



Nevada Public Records Act (NPRA)

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This presentation is designed for educational purposes only. The information provided is not intended to be and should not be construed as legal advice.



TODAY'S AGENDA

- 1 **Overview**
- 2 **Nevada Public Records Act (NPRA) – NRS Chapter 239**
Purpose, Defining a Record, Records Retention, PRR Procedures
- 3 **The 5-Day Rule and Beyond**
Acknowledgement, Clarification, Referral, Estimated Response Date
- 4 **Example Procedure for Processing Public Records Requests**
- 5 **Legal Authorities for Confidentiality**
Exemptions, Common Law Privileges, Balancing Tests
- 6 **Administrative Procedures for Government Agencies**
Denying Requests / Withholding Records, Fee Schedule, Actual Costs
- 7 **Judicial Review of NPRA Decisions**
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- 9 **Recent NPRA Case Law**
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NPRA Overview

The Nevada Public Records Act (NPRA) gives the public broad access to most government records

- NPRA codified at NRS Chapter 239
- NPRA \neq FOIA (*federal* Freedom of Information Act)
 - But NPRA and FOIA have a similar purpose



What's the Purpose of the NPRA?

NRS 239.001
NRS 239.0107(1)(c)

1

Transparency in government

2

Prompt access to records

– *“as expeditiously as possible”*

3

Liberal statutory construction

– *maximize the public's right of access to agency records*

4

Narrow reading of any exemption or exception

What is a “Public Record”?

*No comprehensive definition of a
“record” or “official state record”*

**Recorded evidence of business
operations**

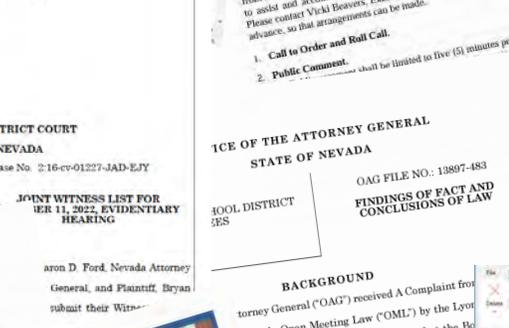
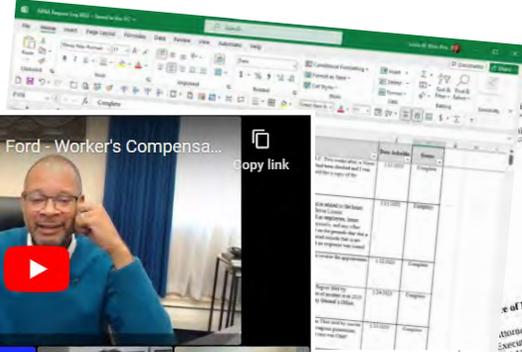
Information an agency *creates* or *receives* to
transact public business, which the agency
maintains as evidence of its functions,
policies, decisions, procedures, operations,
or other activities

NRS 239.005, NAC 239.705(1).



Examples of OAG Records

- Forms
- Complaints
- Contracts
- Agendas
- Minutes
- Spreadsheets
- Press Releases
- Investigation Files
- OML Records
- Legal Filings
- Reports
- Videos/Photos
- Calendars
- Email
- Correspondence
- PSAs



Sealing Records for Decriminalized Offenses

Has that crime been DECRIMINALIZED?

- Yes: Yes
- No: No
- Maybe: Maybe

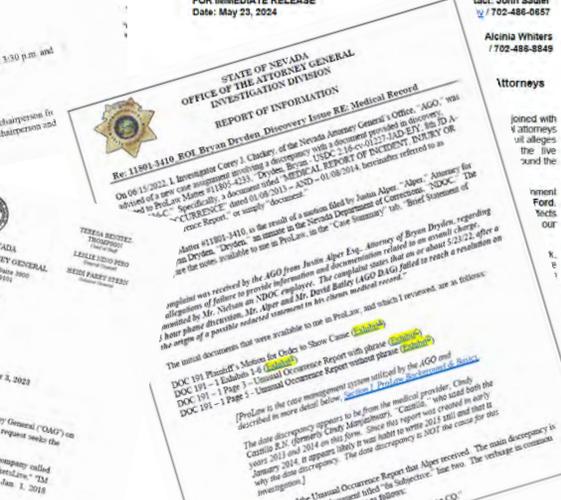
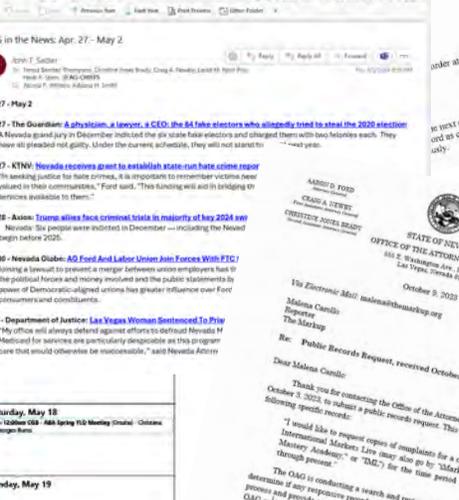
Want your record SEALED?

- Yes: Yes
- No: No
- Maybe: Maybe

Submit a WRITTEN REQUEST to the court where you were convicted.

If your record is sealed:

- You may answer job inquiries as if you do not have a record of this conviction
- You should receive an official document that demonstrates that the following civil rights have been restored, if they had not been already.
 - To vote
 - To hold office
 - To serve on a jury



CONTACT: John Sadler / 702-486-0577
 Alicia Whittiers / 702-486-8849
 Attorney General Aaron D. Ford, Nevada Attorney General, and Plaintiff, Bryan Dryden, Plaintiff, vs. STATE OF NEVADA.

What's NOT a Public Record?

General guide for materials that are not public records

- Informal notes and drafts
- Stationary and unused blank forms

Reference materials

- Reference texts, brochures, newsletters, magazines, newspaper articles, textbooks, presentation handouts, catalogs, etc.

Copies of policy and procedure manuals

Administrative and personal email & correspondence

- Meeting times, lunch dates, staff association memos, FYI memos, spam email, etc.

Personal materials

- Errand lists, bills, personal letters and/or photos

Ad hoc reports

Convenience copies

- Extra copies of official records

Publications for distribution

NAC 239.705(2)

For more guidance, see *Nevada Public Records Act: A Manual for Executive Branch Agencies*, available at https://nsla.nv.gov/ld.php?content_id=56642757, and <https://nsla.nv.gov/public-records/>.

Records Retention, Disposition and Archiving

Agencies are required to maintain records pursuant to records management programs (State & agency specific)

- *Records Retention Schedule* – provides the minimum retention period for an agency's records
- At the appropriate time:
 - Destroy securely, or
 - Send to State Library and Archives

For more information, visit:
https://nsla.nv.gov/state_records_services and find the retention schedule you need.



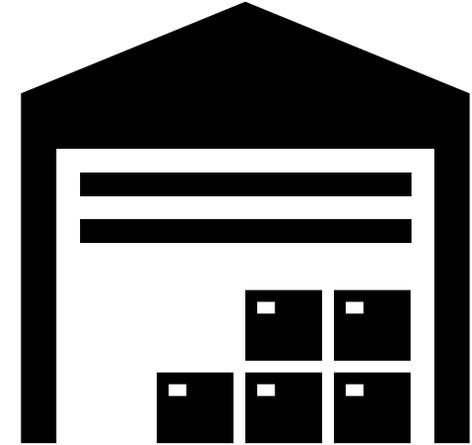
Non-record Materials and *Expired Records* can—and should be—destroyed when they are no longer administratively needed!



SHRED



RECYCLE



ARCHIVE



Which Records are Subject to Public Records Requests?

Legislative Intent

ALL state agency records are public records unless declared confidential by Nevada law.

NRS 239.010.

- NPRA *presumes* an agency record is a public record, unless specific confidentiality restrictions apply

City of Sparks v. Reno Newspapers, 133 Nev. 398, 400 (2017).

How Can Public Records Requests be Submitted?

Method and Medium for requesting records

The NPRA allows both written and verbal requests for public records. NRS 239.0107(1).

Agencies must provide:

- a *form* for requesting public records, *and*
- an alternative method for disabled individuals to submit a request

NAC 239.863.

**OFFICE OF THE ATTORNEY GENERAL
PUBLIC RECORDS REQUEST FORM**

Please note that this form is intended for a request for records held by the Office of the Nevada Attorney General. Requests for records of Nevada state agencies must be submitted directly to the records officer for that state agency.

Date of Request
Requester Contact Information
Name: _____
Organization: _____
Address: _____
City, State, Zip: _____
Phone: _____
E-mail: _____

Records Requested:
Records held by the Office of the Nevada Attorney General: Yes No
Check one: Paper copies Electronic copies Certified copies Inspection (in person)
Please be specific and include as much detail as possible regarding the records you are requesting.

To complete an estimate, the agency will need the following information:
 I will pick up: Please FedEx Please send USPS E-mail (if format allows)
Fed Ex billing number: _____

Statement
 I understand there is a charge for copies of public records. I understand I will receive a written estimate for production of the records indicated above if the estimated cost is expected to be over \$25.00, which I will be required to pay in full prior to inspection or reproduction. Materials will be held for 30 days.

Requester Signature _____ Signature

Request status:		Office Use Only		Estimate:	
Date	Request received		Estimate:	\$	
	Receipt acknowledgment issued		Date deposit received		
	Request filled		Actual (if different):	\$	
	Estimated completion		Date final payment received		
	Estimate provided		Completed by		
	Request denied in whole				
	Other:				

*Retains request form for 90 days following completion of request
REQ 2008047*

Office of the Attorney General
100 North Carson Street - Carson City, Nevada 89701 - Facsimile: 775 684 1108
355 East Washington Avenue - Las Vegas, Nevada 89101 - Facsimile:

A records request form should be posted on an agency's website and made available in-person.

NAC 239.862.

Example:

https://ag.nv.gov/Contact/Public_Records_Requests/

The Five (5) Day Rule

What Does the NPRA Require Agencies to Do in 5 Days?



Acknowledgment and Estimated Response

If records cannot be made available within five (5) days, a written *acknowledgement* and estimated response date must be provided.

NRS 239.0107(1)(c).



Respond with No Responsive Records or a Referral

Tell requester the agency does not have responsive records and, if known, provide the contact information for a government entity that does.

NRS 239.0107(1)(b).



Full Response and Records Release

Provide a copy of the records requested

NRS 239.0107(1)(a).



Acknowledgments & Readily Available Records

Written communications are **REQUIRED** by the NPRA

Acknowledgement: Agencies must respond in writing within *five (5) business days* after a request is received. NRS 239.0107(1).

When a record is “**readily available,**” agencies must provide a copy of the record within *five (5) business days*.

- *Does your agency have policies and procedures to ensure the 5-day time frame is met?*

Request for Clarification

NPRA Requests \neq requests for production of documents under civil procedure rules



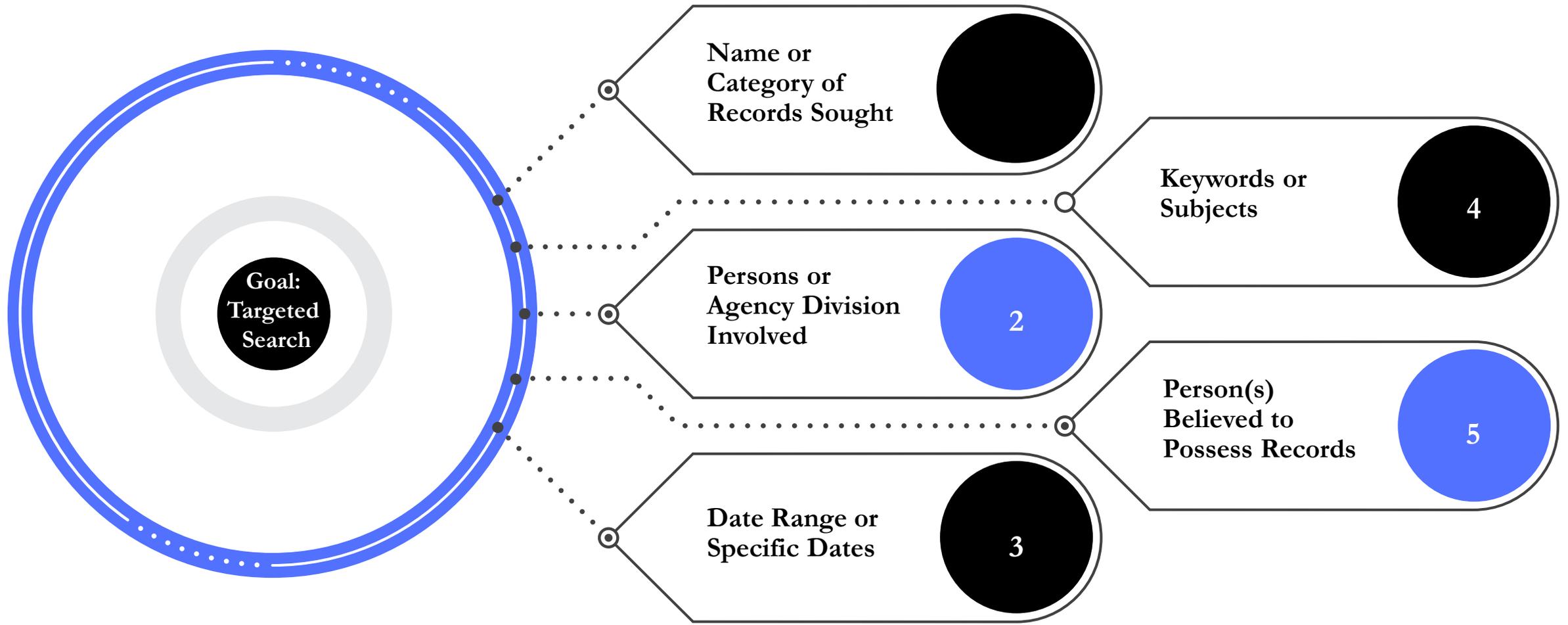
Reasonable requests for public records

When a request is overbroad or unreasonable, the agency is obligated to **request a clarification and narrowed time frame**. NRS 239.0107(1)(c)(2).

- Agencies must make a reasonable effort to assist the requester to maximize the likelihood the requester will receive a copy of the record as expeditiously as possible.

Records must be identifiable and requests must not be overbroad. *Freedom Watch, Inc. v. Dep't of State*, 925 F. Supp. 2d 55, 62 (D. D.C. 2013).

Specific Requests for Clarification



Model Process for Public Records Requests

* Note that each agency should develop agency-specific protocols in coordination with counsel

1

Log all public records requests (and related communications) and acknowledge request within 5 days

2

Search for potentially responsive records

Alternatively: request clarification or refer to another agency

3

Review records for applicable *confidentiality* restrictions based on *statutes or regulations*

4

Review records for *privileged* information (e.g., attorney-client, work product, etc.)

5

Review records for *common law* exemptions (e.g., deliberative process, etc.)

Model Process for Public Records Requests

* Note that each agency should develop agency-specific protocols in coordination with counsel.

6

Consider the appropriate *balancing test* if no specific privileges or confidentiality statutes apply

7

Confer with agency counsel to confirm all applicable legal restrictions on release, if needed

8

Redact any personal privacy information (PII) or other privileged or confidential info from responsive records, if needed

9

Release the records and/or cite applicable legal authority for withholding records, if needed



Statutory Authority to Withhold Records or Redact Information

NRS 239.010 Public books and public records open to inspection; confidential information in public books and records; copyrighted books and records; copies to be prepared by governmental entity and provided in electronic format unless other medium requested.

1. Except as otherwise provided in this section and [NRS 1.4683](#), [1.4687](#), [1A.110](#), [3.2203](#), [41.0397](#), [41.071](#), [49.095](#), [49.293](#), [62D.420](#), [62D.440](#), [62E.516](#), [62E.620](#), [62H.025](#), [62H.030](#), [62H.170](#), [62H.220](#), [62H.320](#), [75A.100](#), [75A.150](#), [76.160](#), [78.152](#), [80.113](#), [81.850](#), [82.183](#), [86.246](#), [86.54615](#), [87.515](#), [87.5413](#), [87A.200](#), [87A.580](#), [87A.640](#), [88.3355](#), [88.5927](#), [88.6067](#), [88A.345](#), [88A.7345](#), [89.045](#), [89.251](#), [90.730](#), [91.160](#), [116.757](#), [116A.270](#), [116B.880](#), [118B.026](#), [119.260](#), [119.265](#), [119.267](#), [119.280](#), [119A.280](#), [119A.653](#), [119A.677](#), [119B.370](#), [119B.382](#), [120A.640](#), [120A.690](#), [125.130](#), [125B.140](#), [126.141](#), [126.161](#), [126.163](#), [126.730](#), [127.007](#), [127.057](#), [127.130](#), [127.140](#), [127.2817](#), [128.090](#), [130.312](#), 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[704B.325](#), [706.1725](#), [706A.230](#), [710.159](#), [711.600](#), sections 35, 38 and 41 of chapter 478, Statutes of Nevada 2011 and section 2 of chapter 391, Statutes of Nevada 2013 and 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, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records.

Many statutory exemptions are listed in the NPRA

Exemption = NPRA does *not* apply

NRS 239.010 refers to other provisions of Nevada law

- Cite *both* NRS 239.010 and the statute listed therein
- If records are confidential under *federal law or regulations*, they may be *exempt* from the NPRA. *City of Reno v. Reno Gazette-Journal*, 119 Nev. 55 (2003).

Regulatory Authority to Withhold Records *or* Redact Information

Regulatory exemptions are stated in the NAC or agency regulations

- Agencies may adopt regulations declaring certain records confidential

NRS 233B.040(1)(a) (reasonable regulations appropriately adopted by an agency “*have the force of law*”); *Banegas v. State Indus. Ins. Sys.*, 117 Nev. 222, 227 (2001).

- *E.g.*, NAC 441A.335(2) protects certain health information, medical records, or reports

But beware: Nevada Supreme Court has held that NACs do not limit the scope of the NPRA

Comstock Residents Ass'n v. Lyon Cty. Bd. of Comm'rs, 134 Nev. 142, 414 P.3d 318 (2018); *Clark Cty. Sch. Dist. v. Las Vegas Rev.-J.*, 134 Nev. 700, 429 P.3d 313 (2018).





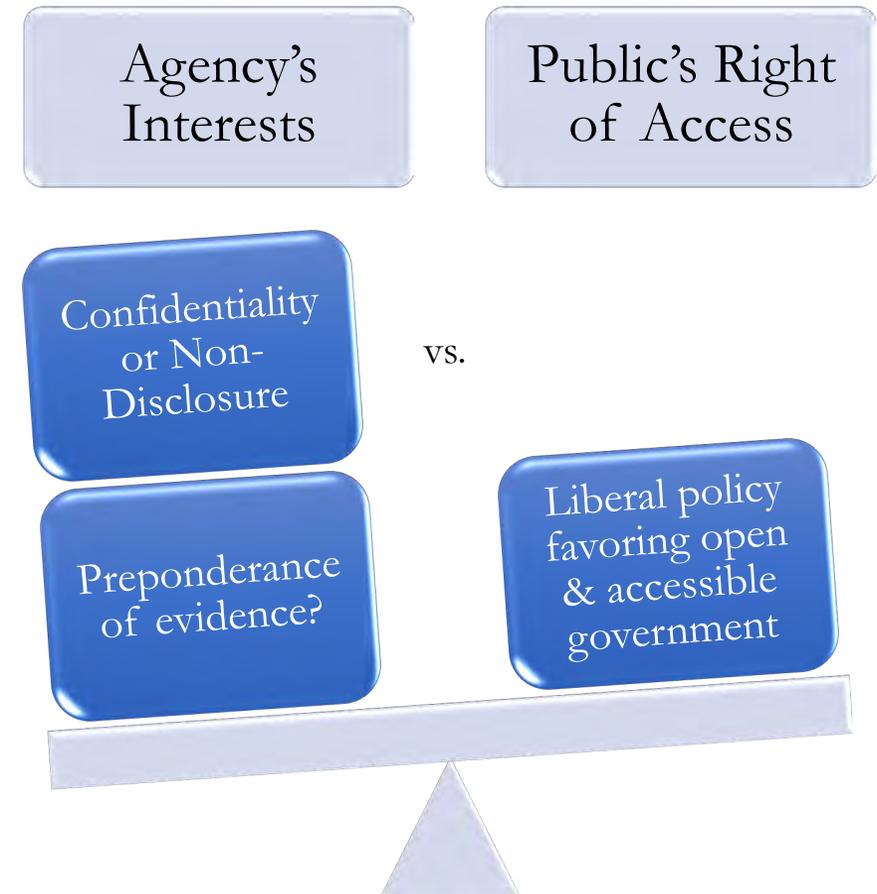
When No Statute Applies = General Balancing Test

The General Balancing Test *must be* used by government agencies to determine if a withholding is justified when a record is not explicitly made confidential by statute

Donrey of Nevada, Inc. v. Bradshaw, 106 Nev. 630 (1990); *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873 (2011)

- Government must explain why the records are not disclosed and provide *specific legal authority* justifying withholding
- Government interest in withholding must outweigh the public interest in disclosure by a “preponderance of the evidence.” NRS 239.0113.
- This test generally should not be used to withhold record in its entirety

This test “*weighs*”:



When Personal Info is Involved = Privacy Balancing Test

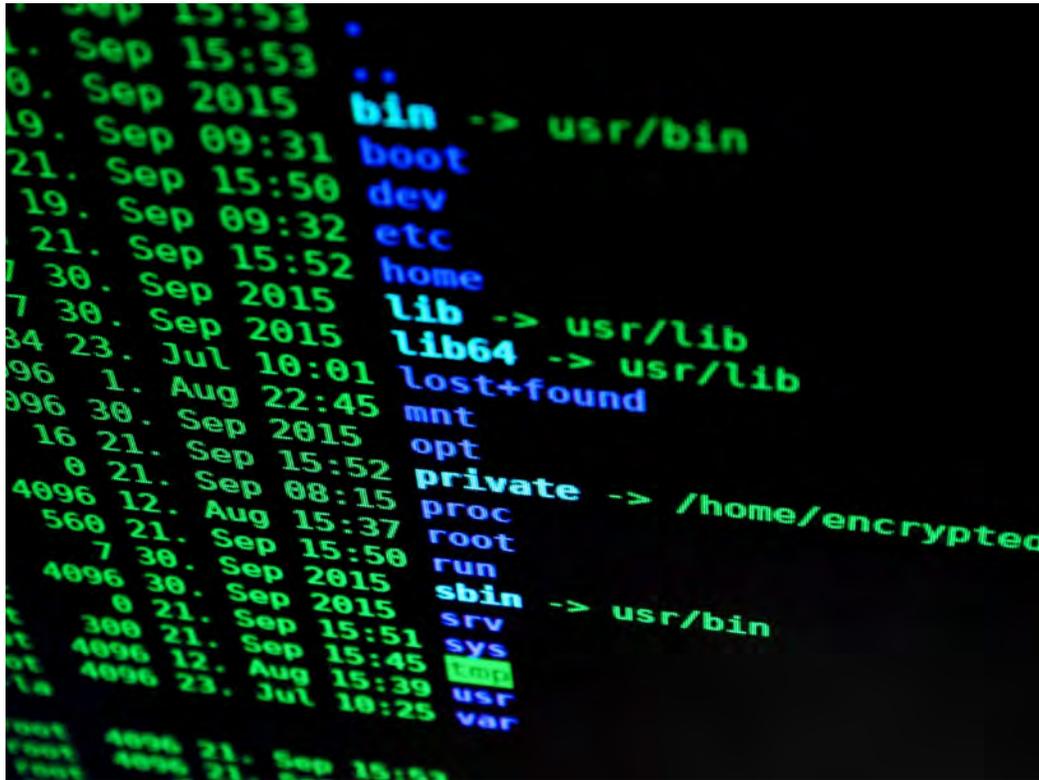
Basic two-part inquiry for withholding information based on **personal privacy interests**:

1. Government must establish a “*nontrivial*” personal privacy interest —interest = “*more than de minimis*”
2. If successful, the *burden shifts* to the requester to show that disclosure/info sought are likely to advanced a significant public interest



Clark Cnty. School Dist. v. Las Vegas Rev.-J., 34 Nev. 700 (2018) (adopting the Ninth Circuit’s test in *Cameranesi v. U.S. Dep’t of Defense*, 856 F.3d 626 (9th Cir. 2017) (personnel and medical files may be shielded from public disclosure to prevent an unwarranted invasion of personal privacy)).

Personal Privacy Balancing Test - *reaffirmed*



NVSC has reaffirmed key parts of the personal privacy balancing test:

- Test applies whenever the government asserts a nontrivial personal privacy interest
- **Threshold to show a nontrivial privacy interest is low**
- “avoidance of harassment is a cognizable privacy interest”
 - embarrassment, stigma

Las Vegas Metro. Police Dep't v. Las Vegas Rev.-J., 478 P.3d 383 (Nev. 2020) (discussing *Clark Cnty. School Dist. v. Las Vegas Rev.-J.*, 34 Nev. 700 (2018), and *Cameranesi v. U.S. Dep't of Defense*, 856 F.3d 626 (9th Cir. 2017)).

Denying a Request or Withholding Records

Statutory or regulatory authority justifying confidentiality:

- State statutes: NRS 239.010 and other NRS provisions
- Federal statutes
- State NACs (cited with balancing analysis!)

Common Law

- Privileges

Balancing Tests

- General Balancing test (*Bradshaw/Gibbons*)
- Personal Privacy Balancing test (*CCSD/Cameranesi*)



Denying a Request or Withholding Records

Provide specific citations to authority

Agencies must provide a written response and a specific citation to statute or other legal authority making a record confidential.

NRS 239.0107(d).

Privilege Log or Index

Agencies are *not* required to produce a log or “Vaughn index” of confidential records before a lawsuit is filed. *Gibbons*, 127 Nev. at 881–83.

- NVSC declined to define the precise form that a log must take or what it must contain
- “adequate log” will vary depending on the circumstances of each case



Investigative & Law Enforcement Records



Generalized assertions about effect of disclosure won't explain why records are confidential or cannot be redacted.

Takeaway: Courts expect granular explanations, not categorical denials

Conrad v. Reno Police Dep't, 139 Nev. 126, 530 P.2d 851 (2023)

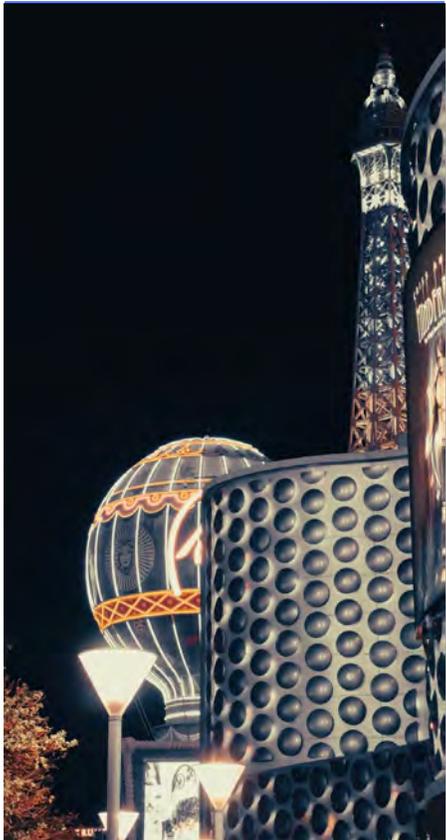
- Requester sought RPD's investigative report before trial and unredacted body camera footage
- *Holding:* court must make "sufficiently specific findings" for government's interests outweigh public's
- Unredacted body camera footage is exempt from disclosure under NRS 289.025

LV RJ v. LVMPD, 139 Nev. 69, 526 P.3d 724 (2023)

- Newspaper sought records of Metro's *closed* criminal investigation of an NHP trooper, who wasn't charged
- *Holding:* Confidential Informant (CI) privilege (NRS 49.335) does not justify withholding records in their entirety;
- police failed to show government interests in confidentiality "clearly outweighed" public interests favoring disclosure

- *RAGA v. LVMPD*, 136 Nev. 28, 458 P.3d 328 (2020) – Withholding in full may be appropriate where confidential and non-confidential material are "inextricably commingled" and redaction would leave nothing left

Helpful Questions for Responding to Public Records Requests



1

Is the requester asking for *records*?
Or do they want *information*?

2

Do the requested records exist?

3

Does the agency have *legal custody or control* of the requested records?

4

Do any statutory exceptions apply? (state or federal)

Helpful Questions for Responding to Public Records Requests

5

Do any *common law* privileges or confidentiality doctrines apply?

6

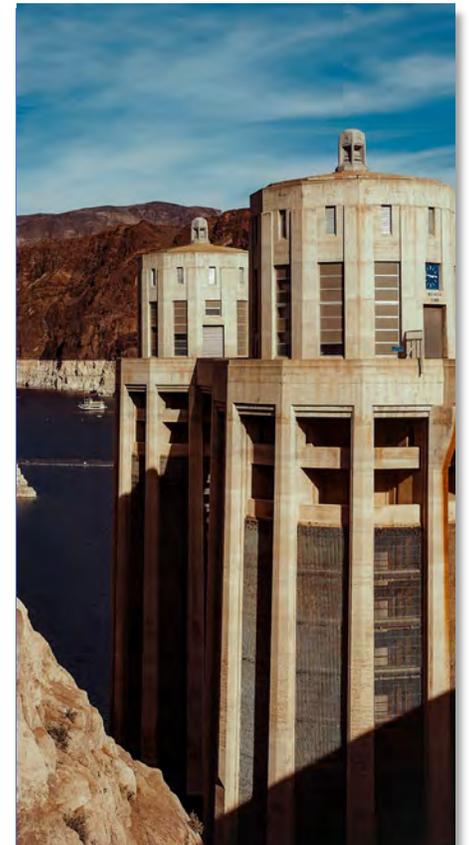
Do the *general* or *personal privacy balancing tests* weigh in favor of withholding?

7

Are responsive records confidential *in their entirety*?

8

Do the responsive records require *redactions*?



Common Personal Privacy Info (PII) for Redaction

Redactions should be “narrowly tailored” to fit only the protected info

- Social Security Number or Tax ID Number
- Driver’s license number or identification card number
- Name of a minor child
- Date of birth and place of birth
- Race or Gender
- Home address
- Personal e-mail address (*i.e.*, any non-government email address)
- Signature, fingerprint, or any other biometric record
- User name or unique personal identifier
- Direct telephone number (*e.g.*, direct line, an assistant, or cell phone)
- Ride Share (*i.e.*, Uber/Lyft) pickup or drop-off address
- Medical identification number or a health insurance identification number
- Airline flight, ticket, or confirmation numbers, and departure/arrival times
- Financial account number or credit/debit card number
- Bank name and associated information (address, phone, routing number, etc.)
- Tracking number and package signer for any shipping carrier (*e.g.*, Fed Ex, UPS, U.S. Postal Service, DHL, etc.)
- Video conference meeting IDs, passcodes, phone conference IDs, and video conference device links (*e.g.*, Teams, Zoom, Lifesize)
- Criminal Justice Information (CJI) (*e.g.*, personal data, property data, other information related to incidents and cases)
- Criminal History Record Information (CHRI), (*e.g.*, arrest descriptions and notations, conviction status, etc.)

See, e.g., NRS 603A.040; 34 C.F.R. § 99.3;
Fed. R. Civ. P. 5.2; D. Nev. LR IC 6-1; EDCR 5.214.

Fee Schedule – List of Fees

Fees charged to fulfill public records requests can be a very contentious issue for government agencies

NRS 239.052(3)

An agency must prepare and *maintain a list of its fees* for providing public records and post the list in a conspicuous place in each of its offices.

NRS 239.053(2)

If applicable, the agency's list of fees must also include per page fee for court reporter transcripts.

Meetings: Minutes & Recordings



No Charge for Minutes and Recordings

- Minutes or audiotape recordings of meetings must be made available to the public within *30 working days*. NRS 241.035(2).
- Upon request, a copy of the minutes or audio recordings must be made available to a member of the public at *no charge*. NRS 241.035(2).
- Agencies must retain five (5) years of minutes. The remainder may be sent to State Archives. NRS 241.035(2).

Charging “Actual Costs” to fulfill requests

- Providing copies of public records is considered part of agencies’ regular duties
- 2019: Legislature repealed “*Extraordinary Use*” fees (NRS 239.055) and replaced that term with “*Actual Costs* (NRS 239.052).
- **Actual costs** include, *but are not limited to*, the “**direct cost**” incurred in responding to a records request, such as ink, toner, paper, media, and postage. NRS 239.005.
- The Legislature ***expressly considered and chose not to exclude overhead, personnel, and labor costs*** from the definition of actual costs
 - Legislators found such costs appropriate when requests are “*incredibly onerous*” or “*incredibly large*”
 - Agencies have flexibility to recoup costs for broad requests that disproportionately utilize agency resources, so costs are *not borne taxpayers but are the requester’s responsibility*

Charging “Actual Costs”

- “Actual costs” do *not* include costs an agency “incurs regardless of whether or not a person requests a copy of a particular public record” NRS 239.052.
 - Why? Discourages agencies from depending on fees to fill in budget shortfalls

Fixed Costs = *Predictable*

- Office Space (rent/lease)
 - Utilities (phone, internet)
 - Essential Business Software
 - Administrative Salaries
- **Fixed ≠ NOT a direct result of any request**

Variable Costs = *Fluctuate*

- Production Supplies (ink, toner, paper, media)
- Postage
- Direct Labor

Variable Costs = directly attributable to a particular PRR

★ *Takeaway: Actual Costs (Variable Fees) should not be set at Arbitrary Amounts* ★

- NPRA does not instruct agencies to charge going rates or even fair or reasonable rates → actual costs
- Agencies should analyze costs for each fee charged and document their conclusions
 - *If you can't explain how you calculated the fee, don't charge it!*
- Fee accrual may be difficult to track without a dedicated public records employee(s) and timekeeping system

Judicial Review by the District Court

Requester may file a petition for judicial review involving their NPRA request on three grounds:

1. Denial of a request
2. Unreasonable delay
3. Excessive or Improper fees

NRS 239.011

Relief available?

- Compel agency or person with legal custody to provide a copy of the record
- Provide relief relating to fees
- Award attorneys' fees & costs
 - Requester *must* prevail

But, *RELAX*: public employees are protected from damages liability (immunity) when they act in *good faith*



Civil Penalties for *Willful* Violations

If a court decides that an agency willfully failed to comply with the NPRA, the court must impose a civil penalty:

1. First violation = \$1,000
2. Second violation = \$5,000
3. Third or subsequent violation = \$10,000

NRS 239.340(1) (violations within 10-year period)

- Penalty is imposed on agency
- Money goes toward improving access to public records



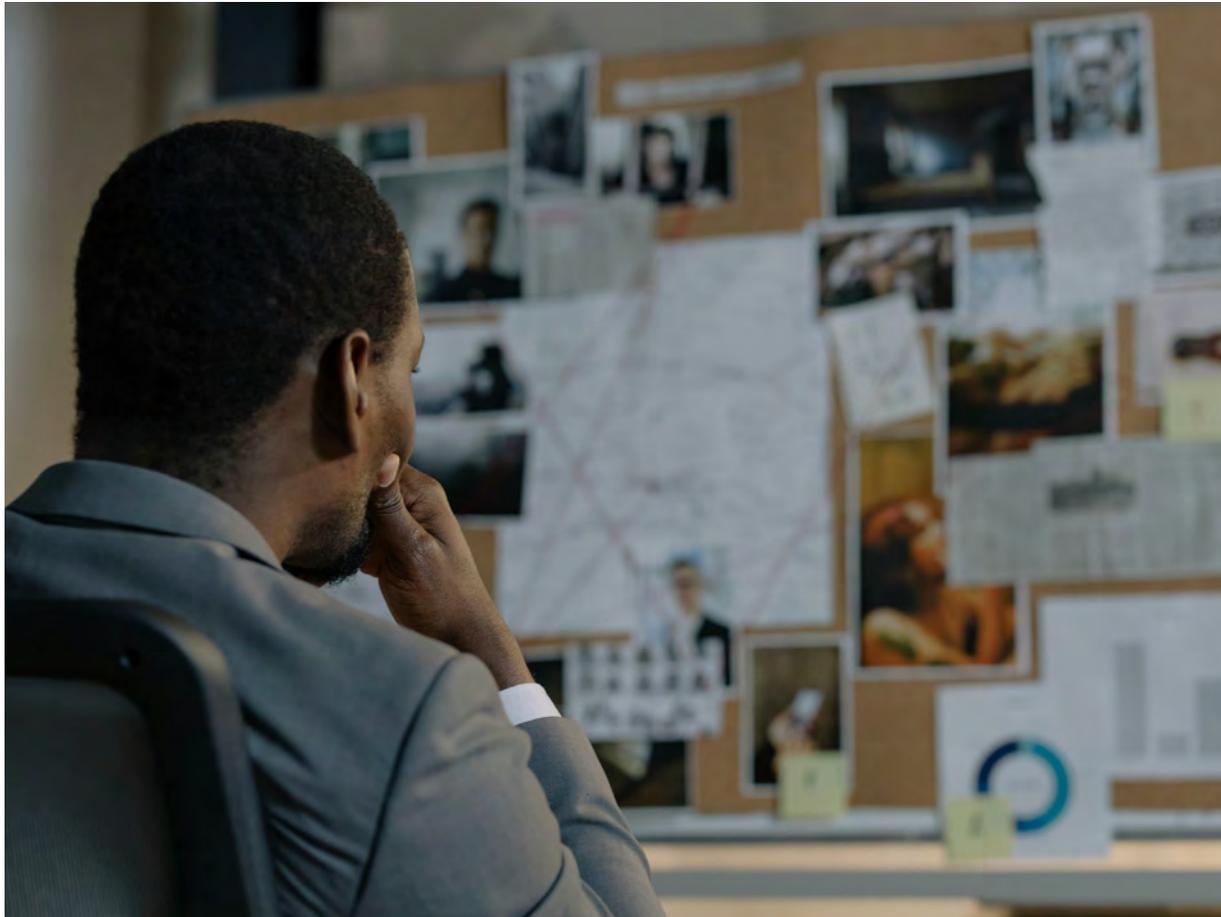
Conrad v. Washoe County, 560 P.3d 663 (Nev. 2024) (unpublished)

- *Background*: requester argued the County violated 5-Day Rule by using automated response, stating request was received and requester would be contacted about records' availability within 30 days.
- *Holding*: NPRA neither explicitly nor implicitly prohibits a pre-determination of delay or an automated response to that effect

Key takeaways for public agencies:

- NPRA anticipates that not all requests can be reviewed and fulfilled within five days. NRS 239.0107(1)(c)(1).
- County complied with NPRA because it (1) *sent the automated response within five business days* and (2) *provided a timeline* for when the records could be available.

In re Matter of Pub. Recs. Requests to LVMPD, 141 Nev. Adv. Op. 26, 569 P.3d 624 (2025)



Preemptive Declaratory Relief Unavailable to Gov't

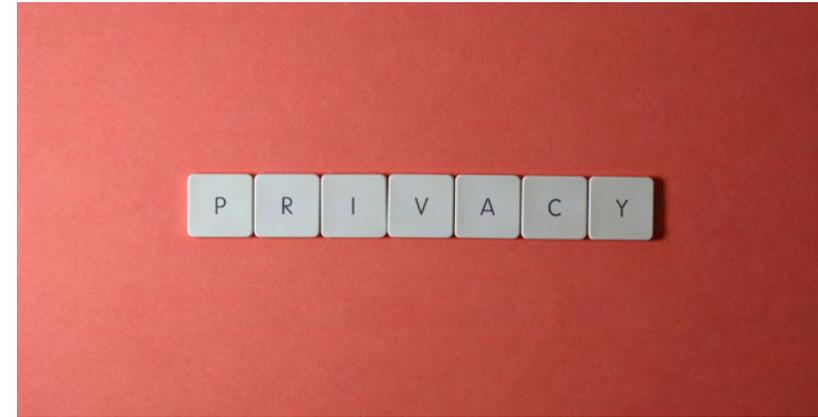
- media outlets requested records about police investigation of an alleged sexual assault by professional athlete

As matters of first impression:

1. police department could not seek an advisory opinion under Judicial Confirmation Law to determine its disclosure obligations
2. NPRA does not allow government entities to seek declaratory relief in response to a PRR

New Records Legislation from 83rd (2025) Session

- AB 197 – Government entities *must* maintain as *confidential* personal information identifying a person as a donor, member, or volunteer of a nonprofit organization
- AB 319 – Certain reports insurers file with medical boards relating to malpractice actions are *public records*
- AB 491 – declarations of candidacy, residency, or eligibility are *public records*

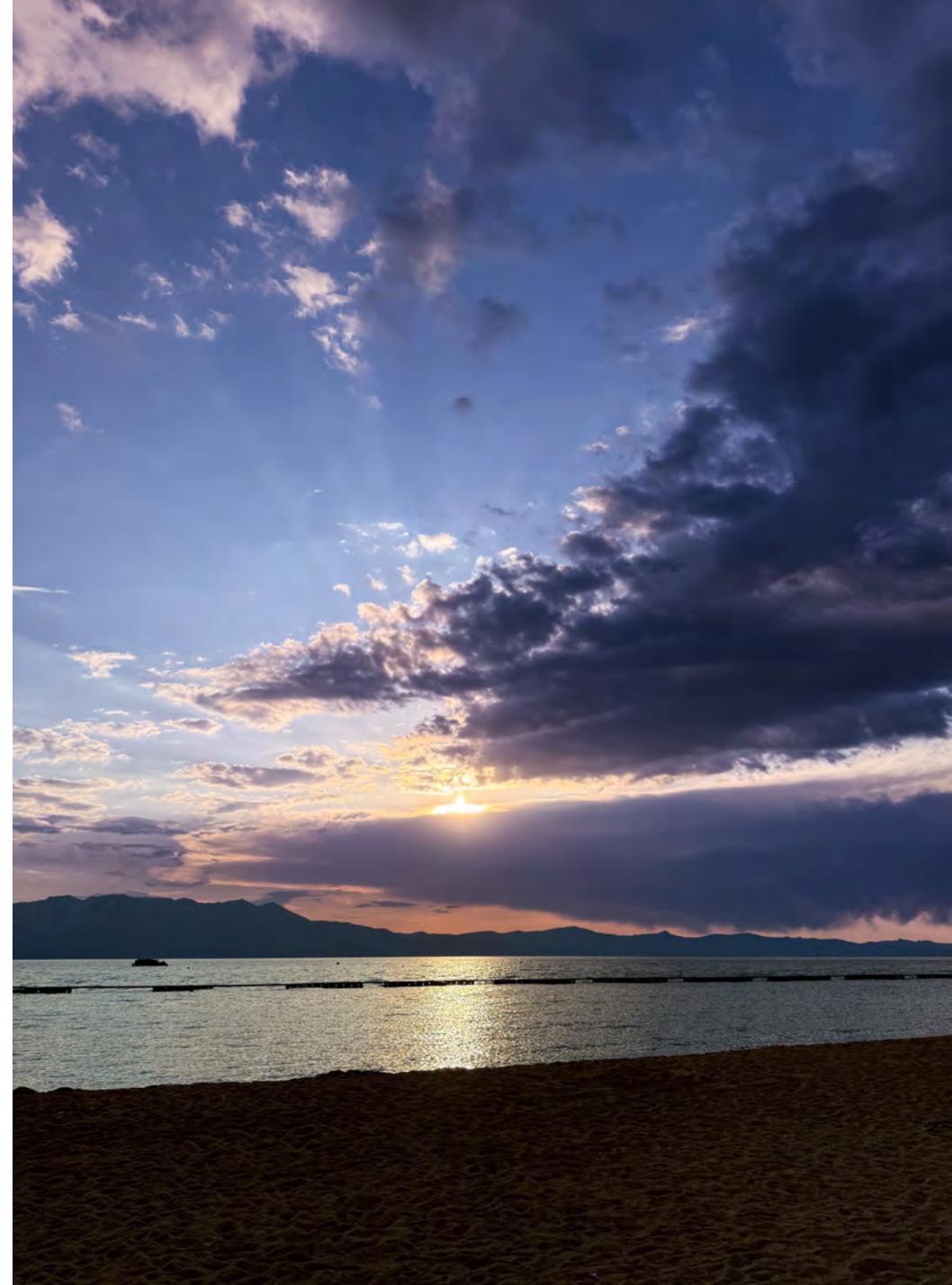


SB 293 – Contracts and related materials addressing compensation for use of college athletes' name, image or likeness are confidential and *not public records*

SB 428 – Candidates proof of identity and residency are *public records*, *except* for SSN, DL or ID card numbers, or account numbers

Public Records Taskforce

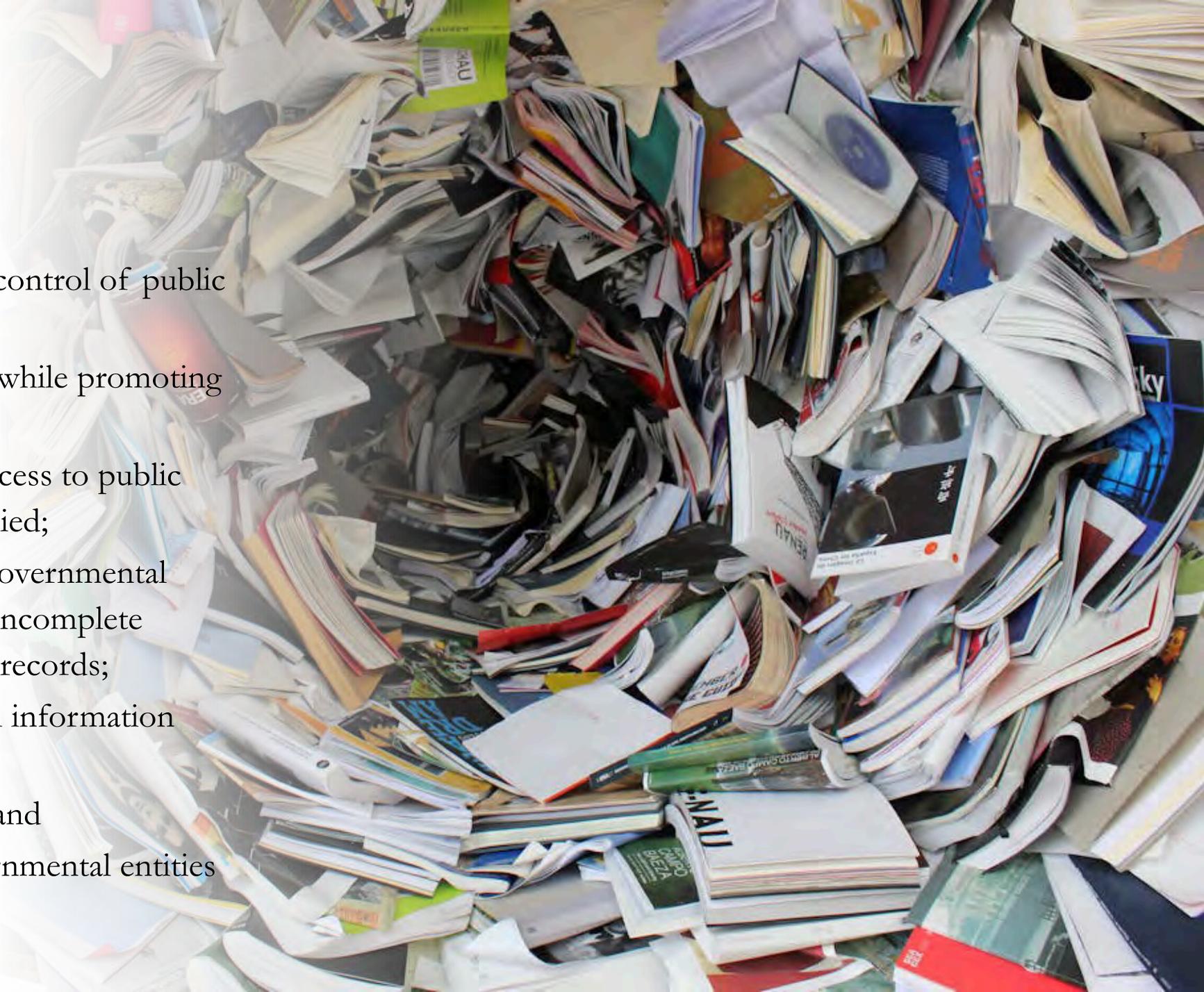
- AB 128 created the Public Records Task Force to evaluate certain topics relating to requests for public records and make certain recommendations.
- Topics for evaluation:
 1. Current exemptions to chapter 239 of NRS;
 2. The policies relating to public records of any review board created pursuant to NRS 289.380 or 289.383;
 3. The impact of broad requests for public records on governmental entities;
 4. The cost, burden and time constraint on governmental entities to redact confidential information;
 5. The financial burden on a person who requests a public record;
 6. Mechanisms to resolve disputes involving requests for public records, including, without limitation, mediation and other types of alternative dispute resolution; and
 7. Methods for collecting and sharing data related to requests for public records.



Public Records Taskforce

Recommendations sought:

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



Public Records Taskforce

Appointed Members

- Brittany Walker
- Benjamin Lipman
- Mitch Fox
- Matthew Morris
- Matthew Christian
- Josh Hicks
- Colleen McCarty
- Kalie Work
- Vinson Guthreau
- Leslie Nino Piro

First Meeting

Thursday, February 26, 1:30 pm
Boulder City Council Chambers

Call to Action!

Please email AGGeneralCounsel@ag.nv.gov if

- You want to improve the NPRA
- You're interested in providing ideas, statistical information, or other input
- would like to receive updates, including links to agenda and meeting materials

Public Records Q & A





*Thank You
for attending!!*