision of the child-welfare system, *see Coroner's Office*, 136 Nev. 44; and student analyses of drone flight data and of deaths of unhoused people in Clark County. Each depended on access to records in bulk.

It is not clear that Nevada could preserve the legal right to inspect and obtain records while barring bulk data requests. For example, if the definition of a "bulk request" included any request that seeks "all or a substantial portion of a structured electronic dataset," it would open the door to governmental entities claiming that a request applied to a particular dataset and rejecting it on those grounds. In addition, as set forth above, true bulk requests have proven vitally important to Nevadans' understanding and oversight of government.

The Transparency members considered whether any narrowly tailored measure could address concerns about commercial exploitation of personal data without restricting public access. The most promising approaches regulate the misuse of data rather than the public's access to it. Those laws already exist and are sufficient. For example, NRS Chapter 603A already governs the "Security and Privacy of Personal Information." Additionally, governmental entities can reduce request volume by proactively publishing datasets from which sensitive identifiers have been removed. Measures that condition access on a requester's identity or purpose, or that impose contractual restrictions on what a requester may do with public records, would invite abuse and raise serious constitutional concerns.

Even the vendor report the government members submitted advises: "Do not make requester purpose a condition of access where the law does not allow it," and "Do not make lawful access depend on government deciding whether a requester is sincere, adversarial, commercial or politically motivated." Granicus, Public Records as a Public Service 15, 22 (Sept. 2026).

- Do not create a separate "bulk data" category, require dissemination agreements, or require requesters to attest to the purpose of a request. Misuse of personal information, if any, can be dealt with through the laws governing its sale, and governmental entities should be encouraged to publish datasets proactively with sensitive identifiers removed.

- The Transparency members oppose authority to demand records from any person in "illegal possession" of them; the phrase is undefined and could reach journalists and members of the public who lawfully received records from a source or through an agency's own mistaken release. It would be bad policy and, in many instances, unconstitutional.

4.3 Criteria for Granting or Denying Access

NRS 239.001 requires exemptions and balancing tests to be construed narrowly. NRS 239.0113 also places the burden on the government agency to prove confidentiality by a preponderance of the evidence when confidentiality is disputed. Nevada does not require a foreseeable-harm determination each time an agency relies on a discretionary exemption, because Nevada's standard is already more demanding: an agency must prove either that a specific statute makes the information confidential or that its interest in nondisclosure clearly outweighs the public's interest in access, and any doubt must be resolved in favor of access. The federal FOIA's foreseeable-harm requirement was adopted to strengthen a statute that is less protective of access than the NPRA, and it should not be imported into Nevada law in any way that would dilute Nevada's standards.

Recommendations

- Codify the standards the Nevada Supreme Court has already announced for denials, so that governmental entities apply them when they respond to requests rather than after litigation begins: (1) a denial must identify each record or category of records withheld, cite the specific statute or other authority for each record or portion of a record withheld, and explain how the legal authority applies to the particular information in question, *Gibbons*, 127 Nev. at 884–85, 266 P.3d at 630–31; (2) when a record is redacted, the entity must identify the redactions and the authority for each and explain why further segregation is not feasible; (3) a denial that relies on boilerplate, string citations or an exemption that does not exist, such as a general "ongoing investigation" or "personnel records" exemption, is a denial without lawful basis; (4) grounds for withholding that protect only the entity's own interests and are not asserted in the entity's initial and timely written response are waived, while statutes protecting the confidentiality of third parties are preserved, see *Coroner's*

Office, 136 Nev. at 48–50, 458 P.3d at 1053–54 (relying on the Legislature's silence on waiver); (5) no ordinance, regulation, policy, contract or collective bargaining agreement (or anything other than state statute) may make a record confidential; and (6) an exemption, statutory or by balancing test, permits, but does not require, withholding unless a statute expressly prohibits disclosure.

- The Transparency members do not support allowing an agency to deny a request it "suspects" is data scraping or phishing; suspicion is not a statutory exemption, and should not become one. NRS 239.010(1) guarantees access to "any person," and any genuine threat to an agency's systems can be addressed through the manner of production rather than by denying access.

- The Transparency members also oppose requiring an affidavit that records will not be used to train an AI model or for a commercial purpose; NRS 239.010(1) makes records available to "any person" without regard to purpose. See also Section 4.2 (quoting the government members' own vendor source).

4.4 Penalties for Delayed or Incomplete Responses

The NPRA currently contains provisions for delayed or incomplete responses.

First, the NPRA allows a requester to initiate a lawsuit whenever a request is "denied or unreasonably delayed or if a person who requests a copy of a public book or record believes that the fee charged by the governmental entity for providing the copy of the public book or record is excessive or improper." NRS 239.011(1). Whenever the requester "prevails," in such a lawsuit, the requester is entitled to recover its reasonable attorneys' fees and costs. NRS 239.011(2). This includes any fees or costs incurred due to an appeal. NRS 239.011(3). Case law has clarified that a requester "prevails" for purposes of this statute whenever they "succeed on any significant issue." *Las Vegas Metro. Police Dep't v. Blackjack Bonding*, 131 Nev. 80, 343 P.3d 608 (2015).

If a government agency "willfully fail[s] to comply with the [NPRA], the court must impose on the governmental entity a civil penalty of:

(a) For a first violation within a 10-year period, $1,000.

(b) For a second violation within a 10-year period, $5,000.

(c) For a third or subsequent violation within a 10-year period, $10,000."

NRS 239.340(1).

Despite these provisions, governmental entities continue to withhold records or portions of records that are not confidential and miss the deadlines the NPRA requires, often repeatedly, and civil penalties have

proven difficult to obtain because the statute does not define "willful." See *Apgar*, 526 P.3d at 739–40 & n.9 (remanding for a determination of willfulness); *Las Vegas Metro. Police Dep't v. Las Vegas Review-Journal, Inc.*, Nos. 82867, 83430, 84308, 2023 WL 5341113, at *3 (Nev. Aug. 18, 2023) (unpublished order) (affirming denial of penalties without prejudice). Examples presented to the Task Force include:*

- Identical requests for an existing employee directory took three law enforcement agencies 18, 75 and 96 days to answer; the agency that took 96 days sent automated extension notices and then reported that it had no responsive records.
- A request to the Nevada Department of Administration for a presentation and one month of emails of three employees went more than 80 days through a series of missed, self-imposed deadlines without production.
- A college asserted that it may take "as many as 30 business days" to respond, and denied a request 32 days after receiving it.
- Requests to the Secretary of State for sports-agent filings went unfulfilled for more than a year, until the requesters complained.
- The ACLU of Nevada reported that the Department of Motor Vehicles produced 7 of 110 responsive documents, explaining in part that the request was "duplicative."
- In the investigation underlying *Apgar*, a police department told a requester that the file "pertain[ed] to an open criminal investigation" a year after the investigation had closed. 526 P.3d at 729.

Noncompliance carries real costs for taxpayers. In just the handful of cases presented to the Task Force, courts ordered governmental entities to pay more than $1.2 million in requesters' attorney's fees: more than $330,000 (juvenile autopsy reports), $620,000 (records of the Alpine Motel fire and of a state trooper investigation), more than $125,000 (records concerning a school district trustee), $96,000 (a rural general improvement district) and $40,000 (a school district). Cook Presentation, slide 13; Conrad Presentation, slides 3–4. As one presenter put it, "Governments are not being sued over the release of potentially confidential information; governments are being sued for not following the NPRA." Cook Presentation, slide 14.

Recommendation: Make the NPRA's deadlines enforceable:

- **Substantive response.** As expeditiously as possible, but in no event more than five business days, an entity must produce records that are readily available (building on NRS 239.0107(2), which already requires that readily available records be provided "as expeditiously as practicable") and, for any remaining records, give a written, good-faith estimate of when they will be produced that is specific to the request, with a clear burden on the governmental entity to establish that it cannot produce the records within five business days. Automated or form extension notices do not satisfy any of these requirements.
- **Outer limit.** Absent the requester's written agreement , a resolution reached in the ombuds process, or a court order, all nonconfidential records must be produced within 30 business days after the request, with rolling production of records as they become available.
- **Deemed denial.** Failure to meet a statutory deadline or the entity's own estimate is a denial for

purposes of NRS 239.011 and the Ombudsperson process.

- **No fees when late.** An entity that misses a statutory deadline or its own estimate may not charge any fee for the request.
- **Define "willful."** A violation is willful if the governmental entity knew or reasonably should have known that its conduct violated this chapter. Without limiting that standard, a violation is willful if the entity fails to respond within the statutory deadlines; denies a request without citing specific legal authority; asserts an exemption that does not exist or misstates the status of an investigation; fails to comply with a court order or with a resolution it agreed to in the ombuds process; or destroys a record that is the subject of a pending request. Bad faith is not required. Add a daily penalty, payable to the requester, for each day an entity fails to comply with a court order or with a resolution it agreed to in the ombuds process.
- **Preserve requested records.** Records that are the subject of a pending request or dispute may not be destroyed under a retention schedule, and an entity that reports that no responsive records exist must describe the search it performed.
- **Faster courts.** Extend the priority NRS 239.011 gives public records cases to appeals, as well, exempt those appeals from the settlement conference program, and replace the current mandamus procedure with a self-contained summary procedure: on filing, the court would order the entity to produce the records or show cause within a short period.

4.5 Protocols to Protect Criminal Investigations

The Task Force spent considerable time discussing criminal records. A number of presenters claimed, without support, that providing public records related to ongoing and active criminal investigations and trials jeopardizes law enforcement interests, privacy rights, and the rights of criminal defendants to a fair trial. No Nevada example supporting any one of these problems was provided. Many states have public records acts that are not designed to protect transparency with the robustness that Nevada does. Such acts should not be considered by Nevada, and transparency related to law enforcement should be strengthened not undermined.

Testimony by transparency advocates and government watchdogs explained the necessary role such access plays in Nevada.

For example, the Review-Journal's executive editor described reporting made possible by law enforcement records, including coverage of police shootings that led to reforms and the investigation of the Alpine Motel fire, and testified that police routinely cite "ongoing investigations" to withhold records "for months and beyond." Cook Presentation, slides 11–12. The Reporters Committee explained that records about the Alpine Motel showed it "had not been inspected by fire officials in the 32 months leading up to" the fire, reporting that prompted citywide code-enforcement reforms. RCFP Testimony at 2–3.

Advocates for greater law enforcement secrecy asserted as a reason for their recommendations

the purported need to protect the rights of criminal defendants. However, the Transparency members are aware of no reported decision of the Nevada Supreme Court or any federal court reversing a Nevada conviction because pretrial publicity deprived the defendant of a fair trial—including in Nevada's most heavily publicized cases. *See, e.g.*, *Gallego v. State*, 101 Nev. 782, 711 P.2d 856 (1985); *Sonner v. State*, 112 Nev. 1328, 930 P.2d 707 (1996). As the United States Supreme Court has explained, "pretrial publicity—even pervasive, adverse publicity—does not inevitably lead to an unfair trial," *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 554 (1976), and trial courts have effective tools to protect a defendant's rights, including careful voir dire, continuances, a change of venue under NRS 174.455, jury instructions and, where truly necessary, targeted orders. The Transparency members recommend that the Legislature not change the law to undermine transparency as a result of law enforcement creating controversy by claiming the power to withhold records the law does not allow to be withheld. The law should not be changed to retroactively validate the withholding of records that are not confidential under current law.

Nor does the disclosure of criminal justice records violate the constitutional rights of the persons named in them. Reputation alone is not a liberty or property interest protected by the Due Process Clause, *Paul v. Davis*, 424 U.S. 693, 712–13 (1976), and there is "no constitutional right to privacy in one's criminal record." *Cline v. Rogers*, 87 F.3d 176, 179 (6th Cir. 1996).

The government proposal suggested that disclosing investigative files concerning persons who were never arrested may violate due process, citing *Houston v. Maricopa County*, 116 F.4th 935 (9th Cir. 2024). *Houston* does not support that conclusion. It addressed a sheriff's practice of proactively posting arrestees' booking photographs and personal details on a public website; the county did not defend that practice on appeal as compliance with the public records law, and the court expressly distinguished public records requests, noting that the plaintiff, "unlike the news station in Scottsdale, is not requesting records." *Id.* at nn.6–7. Indeed, the court faulted the postings for omitting information about the government's own conduct, such as the names of the arresting officers, the arresting agency and whether charges were pursued. *Id.* Thus, this case stands for greater access to records, not less. Where an investigation of a person who was never charged implicates a genuine privacy interest, existing law already permits targeted redaction of identifying information; it does not justify withholding the record of what law enforcement did. *See Apgar*, 526 P.3d at 739 (public has "a significant interest in determining whether Metro handled the investigation appropriately or whether it treated a fellow law-enforcement officer with more sympathy or leniency than any other offender," in an investigation that resulted in no charges).

Recommendation: Do not enact a categorical exemption for criminal investigative records or for records "involved in an active prosecution." Instead, codify the existing, court-tested standard and close the gaps that have been exploited:

- Information may be withheld because an investigation or prosecution is pending only if the entity shows, with particularized facts, that disclosure of that specific information would interfere with

a pending proceeding, reveal the identity of a confidential source, or endanger a person; and that the harm in this particular case outweighs the public interest. Even if such a showing is made for certain information, the remainder must be produced with redactions.

- The existence of an investigation is not itself a basis for withholding, and records of closed investigations—including those that end without charges—are public, subject to redaction of specific confidential information otherwise made confidential by law.
- An entity that withholds information on the ground that an investigation or prosecution is pending must state the status of the matter, re-review the records when the matter concludes (and at least every 90 days), and notify the requester and produce the records when the basis for withholding ends.
- Misstating that an investigation is open is a willful violation under NRS 239.340.
- Do not make records confidential merely because they are eligible (or because the government claims they are eligible) to be sealed. There is already a process in place for courts to determine when sealing is lawful and appropriate pursuant to NRS 179.2405 et seq. When a court orders records sealed, existing law governs and mandates that sealed records are available for inspection only by certain regulatory and law enforcement entities and only in limited circumstances. Allowing government entities to speculate regarding what records may be sealed would only serve to multiply review time, increase delays, and undermine the existing process.

Even if some states hide investigative files more than Nevada does, that would not be a reason for Nevada to abandon a stronger law that its courts have applied successfully for more than three decades.

In fact, the government members' own 50-state survey (Exhibit 1B) does not support a categorical exemption. By its own labels, 25 states use a harm-based or criteria-based test or presume records open, and only five are described as simply "generally closed"; most of the remainder close files only while an investigation is active. Exhibit 1B describes Nevada's current law accurately: "There is no blanket exemption for all police investigative files … courts apply a case-specific balancing analysis." A categorical exemption would move Nevada from the majority to the minority. Exhibit 1B does not address records eligible for sealing at all.

Body-Worn Camera Recordings

Nevada law makes body-worn camera recordings public records, NRS 289.830(2), and the Nevada Supreme Court has held that agencies must segment or blur footage where necessary rather than withhold it. *Republican Attys. Gen. Ass'n*, 136 Nev. at 33–36, 458 P.3d at 333–35. In 2023, however, the Court held that an officer's face in body-worn camera footage is a confidential "photograph" of a peace officer under NRS 289.025, so that agencies may blur officers' faces. *Conrad*, 530 P.3d at 856–57. Agencies now blur the faces of on-duty officers—who "openly display their identities on their badges," as the Reporters Committee observed—

and charge requesters for the time it takes, at rates of up to $89 per hour of staff time, and, as noted in Section 3.5, LVMPD charges four hours of review time for every hour of footage; one government survey respondent likewise estimated that reviewing and redacting one hour of footage takes four hours of staff time (Exhibit 1E, p. 114). By contrast, 12 of 14 law enforcement respondents to the government members' survey never charge for staff time on body-worn camera requests, and 6 of 13 never blur officers' faces (Exhibit 1H, pp. 9, 11). Concealing the identities of officers in the recordings created to hold officers accountable defeats the purpose of the recordings. The California Supreme Court has held that agencies may not shift the cost of redacting such records to requesters. *Nat'l Lawyers Guild v. City of Hayward*, 9 Cal. 5th 488 (2020).

Recommendation: (1) Amend NRS 289.025 to provide that recordings and images of a peace officer performing official duties are not confidential "photographs"; (2) prohibit fees for reviewing, redacting or blurring body-worn camera recordings; (3) require release of recordings of an officer's discharge of a firearm or use of force resulting in death or serious bodily injury within 10 business days regardless of whether there is a request and within any sooner statutory time frames after a request; and (4) require that redaction be targeted to specific information—such as the faces of victims, minors and bystanders inside private residences, and gruesome depictions of deceased persons if the government can meet its burden to show withholding the information clearly outweighs the public interest—rather than used to withhold entire recordings.

4.6 Standardized Fee Schedule

The NPRA allows each governmental entity to set its own fees, limited to the entity's actual cost. NRS 239.052(1); NRS 239.005(1) (defining "actual cost"). As a result, requesters face different charges from entity to entity for the same kind of request. Entities also lack a common benchmark for what counts as a reasonable or actual cost. AB 128 directs the Task Force to recommend "a standardized fee schedule."

Nevada previously allowed a governmental entity to charge an additional fee for the "extraordinary use" of its personnel or technological resources, capped at 50 cents per page. Former NRS 239.055. The Legislature repealed that provision in 2019. See Coroner's Office, 136 Nev. at 58–59.

Several states, like Nevada, do not permit charges for staff time. West Virginia prohibits search or retrieval fees and charges based on staff hours. W. Va. Code § 29B-1-3(e). Arkansas prohibits fees for "existing agency personnel time associated with searching for, retrieving, reviewing, or copying the records." Ark. Code § 25-19-105(d)(3)(A)(i). Indiana excludes labor and overhead from the "actual cost" that may be charged, subject to limited exceptions. Ind. Code § 5-14-3-8. Kentucky prohibits charging noncommercial requesters for staff time. Ky. Rev. Stat. § 61.874(3), (4). And California's Supreme Court has held that agencies may not

charge requesters for the cost of redacting electronic records. *Nat'l Lawyers Guild*, 9 Cal. 5th 488.

Recommendation: The Legislature should amend the NPRA to require a single, uniform schedule of fees that every governmental entity in Nevada must use when fulfilling public records requests. The Nevada State Library, Archives and Public Records or a public records ombudsperson should be tasked with adopting the schedule, publishing it online, and reviewing it at least once a year.

The Transparency members recommend the delegated approach because a schedule set by rule can keep up with real costs without legislation each session. The Transparency members recommend that the statute:

1. **Designate the body and set a review cycle.** Direct Nevada State Library, Archives and Public Records or a public records ombudsperson to adopt the schedule after public notice and comment, review it at least annually, and publish the schedule online, but not allow it to include the prohibited categories or anything other than actual costs.

2. **Cover reproduction costs.** Set reasonable per-unit charges for the hard costs of reproduction: standard and oversized paper copies, color copies, electronic storage media (flash drives, CDs, DVDs), and postage or shipping.
3. **Make the schedule a ceiling.** A governmental entity may charge less than the schedule or waive fees but may not charge more.
4. **Prohibit certain charges.** No fee may be charged for:
    a. Inspecting records;
    b. deciding whether a record or part of a record is confidential;
    c. searching for records;
    d. reviewing records;
    e. redacting, segregating or blurring records, including body-worn camera recordings; or
    f. any other staff or attorney time.
5. **Provide for estimates and waivers.** Require a written, itemized estimate before any charge above a set amount is incurred. Authorize waivers or reductions when disclosure primarily benefits the public.

Nevada's choice is deliberate. The Legislature defined "actual cost" to exclude any "cost that a governmental entity incurs regardless of whether or not a person requests a copy of a particular public record," NRS 239.005(1), and in 2019 it repealed the only provision that expressly allowed an additional charge for staff time, the fee for "extraordinary use" of personnel in former NRS 239.055. Even that provision capped the charge at 50 cents per page. Coroner's Office, 136 Nev. at 58–59. The Legislature should confirm that the repeal means what it says.

Other states permit staff-time charges in varying forms; Nevada should not follow them. The features of other states' schedules worth borrowing are those that limit fees: a single schedule, set by one body and reviewed regularly, that operates as a ceiling.

The law should specifically exclude staff time, as well as any charge for costs related to searching for, reviewing, redacting and producing public records.
Governmental entities should not be allowed exemptions from fee limitations.

4.7 Protections Against Retaliatory Litigation

AB 128 asked the Task Force to recommend mechanisms to protect governmental entities from retaliatory litigation. The Task Force received no evidence that requesters file retaliatory suits. The government members' own survey found that 43 of the 60 entities that reported had no

petitions filed against them under NRS 239.011 since 2023, and the survey identifies no retaliatory suit (Exhibit 1C, p. 10). Litigation under NRS 239.011 is the enforcement mechanism the Legislature created, and the record shows that requesters prevail because records were unlawfully withheld. To the extent governmental entities claim to be concerned about the hypothetical chance they are sued by third parties who claim records related to them should not have been released (the Transparency members are aware of no Nevada case in which a governmental entity has been held liable for releasing a public record), Nevada law already immunizes officers, employees and their employers from damages for good-faith disclosure. NRS 239.012. But the Nevada Supreme Court has suggested that the subject of a record may bring a "reverse-records action" to block disclosure, *In re Public Records Requests to Las Vegas Metro. Police Dep't*, 141 Nev. Adv. Op. 26, 569 P.3d 624, 633–34 (2025), and such suits would delay access and draw both governmental entities and requesters into court. Some states not only provide immunity, but make clear that people identified in public records do not have standing to challenge the provision of the records ahead of disclosure or to sue based on disclosure.

Recommendation: (1) Clarify and/or enhance the existing immunity provisions, including NRS 239.012, to provide that, unless a statute specifically prohibits disclosure of the information, the good-faith release of a public record is not actionable and is not subject to any penalty, and that exemptions permit, but do not require, withholding; and (2) to encourage prompt production of records, provide that a person who is the subject of a public record lacks standing to enjoin its release unless a statute specifically makes the information confidential and gives a private right of action, and in that case require that any action be filed promptly, not suspend the NPRA's deadlines for other records, place the burden on the party seeking to block disclosure, allow the requester to intervene, and require an unsuccessful party to pay the requester's attorney's fees.

4.8 Accessibility of Records without a Records Request

More consistent and widespread availability of public records benefits the public and the government by eliminating the need for the public to make, or the government to respond to, a record request.

Recommendation

- Governmental entities should provide a public "reading room" on their websites for public records such as: official letters and correspondence; final decisions of an agency; records repeatedly requested by the public in records requests.
- Minutes and exhibits related to administrative workshop and regulatory hearings should be posted on agency websites.