PUBLIC RECORDS TASK FORCE
FINAL REPORT DRAFT

Public Records Task Force
State of Nevada

Submitted to: Director, Legislative Counsel Bureau

For Transmittal to:

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

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Executive Summary

Assembly Bill 128 of the 2025 Nevada Legislative Session, created the Public Records Task Force is comprised of ten individuals. Five members are labeled transparency advocates and five are labeled government representatives and are employed by governmental entities in Nevada. All members share a commitment to carefully evaluate Nevada public records law and to evaluate and make recommendations for improvement.

Task Force Members:

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

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

Transparency Advocate Concerns

- Timeliness of responses to public records requests.
- Governmental misinterpretation of the public records law to support a denial of public records requests.
- Inconsistent treatment of public records requests by various state and local agencies.
- Inconsistent treatment of legal issues arising in public records request litigation by the courts.

Governmental Representative Concerns

- Overly broad and unduly burdensome public records requests, exacerbated by requesters' use of Artificial Intelligence ("AI").
- Need for statutory protections of personal information and privacy interests.
- Balancing the interests of public records requesters with state and federal Constitutional considerations during an active criminal investigation, particularly when a victim(s) or witness(es) are involved.
- Lack of technological resources or staffing to respond to public records requests within five days.
- Lack of statutory updates to reflect modern changes to records practices.

1. Introduction

1.1 Legislative Mandate

The Public Records Task Force ("PRTF" or "Task Force") was created by Assembly Bill 128. 2025 Nev. Stat. 1416 - 19, ch. 228. The purpose of this Task Force is to evaluate certain topics relating to requests for public records and make certain recommendations. The bill also: (1) prescribes the membership and duties of the Task Force; and (2) requires the Task Force to submit a written report describing its work and recommendations for transmittal to the Joint Interim

Standing Committee on Government Affairs and the Senate and Assembly Standing Committees on Government Affairs for the 84th Session of the Legislature. *Id.*

1.2 Objectives

The Task Force was charged with evaluating:

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

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

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

Id.

1.3 Methodology

Following member appointments in the fall of 2025, the Task Force held its first meeting on February 26, 2026, at City Hall in Boulder City. Members attended in-person and virtually. At its first meeting, the Task Force received in-person and written public comments, unanimously

elected a Chair and Vice Chair, approved a Task Force webpage hosted by the Office of the Attorney General, and discussed potential topics to be considered at future meetings.

The Task Force webpage includes meeting minutes, meeting agendas, and presentation materials accessible online at https://ag.nv.gov/Hot_Topics/Public_Records_Task_Force/. **Appendix A** of this report also contains all PRTF meeting agendas and minutes. The Task Force held its second meeting on April 27, 2026, at Washoe County Commission Chambers in Reno. Members attended in-person and virtually. The Task Force received multiple written public comment submissions. **Appendix B** of this report reproduces all PRTF meeting materials, including all public comment, presentations, and other submissions. Given changes in membership that occurred following the first meeting, the Task Force unanimously selected a new Chair and Vice Chair.

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

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

Finally, the Task Force addressed the request for a status presentation to the Joint Interim Standing Committee on Government Affairs, considered the structure of the final report to the Legislature, selected additional Task Force Meeting Dates and Locations, and addressed related administrative and housekeeping items.

The Task Force held its third meeting on June 8, 2026, at the Clark County Commission Chambers in Las Vegas. Members attended in-person and virtually. The Task Force received multiple written and in-person public comment submissions, which are included in the

supporting materials attached to this status report. During its third meeting, the Task Force received a presentation from Mr. Glenn Cook, Executive Editor for the *Las Vegas Review-Journal*. In the presentation, Mr. Cook provided his observation that "governments routinely deny requests for information that is public," and emphasized that transparency "is an essential function of government." The presentation addressed rights of records requestors, costs associated with producing public records, and a variety of challenges that he said present hurdles to requestors seeking access to public information, among other observations. The presentation noted specific examples involving investigative journalism being "stymied by public records denials," as well as specific examples involving "investigative stories completed thanks to access to public records." The presentation concluded with specific recommendations for reforms to the NPRA statute.

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

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

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

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

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for privacy and dignity, with emphasis on a case study involving highly publicized murders of college students in the State of Idaho.

2. Overview of Nevada Public Records Law

2.1 Summary of NRS Chapter 239

The NPRA, NRS Chapter 239, governs public access to government records generally. Under the NPRA, "unless otherwise declared by law to be confidential, all public books and public records of a governmental entity must be open at all times during office hours to inspection by any person." NRS 239.010(1).

2.2 Purpose and Principles of Public Records Law

The NPRA requires governmental entities to make available to the public upon request any public records within their legal custody or control so as to "foster democratic principles." NRS 239.001(1); *see also Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 878, 266 P.3d 623, 626 (2011) ("[T]he provisions of the NPRA ... promote government transparency and accountability.").

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

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

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

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

1. Allow inspection or provide a copy of the record. *Id*. at (1)(a);

2. Advise the requester that the government entity does not have "legal custody or control" of the record and the name and address of the entity that does, if known. *Id*. at (1)(b).
3. If the government entity cannot provide a record within 5 days, advise the requester of that fact and provide the earliest date and time after which it is reasonably believed the record will be available. The entity must also assist the requester to focus the request so as to maximize the likelihood the requester will receive a record. *Id*. at (1)(c); or
4. Deny the request if the any part of the record is confidential, and provide the legal basis for doing so. *Id*. at (1)(d)(1)-(2) (requiring entities to provide the requester with a written denial that includes "citation to the specific statute or other legal authority that makes the public book or record, or a part thereof, confidential").

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

As noted above, both statutory and case law exemptions apply. For either, Nevada courts test an entity's "claims of confidentiality under the backdrop of the NPRA's" important principles. *Gibbons*, 127 Nev. at 880, 266 P.3d at 628. Courts analyze claims of confidentiality "with a presumption in favor of disclosure." *Pub. Emps.' Ret. Sys. of Nev. v. Reno Newspapers, Inc. (PERS)*, 129 Nev. 833, 837, 313 P.3d 221, 223-24 (2013). The governmental entity bears the burden to prove, under a preponderance standard, that the requested records qualify as confidential." *Gibbons*, 127 Nev. at 880, 266 P.3d at 628; *see also* NRS 239.0113. The entity does not satisfy its burden by making "a non-particularized showing, or by expressing hypothetical concerns." *Gibbons*, 127 Nev. at 880, 266 P.3d at 628 (citation omitted). Courts adhere to the NPRA's mandate to liberally construe any provisions that facilitate access to public records; conversely, courts narrowly construe any exemptions or balancing tests that limit access to public records. NRS 239.001(2)-(3); *see also Clark Cnty. Office of Coroner / Med. Exam'r v. Las Vegas Review-Journal (Coroner's Office)*, 136 Nev. 44, 45, 458 P.3d 1048, 1050-51 (2020).

As for statutory exemptions, NRS 239.010(1) lists hundreds of statutes. The NPRA "yields to" these statutes. *Republican Attys. Gen. Assoc. v. Las Vegas Metro. Police Dep't,* 136 Nev. 28, 34, 458 P.3d 328, 333 (2020). The list is not exhaustive. There may be statutes that provide for confidentiality found anywhere in the NRS that are not listed in NRS 239.010(1). City of Reno v. Reno Gazette-Journal, 119 Nev. 55, 63 P.3d 1147 (2003).

As for common law exemptions, there are two currently recognized by the Nevada Supreme Court. The first is a general balancing test. It requires the governmental entity to "prove that its interest in nondisclosure clearly outweighs the public's interest in access." *Gibbons*, 127 Nev. at 881, 266 P.3d at 628.

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

Under the NPRA, a requester can file suit in district court if a governmental entity denies or unreasonably delays a request. NRS 239.011. The court must give the matter priority. If the requester prevails, the governmental entity must pay the reasonable attorneys fees and costs incurred by the requester. *Id*. If the governmental entity willfully violates the NPRA, then additional monetary penalties apply. NRS 239.340.

2.3 Key Definitions and Concepts

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

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

> information created or received by a state agency under authority of law, regulation or other legal mandate or in connection with the transaction of public business that is maintained by the state agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the state agency, including, without limitation, all papers, maps, photographs, financial statements, statistical tabulations, recorded media and other documentary materials, regardless of physical form or characteristics.

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

> published materials printed by a governmental printer, informal notes, unused blank forms except ballots, brochures, newsletters, magazines, catalogs, price lists, drafts, convenience copies, ad hoc reports, reference materials not relating to a specific project and any other documentation that does not serve as the record of an official action of a state agency.

NAC 239.705(2).

For local government entities, "Record of a local governmental entity" or "record" means:

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

NAC 239.101.

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

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

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[1] The NPRA expressly defines an "Official state record" to include, without limitation:

> (a) Papers, unpublished books, maps and photographs;
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> (b) Information stored on magnetic tape or computer, laser or optical disc;
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> (c) Materials that are capable of being read by a machine, including, without limitation, microforms and audio and visual materials; and
>
> (d) Materials that are made or received by a state agency and preserved by that agency or its successor as evidence of the organization, operation, policy or any other activity of that agency or because of the information contained in the material.

NRS 239.005(6).

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

3. Findings and Evaluation

3.1 Current Exemptions to Chapter 239 of NRS

There are nearly 600 statutory exemptions to NRS Chapter 239, some of which are identified in the NPRA only by reference to the corresponding statute rather than specific description of subject matter. *See* illustrative list of exemptions attached hereto as **Appendix C**. The expansive scope of these exemptions is too voluminous for the PRTF alone to evaluate in this short time frame and make recommended changes as the exemptions impact hundreds of private and public stakeholders including businesses entities, time shares, educational institutions, gaming, banks, medical professionals, and insurance companies. It is recommended that any changes to these exemptions be evaluated after seeking all stakeholder input. The Task Force's government members believe that most if not all of these exemptions are necessary.

The PRTF has found in its review that many of the statutes are not clearly worded on what information is confidential and points to NRS 202.3662 as an example of a clearly worded statute that the legislature could choose to model in the future:

> **NRS 202.3662 Confidentiality of information about applicant for permit and permittee.**
>
> 1. Except as otherwise provided in this section and NRS 202.3665 and 239.0115:
>
> (a) An application for a permit, and all information contained within that application;
>
> (b) All information provided to a sheriff or obtained by a sheriff in the course of the investigation of an applicant or permittee;
>
> (c) The identity of the permittee; and
>
> (d) Any records regarding the suspension, restoration or revocation of a permit,
>
> → are confidential.

2. Any records regarding an applicant or permittee may be released to a law enforcement agency for the purpose of conducting an investigation or prosecution.

3. Statistical abstracts of data compiled by a sheriff regarding permits applied for or issued pursuant to NRS 202.3653 to 202.369, inclusive, including, but not limited to, the number of applications received and permits issued, may be released to any person.

(Added to NRS by 1997, 1174; A 1999, 851; 2007, 2077; 2011, 754, 3110)

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

Under Nevada law, any municipality or county 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 Task Force's 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). CRB's members are volunteers. They have a limited ability to investigate claims of misconduct on their own. As such, any complaint received by the CRB is first sent to LVMPD's 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 a policy has been violated, LVMPD will implement discipline according to its negotiated contracts with its collective bargaining units. IAB will also forward its investigatory file to the CRB. At that point, the CRB can initiate its own hearings and eventually issue its own findings and recommendations.

"The 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 their findings and recommendations, to include the name of the officer. However, there are laws that are in conflict with publishing the identities of the officers. First, the City and County have enacted ordinances requiring the CRB to maintain the confidentiality of its hearings and "all records of proceedings before the panel [of the CRB]." This would necessarily include any interviews of the subject officer or witness officers. Moreover, the CRB "shall not abridge the rights of a peace officer, school police officer, constable or deputy of a constable that are granted pursuant to a collective bargaining agreement, a contract or any federal or state statute or regulation." NRS 289.385(2). LVMPD has policies mandating confidentiality of its IAB records. The collective bargaining agreements are consistent with LVMPD policies. In addition, the Peace Officer Bill of Rights ("POBR") requires IAB investigatory files to be confidential, at least when

the subject officer is not facing discipline, pursuant to NRS 289.080(9). A panel of the Nevada Supreme Court recently confirmed this (which is presently the subject of a motion for en banc reconsideration), citing the officer's due process rights under the POBR. *American Civil Liberties Union of Nevada v. Clark County Sch. Dist.*, 142 Nev. Ad. Op. 24 (Mar. 26, 2026).

Officers also have significant privacy interests under the common law. "[O]fficers d[o] not surrender their privacy interests by swearing an oath of office." *Las Vegas Metro. Police Dep't v. Las Vegas Review-Journal*, 136 Nev. 733, 478 P.3d 383 (2020) (stating that privacy interests include information that may cause "embarrassment, shame, stigma, [or] harassment" or "endangerment, or similar harm"); *Clark County Office of the Coroner/Medical Examiner*, 136 Nev. at 55–58, 458 P.3d at 1057–59 (medical information, personnel files, details about sexual orientation, and other information about a person's life give rise to privacy interests).

Despite these rights, the Nevada Supreme Court recently held that the CRB may continue publishing officer names when they publish their findings and recommendations. *Las Vegas Police Protective Ass'n v. Las Vegas Metro. Police Dep't Citizen Review Board*, 142 Nev. Ad. Op. 55 (Aug. 20, 2026).

Recommendation: Nevada law should be clarified in a way that appropriately balances the officers' rights with the public's right to know that officers are held accountable when they violate police policy.

3.3 Impact of Overbroad Public Records Requests

Most public records requests in Nevada are handled quickly by employees who have other jobs. A minority of broad, unclear, repetitive or automated requests consume a disproportionate share of that limited capacity, and every other requester waits behind them. The Task Force's objective is to make those requests workable, not to restrict access.

Types of Overbroad Requests

At its July 22, 2026 meeting, PRTF members observed that the term "broad request" was being used to describe several different things. Each imposes a different kind of burden and calls for a different response. For purposes of this report:

- *Large or complex requests* identify a subject but reach across many custodians, systems, formats or years (for example, "all communications regarding X from 2018 to present").
- *Unclear requests* do not reasonably identify the records sought, or ask questions or seek information rather than existing records.

- *Bulk or compiled data requests* seek all or a substantial portion of a structured dataset. These are addressed in Section 4.2.
- *High-frequency or automated requests* arrive in volume from a single requester or requesters acting together, including requests generated by scripts or AI.

None of these is improper merely because it is large. Transparency members emphasized, and the Government members agree, that broad requests often serve legitimate oversight, journalism and litigation purposes. The problem is not breadth. It is that Nevada law provides no structure for managing breadth.

Presentations Received

During the PRTF meetings, several government presenters 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. Specifically, 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. When Nevada first enacted public records law in 1911, documents were 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. For example, a requestor might ask for "all records related to X", this 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. Even after identifying responsive records, each record must be reviewed to determine whether it contains any confidential information and if so, redacted, before it can be provided to the requester. In other words, volume, complexity, and risk have increased, when expectations of the public for a timely response has not changed.

Heather Hahn from the Nevada Department of Transportation (NDOT) also presented about the burden of overbroad and vexatious requests, stating that these records requests severely hamper an agency's ability to respond to all records requests. Vexatious requesters intentionally ask for broad, excessive, and repetitive records in an effort to overwhelm agencies. At the federal level, this behavior is commonly referred to as "FOIA bombing." Between 2023 and 2025 NDOT experienced a 33% increase in records requests. NDOT projects 1680 requests in 2026 which represents 56% increase over 4 years without additional staffing or resources. Ms. Hahn explained that more and more requests appear to be written by AI where the approach is an over-broad format.

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Survey Findings

The Government members' survey of 92 Nevada government entities (**Appendix E**) confirms that NDOT's presentation reflects a statewide pattern rather than isolated experience.

Capacity is thin and largely unmeasured. Half of responding entities (46 of 92) have no employee whose primary duty is public records. Even among the 21 entities that received 1,000 or more requests in 2025, seven have no such employee and nine have only one to three (Table E-3). Eighty-four entities rely on employees for whom records work is a secondary duty, and 29 spread it across more than 10 such employees. Attorneys take part in responding at 84 entities, 56 of which rely on assigned government counsel such as a Deputy Attorney General or Deputy District Attorney. *The 33 entities able to estimate their 2025 hours reported roughly 90,000 hours combined, the equivalent of about 43 full-time positions*. Only 13 entities track staff hours at all, so the true figure is higher.

The burden is concentrated in a minority of requests. Most requests are routine: 57% of Nevada survey respondents often handle requests in under an hour, and 71% often give a final response within five business days. But 29% at least occasionally handle requests requiring more than 30 staff hours, and 46% handle requests requiring 10 to 30 hours. Twenty-seven entities at least occasionally need three to six months to complete a request, and 13 at least occasionally need more than six. Granicus made the same point nationally: "Not all requests are created equal." Data it supplied from Connecticut show six agencies accounting for about 94% of 71,024 requests over two years.

Requests are growing in volume and, more importantly, in complexity. Between 2023 and 2025, 15 responding entities moved into a higher request-volume range and only one moved lower. The number receiving 1,000 or more requests rose from 17 to 21 (Table E-2). Because the survey used wide ranges, these figures understate growth.

National data point the same way. Granicus's 2025 Public Record Complexity Benchmark Report draws on anonymized data from nearly 500 of its public records customers. Granicus narrowed that pool to about 240 agencies (55% city, 25% state and 20% county) and tracked them quarterly from early 2018 through mid-2025. Its Complexity Index combines eight measures of the records produced and the staff effort required, weighted against request volume. Granicus reports the following changes since 2018:

Granicus 2025 Public Record Complexity Benchmark: change since 2018

Measure	Change since 2018
Request volume (average per quarter, 436 to 1,136)	+161%
Complexity Index (volume-adjusted)	+72%

Measure	Change since 2018
Size of response files	+438%
Video files	+173%
Number of response documents	+46%
Scanned images and PDFs requiring OCR	+32%
Clarification emails	+31%
Total staff time	−10%

Source: Granicus, 2025 Public Record Complexity Benchmark Report, pp. 5–16. Granicus states that its data are volume-adjusted. The record and activity measures therefore track what each request involves rather than total growth.

The Complexity Index is the more important figure: each request is harder to fulfill, not merely more frequent. Granicus attributes part of the change to "the proliferation of multimedia content" and "possibly the growing influence of AI-powered requests and automation." It notes that large state, county and city agencies may receive 4,000 to 15,000 requests a year. Its central point, that request counts alone understate workload, is consistent with the survey.

Records are scattered and searching them is manual. Eighty-five percent of Nevada survey respondents (78 of 92) must search several separate systems to respond to a typical request. Most search two to five; some search 10 to 20.

Clarification is routine but has no structure. At least occasionally, 83% of Nevada survey respondents must ask requesters to narrow an overbroad request, 75% must address an unduly burdensome one (for example, spanning decades) and 82% receive requests for information rather than records (Table E-4). Forty percent at least occasionally see a request abandoned after clarification is sought, meaning that employee's scoping work goes unused. Seventy-four percent at least occasionally refer requesters to another entity that may hold the record. Nationally, Granicus reports that clarification emails rose 31% between 2018 and 2025. It attributes the rise to "more first-time requesters… often with vague or overly broad inquiries," and notes that each exchange "add[s] time and complexity."

Repeat, commercial and automated requests are common. Sixty-five percent of Nevada survey respondents often receive requests from repeat or high-volume requesters, and 47% often receive requests made for a commercial purpose. Sixty-six percent (61 entities) at least occasionally receive requests that appear AI-generated; only 13 could not say. By comparison, a 2026 federal FOIA Advisory Committee survey, as reported by Granicus, found that 46% of federal Nevada survey respondents believed they had received AI-generated requests and 50% were unsure. That Committee cautioned that the underlying issue is the volume and frequency

technology makes possible, not AI alone. Sixty-three percent of Nevada survey respondents at least occasionally receive requests used to support litigation.

Nevada survey respondents' own words point the same way. Staffing and staff time was the most frequently cited operational challenge (50 of 79 written answers), followed by records systems (33), request volume (25) and overbroad or burdensome requests (25). Overbroad requests were the second most frequently requested statutory change, after fees (17 and 19 of 57 answers, respectively) (Table E-13).

[Insert law enforcement survey findings from Appendix F.]

Discussion: NRS 239.0107(1)(c) already requires an entity that cannot make a record available within five business days to give the earliest date the record is reasonably expected to be available and to assist the requester in focusing the request. The statute stops there. It does not say what a request must contain, how a request for clarification affects the timeline, whether simple requests may move ahead of complex ones, or whether an entity may point a requester to records it has already published. Without that structure, the cost of a broad request falls on unrecovered staff time (75% of respondents never charge for staff time, Table E-7). It also falls on delay for every other requester in the queue, including the requesters about whom transparency members are most concerned.

Granicus frames public records administration as a risk-management problem and urges mitigation as the default: reduce delay, inconsistency and cost without reducing the right of access. The Government members agree. The recommendations below are directed at observable workload (scope, volume, frequency and duplication), not at a requester's motive. That approach protects routine requesters from delay, treats large requesters predictably and gives courts a measurable standard to apply.

Recommendations: The recommendations below follow what responding entities said they need:

1. **Fund public records staffing and request tracking.** Staffing and staff time was the operational challenge respondents cited most often (50 of 79 answers), and half have no employee whose primary duty is public records (Table E-3). About 62% track requests by hand or in a spreadsheet. Appropriate funding, or a grant program, for dedicated records staff and request-tracking systems at the entities with the highest volume and no dedicated staff (see Section 3.4, Recommendation 5).
2. **Recover staff time through a uniform fee schedule.** Adopt the uniform schedule recommended in Section 4.6, including the three-hour threshold and the aggregation of frequent requests from the same requester or requesters acting together. Fees and cost

recovery were the change Nevada survey respondents requested most often (19 of 57 answers), yet 75% never charge for staff time and those that do use thresholds from 1 to 10 hours (Tables E-7 and E-8).

3. **Address commercial and high-volume requests.** Require a requester to certify whether a request is for a commercial purpose, with an exemption for news media, as recommended in Section 4.3. Route commercial and bulk requests to the bulk-data procedures recommended in Section 4.2, rather than the ordinary request queue.

4. **Require identifiable requests and requester contact information.** Require a requester to provide a name and contact information and a description of the records specific enough to identify them with reasonable certainty, as recommended in Section 4.3. Provide that a request for all or substantially all of an entity's records, without a subject, time period or other limiting criteria, is not a request for identifiable records. Nevada survey respondents' most common examples of overbroad requests ask for "all communications," "all records relating to," or every document in a subject area over several years (Table E-14).

5. **Create a structured scoping step.** Amend NRS 239.0107 to provide that when an entity requests clarification in good faith: (a) the government entity's time to respond runs from receipt of the clarification; and (b) the entity may close the request if the requester does not respond within a defined period, as recommended in Section 4.3. Overbroad or unclear requests were the second most common change respondents requested (17 of 57 answers).

6. **Measure what entities themselves need to manage.** Asked which metrics would help them, Nevada survey respondents most often named staff hours per request (about 39), number of requests (24), requester type, including media, commercial, and repeat requesters (21), and response time (16). Include those measures in the reporting form recommended in Section 3.7. Because only 26% of respondents could report annual metrics without new systems or staff (Table E-11), phase the requirement in and fund it.

As Ms. Cabrera said in her presentation, this is not about denying access but making requests workable. Allowing time for a scoping phase, establishing a format and required information for requesters, and establishing consistent and standardized reasonable charges for staff time would all assist local governments with responses to overbroad requests.

3.4 Cost, Burden, and Time Constraints for Redaction

Review and redaction is the step most closely tied to delay in responding to public records requests. It is legally required, done almost entirely by hand, and carries growing liability for getting it wrong.

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Why Review Is Legally Required

As described in Section 3.1, Nevada law provides nearly 600 statutory confidentiality provisions. *See* **Appendix C**. Government records also contain material protected by Constitutional interests, legal privileges, and by the common-law privacy interests the Nevada Supreme Court has recognized. A government entity may not withhold a whole record if the confidential portion can be redacted, NRS 239.010(3), and it bears the burden of proving each withholding with a particularized showing. NRS 239.0113; *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 880, 266 P.3d 623, 628 (2011).

The consequences of an erroneous release are growing. Assembly Bill 197 (2025), for example, bars state entities from releasing information about donors to 501(c)(3) organizations except in specified cases. NRS 239B.027. This new statute creates a private right of action for costs, damages, and attorney fees against an entity whose release causes harm. Release of private information can also harm the person it concerns and erode public trust in the entity. For these reasons, government entities are legally obligated to review and redact records of confidential information before they are produced.

Presentations Received

Presenters explained that review and redaction is a labor-intensive process since records are no longer single pieces of paper, but consist many times of emails where email chains are embedded in other emails, or the records are located across various databases and in many file formats. Each of these millions of records may have confidential information in them and must be reviewed before produced in a records request. This requires a manual, line-by-line and frame-by-frame review.

For example, Ms. Hahn with NDOT described the scale of review a single requester can generate. Over two years, one requester submitted 34 requests and declined to narrow any of them. NDOT staff reviewed 200,017 documents in response, 130,000 of them for a single request. NDOT estimated 828 staff hours were required to complete this review, amounting to $152,545 in personnel time. NDOT's depletion of 828 staff hours to fulfill a single request interferes both with NDOT's ability to perform its core transportation operations and to fulfill other good-faith requests. This example illustrates substantial impact of requests on an agency, particularly when a requestor refuses to narrow the scope.

Nevada Survey Findings

Redaction is common and is the leading cause of delay. Redaction is needed at least occasionally at 82% of responding entities, and often or very often at 51%. Redaction workload extends response times at least occasionally for 66% of respondents, and often or very often for 41%.

Unclear confidentiality rules multiply review time. Confidentiality, privacy and redaction was the most frequently cited statutory ambiguity (24 of 61 written answers), followed by the definition of "record" (16) (Table E-13). Respondents' three highest policy priorities were all statutory presumptions of confidentiality: personnel and internal affairs records (79% rated very or extremely important), open criminal investigations (78%) and victim and witness identities (75%) (Table E-12). Respondents also asked for statutory treatment of body-worn camera and other video, juvenile records, coroner and autopsy records, security-sensitive infrastructure information, drafts and working papers, and privileged material.

A single request can require days or weeks of redaction. At least occasionally, redacting a single request takes 10 to 30 hours at 27 entities (29%) and more than 30 hours at 13 entities (14%). About one in six respondents could not estimate redaction time per request, again reflecting the absence of tracking.

The share of time spent on redaction rises with volume. Twenty-two respondents spend more than half of their public records hours on review and redaction. Among the 21 highest-volume entities, eight do (Table E-5).

The work is manual. About 75% of respondents (69 of 92) redact by hand or in standard PDF software. Almost no entity uses AI for search or redaction. The exception, AI video redaction tools for body-worn camera footage, still requires substantial manual correction according to Nevada survey respondents. Entities cited cost, accuracy, legal and confidentiality risk, and procurement as reasons for not adopting AI tools.

The material under review keeps growing. Granicus's 2025 benchmark report states that, per request, the size of response files grew 438% between 2018 and 2025 and video files grew 173%. Scanned images and PDFs that must be converted before they can be searched or redacted grew 32%. Granicus describes video as among the most complex records to manage. Faces, license plates, screens and the accompanying audio must all be obscured, often with specialized tools.

[Insert law enforcement survey findings from Appendix F.]

Government entities want tools to reduce the staff time spent on public records requests. Respondents reported significant costs related to the technology they need, ranging from low five-figures to high six figures annually (Table E-6). By comparison, the 33 entities able to estimate reported about 90,000 staff hours on public records in 2025 (Section 3.3).

Discussion: Because the NPRA does not enumerate redaction guidelines, staff must often apply the common-law balancing test to individual items. An example is whether a private person's home address should be redacted from a given record. Staff must also be prepared to justify each such judgment. That is the most expensive form of review that typically involves the government

entities' counsel. It is also the most likely to produce inconsistent results across entities and disputes with requesters. More specific statutory guidelines reduce redaction time and disputes, and make responses more predictable. The delays that case-by-case review causes can themselves damage public trust.

Technology can reduce the mechanical burden of redaction but cannot replace the legal judgment it requires. Granicus's discussion paper is consistent with this: AI may serve as a records officer's "researcher, clerk and navigator," but humans must remain accountable for exemption decisions, redactions, fee determinations and disputes. Granicus's benchmark report also notes that total staff time fell 10% since 2018 even as complexity rose. However, the quarterly series swings widely (from about 270 hours to a peak near 2,900), and Granicus's own paper cautions that the data do not establish the cause. Technology should therefore be funded as a way to manage growing complexity, not as a substitute for staff or a reason to shorten timelines.

Finally, much of the cost of review is created before a request arrives. Official business conducted through applications stored in multiple databases, inconsistent retention and poorly classified records all expand what must be searched and reviewed.

Recommendations: The following recommendations address the cost, burden, and time constraints imposed by review and redaction:

1. **Replace case-by-case balancing with categorical rules for high-frequency requested records.** Enact the uniform definition of personal identifying information and the personnel-records protections recommended in Section 4.2, and the criminal-investigation protections recommended in Section 4.5. Add express treatment of victim and witness identities and of body-worn camera and other government video. A defined list of data elements that may be redacted lets staff redact by category rather than build a balancing record for each line.
2. **Reconcile liability for disclosure errors.** Confirm that the good-faith immunity in NRS 239.012 protects an entity and its employees that follow reasonable review procedures, and reconcile new private rights of action, such as NRS 239B.027, with that immunity. An entity facing damages for a single missed redaction will review more slowly and withhold more.
3. **Tie timelines to the review actually required.** Clarify that the estimated availability date under NRS 239.0107(1)(c) may account for the volume of material requiring review and redaction, and may be revised with written notice. Pair this with the installment and multitrack processing recommended in Section 3.3.
4. **Allow recovery of redaction costs under the uniform fee schedule.** Under the schedule recommended in Section 4.6, staff time spent redacting is chargeable after the three-hour

threshold, while time spent deciding whether material is confidential is not. The schedule should set a separate, published rate method for specialized work such as video redaction.

5. **Fund staff and tools, and simplify buying tools.** Appropriate funding for dedicated public records staff, and funding or a grant program for request-tracking, document-redaction, and video-redaction tools, prioritizing entities with the highest volume and those without dedicated staff. Direct the State Purchasing Division to establish statewide contracts that local governments may join, addressing the procurement barrier respondents reported. Contracts for these tools should include the public records and data-use provisions recommended in Section 4.1, including the prohibition on training models on government data.
6. **Invest upstream in records management.** Direct the Nevada State Library, Archives and Public Records to issue guidance and training on conducting official business through personal accounts and messaging applications, on retention, and on records classification. Fewer records would then have to be searched and reviewed to answer each request.

Layered review, consistent protocols and training remain the core safeguards. These recommendations are intended to let entities apply them faster and more consistently. That protects both the privacy of the people whose information government holds and the public's timely access to the rest.

3.5 Financial Burden on Requestors

- Provide fee structures
- List accessibility concerns
- Identify equity considerations

3.6 Dispute Resolution Mechanisms

Currently, judicial intervention is the only dispute resolution mechanism presently contemplated under the NPRA for public records disputes . There are currently no existing mandatory dispute resolution mechanisms set forth in NRS Chapter 239. The PRTF discussed multiple options for alternative dispute resolution mechanisms.

The PRTF heard a presentation from the Reporter's Committee for Freedom of the Press which recommended an independent, impartial, and empowered ombuds-office to administratively review records requests disputes. The Reporter's Committee pointed to Connecticut and Utah as

model examples. Members of the PRTF also suggested having administrative level review within each government agency, or authorizing a state agency such as the Office of the Attorney General to review claims. In general, there was consensus that there should be alternative dispute resolution mechanisms available to requestors. Key considerations will be how the principal or members of the dispute resolution body is chosen, whether the body will have the power to compel records, and the cost to the State and/or local governments.[2] The Reporter's Committee expressed support for a government appointed principal if there are safeguards that ensure independence such as the appointment for a set term without ability to remove the principal.

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 comprised of 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: 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*

[2] It should be noted that the other state models primarily arise from states with additional funding mechanisms such as income tax, including the Connecticut and Utah models provided in the Reporter's Committee's presentation and the examples provided in this report except for Tennessee and Texas.

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).

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

Currently, the NPRA does not require government entities in Nevada to collect or share data related to public records requests, such as request volume, response times, denials, or fees.[3] Without that data, neither the Legislature nor the public can measure request volume, response times, or the staff and resources entities spend on compliance, except by submitting a public records request for whatever an entity happens to track. The Government members' own survey shows how little is tracked today and what it would take to change that.

Most entities do not track the data a reporting requirement would ask for. Only 13 of 92 respondents (14%) track staff hours spent on public records. About 62% (56 of 91) track requests by hand or in a spreadsheet. About one in six could not estimate redaction time per request. The 33 entities able to estimate their 2025 hours reported roughly 90,000 hours combined, but several large entities answered "thousands" without a figure.

Most could not report without new systems or staff. Only 24 of 92 respondents (26%) said they could report annual metrics without new systems or staff; 33 said they could not and 35 were unsure. Ability to report does not rise with volume: among the 21 entities receiving 1,000 or more requests a year, only 5 said they could (Table E-11).

Entities want the data for their own management. Asked which metrics would help them manage their own public records work, 74 respondents gave a substantive answer. The most common were staff hours or time spent per request (about 39), the number of requests received (about 24), requester type, including media, commercial and repeat requesters (about 21), and response or processing time (about 16). Cost of responding, and denials or redactions, were each named about 11 times.

Request counts alone understate the work. Granicus's 2025 benchmark makes this point directly: "volume alone doesn't tell the full story. Not all requests are created equal." Across the agencies in its dataset, request volume rose 161% from 2018 to mid-2025. Over the same period its volume-adjusted Complexity Index rose 72%, driven by larger response files (+438%), more video (+173%) and more clarification emails (+31%). The survey shows the same pattern in Nevada: 57% of respondents often handle requests in under an hour, while 29% at least occasionally handle requests requiring more than 30 staff hours. A reporting form that counts only requests would miss where the burden lies.

[3] 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.

Reported data reveals where the burden is concentrated. Data Granicus supplied from Connecticut show six state agencies accounting for about 94% of 71,024 requests over two years, led by public safety and child welfare. Granicus concluded that "a statewide policy based on an 'average request' would therefore be misleading." Nevada's survey points the same way: 21 respondents received 1,000 or more requests in 2025 while 20 received 25 or fewer (Table E-2).

Models from Other States, District of Columbia, and the Federal Government

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., Ed. 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;
- 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.[4] 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).

[4] 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).

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, 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 (*United States*): 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.

Discussion: The Nevada survey shows that a reporting mandate imposed all at once, without funding, would fall hardest on entities least able to absorb it. Half of respondents have no employee whose primary duty is public records, and most track requests by hand. Washington addresses this by requiring full reports only from agencies spending at least $100,000 a year on records requests and allowing smaller agencies to report voluntarily. Granicus similarly recommends measuring demand, timeliness, complexity, cost, outcomes and disputes, while keeping requester identity and other protected case information out of anything published.

Consistent data would give policymakers an objective record of how the NPRA works in practice: the number and complexity of requests, what compliance costs, and the staffing constraints entities face. It would also let future policy changes, including the uniform fee schedule recommended in Section 4.6, be measured against experience rather than anecdote.

Recommendation: The Legislature should amend the NPRA to require annual reporting on public records requests:

1. **Require annual reporting on one standard form, phased in by size and tied to funding.** The NPRA should be amended to require governmental entities to report annually on public records requests using a single form. Entities that received 1,000 or more requests in the prior calendar year should complete the full form beginning with the first full calendar year after funding for tracking systems is available. All other entities should report the core metrics marked below, and may report the full form voluntarily. The thresholds should be reviewed after two reporting cycles.

2. **Designate one body to adopt the form and publish the results.** The Nevada State Library, Archives and Public Records or a 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 Legislative Counsel Bureau should provide the Legislature with a statewide summary before each regular session.
3. **Include the metrics entities themselves need, and measure complexity as well as volume.** The form should require, at a minimum, the measures of volume, staff time, timeliness, fees collected, and fee waivers requested and granted. Entities should be encouraged to tack and report additional measures such as requester type, the number of requests for which clarification was sought; requests abandoned after clarification or after a fee estimate, the number of requests denied in full or in part, and the legal grounds most often relied on, and the number of petitions for petitions for judicial review or mediation efforts, with outcomes.
4. **Define terms so entities report consistently.** The designated body should define: a common reporting period (the calendar year); when a request is "received" and "closed"; whether days are business or calendar days; how a multi-part request is counted; what makes a request "abandoned"; and acceptable methods for estimating staff hours until entities have tracking systems.
5. **Fund the systems that make reporting possible.** Appropriate funding, or a grant program, for request-tracking systems, prioritizing high-volume entities and entities without dedicated records staff. Establish statewide contracts that local governments may join (see Section 3.4).
6. **Use the data.** The designated body should use reported staff-time and fee data in its annual review of the uniform fee schedule recommended in Section 4.6. Good-faith estimates submitted on the form should be used for policy purposes and should not, by themselves, establish a violation of the NPRA.

4. Recommendations

4.1 Clarification of Custodianship and Control

The NPRA requires the governmental entity with "legal custody or control" of a record to respond to a requestor, NRS 239.0107. However, the NPRA does not provide a comprehensive explanation what legal custodianship or control means across state and local government. The Nevada Administrative Code 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. The Nevada Supreme Court has held that a government entity has "legal control" over records where an 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*, 134 Nev. at 147–48, 414 P.3d at 323 ("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)). The definition of "custodian of records" in NRS 239.121 is limited to 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. Further, NRS 239.0107 allows an entity that lacks custody or control to direct the requestor elsewhere, if known.

Clarification of Legal Custody

Other states provide more clarity on the meaning of custody. North Carolina, for example, specifies that an agency holding another agency's records for purposes of storage, safekeeping, or data processing is not the custodian responsible for responding to a public records request. N.C.G.S. § 1326. It also has a provision that allows a custodian to demand custody of public records from any person having illegal possession them and provides consequences if the record(s) are not produced according to law. *See* N.C.G.S. § 1325. This facilitates records processing by allowing the entity who created and is thus more familiar with its contents to be the entity reviewing it for confidentiality and disclosure. Nevada should adopt this concept, while requiring service custodians to preserve, secure, and return records to the responsible entity.

Recommendation: The Legislature should amend the NPRA to distinguish between the "responsible custodian" and a "service custodian."

- Responsible custodian: A governmental entity holding the legal control, statutory responsibility, or policy accountability for the program, function, transaction, or decision documented by the record. A governmental entity that caused the record to be created, whether by creating the record itself or through a private contractor. A responsible custodian does not include a government entity that did not create a record and has no right or responsibility to maintain or assert a legal privilege with respect to the record.
- Service custodian: An IT department, archive, contractor, cloud provider, or shared-service organization that stores or processes records for another entity but does not determine their legal status.

Clarification of Legal Control

Recommendation: The NPRA should be amended to clarify that a governmental entity has legal control of a record when it has the legal right or practical ability to obtain or retrieve the record; require another person to preserve or produce it; direct how it is maintained, used, transferred or destroyed; or require its return when employment, office or a contract ends. An entity also has legal control of a record it uses to perform a governmental function or make an official decision. *See Blackjack Bonding*, 131 Nev. at 86–87; *Comstock*, 134 Nev. at 147–48. The definition should exclude instances where one entity simply shared its record or access to its record with another entity.

For example, the following circumstances, standing alone, should not give a governmental entity legal control of a record or make it the responsible custodian obligated to respond to a request for that record:

- storing the record solely as a backup for another entity;
- monitoring a system or network that contains the record solely for cybersecurity purposes;
- providing technical administration, hosting or support for a system that contains the record;
- receiving a courtesy copy of a record that the entity does not use or rely on in conducting its own business;
- holding the record temporarily and solely to transmit it to another person or entity;
- holding the record as a service custodian on behalf of another governmental entity; or
- holding property of a private person, such as a device or recording obtained by consent or warrant, whose contents have not otherwise become a record of the entity.

Contract Requirements

Nevada law does not currently address contract language requirements for private individuals, non-governmental partnerships, corporations, or business entities who enter into a contract for services with a public agency responsible for public records. In addition to other contract requirements provided by law, each public agency contract for services entered into should include a provision that requires the contractor to comply with Nevada public records laws, specifically to ensure:

1. Records created, received or maintained in performing the governmental function remain under governmental control
2. The contractor must preserve them according to applicable retention schedules
3. The contractor must return responsible records promptly when requested by the agency

4. Confidential and personally identifiable information must remain protected during and after the contract
5. Records must be restored or securely disposed of when the contract ends
6. The contractor may not sell, commercially exploit, train an AI model on, combine or repurpose government data unless expressly authorized by law and contract
7. Subcontractors and cloud providers are bound by the same requirements
8. The agency must retain the practical ability to export its records in a usable format

Florida, for example, treats certain private entities acting on behalf of government as subjects to its public-records requirements. Florida also requires public service contracts to address preservation, confidentiality, production and transfer of records when a contract ends. *See* Fl. Stat. § 119.01 *et seq*.

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, confidentiality, production and transfer of records when a contract ends.

Public Records Act Compliance Coordination

It's often unclear which government employees are responsible for responding to public records requests on a government entity's behalf. 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. In Washington, state and local agencies are required to publicly identify a public records officer responsible for overseeing compliance. *See* Wa. Rev. Code § 42.56.580.

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

- A central email address for public records request correspondence that will remain the same even if staffing changes;
- The contact information for its public records coordinator; and
- The agency's physical office location to make public records requests, in addition to any online submission method;

4.2 Protection of Sensitive Information and Transparency

Privacy and transparency are equivalent obligations. Nevada public records laws must protect sensitive data, without concealing public records. 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 those principles.

Current confidentiality provisions are scattered across many chapters and use inconsistent terms. For example, with regard to personally identifying information, NRS 239.0105 states that "records containing the name, address, telephone number or other identifying information of a natural person" are confidential but only if the information is contained in a record related to the use of a recreational facility or enrolling a minor in a recreational activity. Nonetheless, those limited records are not confidential to certain individuals including a reporter or editorial employee, or if over 30 years old. *See* NRS 239.0105 (2). Similarly, NRS 603A.210 protects social security numbers, driver license numbers, certain account numbers, medical identification numbers, and user names from disclosure. Finally, NRS 239.014 protects certain personally identifiable information collected electronically when an agency determines that disclosure could produce specified negative consequences. However, this applies specifically to information collected from the public by automated means over the internet or other digital network. It is not a comprehensive definition for all public records. All of these provisions combine to demonstrate a legislative acknowledgement that personally identifying information is sensitive to misuse and should be protected, yet the law remains limited and inconsistent.

Legislators should consider defining a limited category directly in NRS Chapter 239 covering vulnerable data such as: social security numbers, Tax ID numbers, financial account numbers, authentication credentials, security questions, full dates of birth, personal email addresses, telephone numbers, medical-biometric-genetic, precise geolocation data, and information identifying protected victims, minors, or people with confidential addresses. The statute should expressly provide that the definition does not conceal information necessary to evaluate government expenditures, public compensation, contracts and vendors, official decisions and votes, lobbying and campaign activity, conflicts of interest, licensing, government findings or misconduct.

Recommendation: The Legislature should establish a uniform statewide definition of "personal identifying information."

DRAFT

Bulk Data Requests

Historically, a public record would be available at a government agency's physical counter. The public could inspect the record, journalists could investigate it, and residents could hold public officials accountable. However, more and more agencies are digitizing the physical copies of its public records. The risk environment for Nevadans is different. Technical advances make information discoverable from great distances at speed and scale. Data brokers can combine records from multiple agencies and foreign actors can access the same database without ever entering Nevada. Information that seems harmless individually can be aggregated and exploited, sold to others for a fee or used to target certain demographics for unsolicited commercial purposes. Public access to records is not a concern in this context. The scale, aggregation, searchability and automated reuse of that access poses threats.

Ordinary public access is not equivalent to placing person-level information into a universally searchable, indexable, and bulk-downloadable database. Technology can transform isolated records into population-scale profiles by enabling automated scraping, name and address-based searches, bulk downloads, AI-supported profiling, and dataset linking. In some cases, the requestor is using the information for the purposes of reselling and solicitation.

Nevada can preserve the legal right to inspect and obtain records while applying narrowly tailored safeguards to the technological method of dissemination. Currently, NRS 239.014 recognizes that electronic collection of personally identifiable information can create risks and requires agencies to determine confidentiality. But the law does not address bulk publication, web scraping, application programming interfaces, dataset linkage or search-engine indexing.

Nevada law already recognizes that disclosure characteristics (such as email addresses and phone numbers) of an entire database can differ from those of an individual data request (NRS 239B.040).

Arizona's judiciary governs bulk or compiled court data, requiring dissemination agreements for bulk requests for commercial and non-commercial purposes, and ensures the requestor complies with state laws. See Arizona Judicial Branch.

Recommendation: The Legislature should amend the NPRA to establish standardized procedures for requests for bulk or compiled data. The statute should:

1. **Define "bulk or compiled data."** Define bulk or compiled data as all or a substantial portion of a structured electronic dataset containing information concerning Nevadans, properties, businesses, cases or transactions.

2. **Authorize bulk-data procedures.** When a requester seeks all or a substantial portion of a governmental entity's database, permit the entity to process the request under standardized bulk-data procedures rather than treating it identically to an ordinary document request.
3. **Require dissemination agreements for high-risk datasets.** Require a standardized dissemination agreement for requests for defined high-risk bulk datasets. The agreement should ensure that the requester complies with applicable privacy and confidentiality laws.
4. **Allow custodians to recover records held unlawfully.** Authorize a governmental entity that is the legal or responsible custodian of public records to demand their return from any person in unlawful possession of them.

Personnel Records

In Nevada, there is no blanket confidentiality rule for personnel records. However, Nevada courts have recognized that personnel files may be shielded from public disclosure to prevent an unwarranted invasion of personal privacy. *See Clark Cnty. Sch. Dist. v. Las Vegas Rev.-J*, 134 Nev. 700, 429 P.3d 313 (2018); *see also Las Vegas Metro. Police Dep't v. Las Vegas Rev.-J.*, 136 Nev. Adv. Op. 86, 478 P.3d 383, 387–88 (2020). Most recently, the Nevada Supreme Court held that police internal investigative files are exempt from disclosure pursuant to NRS 289.080 unless the investigating agency recommends punitive action. *Am. C.L. Union of Nevada v. Clark Cnty. Sch. Dist.*, 142 Nev. Adv. Op. 24, 586 P.3d 1221 (2026). Many other states also recognize that active employment investigations are confidential. For example, the State of Florida, known for its transparency laws, has temporary protections for active human resources investigations. *See e.g.,* Fla. Stat. §§ 119.071(2)(k), 112.533(2); *Woolling v. Lamar,* 764 So. 2d 765 (Fla. 5th DCA 2000); Op. Att'y Gen. Fla. 94-75.

Recommendation: Provide the same levels of protection for all public employees that are provided to police officers.

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, however, require a foreseeable-harm determination each time a government entity relies on a discretionary exemption.

Federal FOIA provides a useful model in this example. The FOIA Improvement Act of 2016 states that a federal agency may withhold information only when it foresees that disclosure would reasonably harm an interest protected by an exemption or when disclosure is prohibited by law. Agencies shall "consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible."

The Nevada legislature attempted to address overbroad and unduly burdensome requests in the NPRA by requiring a government entity to "Make reasonable effort to assist the requester to focus the request." NRS 239.0107(1)(c)(2). However, in many cases, the requestor refuses to focus their request, so significant time is used to fulfill the request, further delaying requests that come after. This is often the case with bad-faith "FOIA bombing" requests. While some large requests remain valid, government entities should be allowed to use structured tools and methods, such as standardized request forms, to clarify what requestors are looking for.

For example, Utah Code § 63G.2.204(1) requires that a records request be in writing and contain the requester's full name, mailing address, daytime phone number, and email (if willing to receive communications by email), and a description of the record specific enough to identify the record with reasonable certainty. *See* example of Utah's standard request form here: GRAMA-request-form2.pdf.

Recommendation: Requestor should be required by law to provide contact information including phone and email, and a description of the record specific enough to identify the record with reasonable certainty.

Administrative Closure of Certain Requests

A request must reasonably identify the records or categories of records sought. A request cannot be denied solely because it includes a large volume of records. However, a request for all or substantially all records of an agency, without a reasonable identifiable subject matter, record category, time period, person, transaction, event, or other limiting criteria, does not constitute a sufficiently identifiable request, and should be grounds for denial.

Washington: The State of Washington allows government entities to close an unclear request when the requestor doesn't respond to a request for clarification, while requiring government entities to continue responding to portions that are clear. Washington law states, "A public records request must be for identifiable records. Wa. Rev. Code § 42.56.080. A request for all or substantially all records prepared, owned, used, or retained by an agency is not a valid request for identifiable records." But requests for all records concerning a particular topic, keyword, or person is not in itself invalid. Further, Washington law states that an agency cannot deny an identifiable request simply because it is overly broad.

Louisiana: "If the custodian reasonably determines that the request would substantially disrupt required government operations, the custodian may deny access only after reasonable attempts to narrow or specify the request with the requestor." La. Rev. Stat. § 44:32.

Recommendation: Allow a government entity to close a request when the requestor refuses to narrow the scope within a reasonable time and it is not possible to identify responsive records.

Automated, "Bot," "Phishing," or "Data Scraping" Requests

Washington law RCW 42.56.080 also allows for denial of a "bot request" provided certain criteria. In Washington, agencies may deny a bot request that is "one of multiple requests from the requestor to the agency within a twenty-four hour period, if the agency establishes that responding to the multiple requests would cause excessive interference with other essential functions of the agency." Bot requests are described as a request for public records that an agency" reasonably believes was automatically generated by a computer program or script."

Government entities in Indiana looks to 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. 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).

Recommendation: Amend the NPRA to allow agencies to deny 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.

Vexatious Requestors

Many presenters to the public records task force described instances of "FOIA bombing" where individuals submit intentionally ask for broad, excessive, and repetitive records in an effort to overwhelm agencies. There are already standards in state law for vexatious litigants. *See, e.g.*, NRS 159A.0486 (setting forth criteria for a person to be labeled a vexatious litigant in the guardianship context).

Recommendation: Local governments should be empowered to seek a declaratory relief from the Court finding that a requestor is a vexatious requestor utilizing similar criteria. For example, court

may find that a petitioner is a vexatious requestor if a person, (a) submits a public record request that is intended to harass or annoy the government entity; and (b) has previously submitted public records requests intended to harass or annoy the government entity. If a court finds a person is a vexatious requestor, the court may impose sanctions on the requestor in an amount sufficient to reimburse the government entity for all or part of the expenses incurred by the government entity to respond to the requestor and for any other pecuniary losses which are associated with the public records request.

Recommendation: Require affidavit on submission of a records request that that data is not being used to train an AI model on, sell, or repurpose government data ("commercial purpose") unless expressly authorized by law and contract. If data is being used for commercial purposes the request should be denied as prohibited by law. If companies want data for commercial uses this should be required by contract. There should be an exemption for media.

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, 90, 343 P.3d 608, 615 (2015). Government employees have a duty to protect public tax dollars. Using tax dollars to pay a prevailing requesters' fees and costs prevents those dollars from being used to provide services to the public. And as has been widely reported, requesters have recovered sums well into the six figures when prevailing under the NPRA. As such, the possibility of having to pay the requesters' fees and costs is a severe penalty.

Second, 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)."

This second penalty provision was added to the NPRA in 2019. Again, using tax dollars to pay penalties prevents those dollars from being used for core agency services. As such, it serves as a significant deterrent to willfully violating the NPRA.

The Task Force does not recommend any additional penalties. Instead, the Task Force is focused on more productive ways to ensure compliance with the NPRA, like alternative forms of dispute resolution (Section 3.6) and clarifying exemptions (Sections 4.1, 4.2, 4.3, 4.5, and 4.6) so that less disputes arise in the first place.

4.5 Protocols to Protect Criminal Investigations

The Task Force spent considerable time discussing criminal records. In particular, the Task Force heard substantial testimony that providing public access to ongoing and active criminal investigations and trials jeopardizes law enforcement interests, privacy rights, and the Constitutional rights of criminal defendants to a fair trial. Most states protect open criminal files, at least in some way as summarized below, as well as materials previously received by the PRTF. The PRTF also heard testimony that stakeholders throughout the state disagree as to the state of current law in Nevada governing such records. Finally, protecting the rights of criminal defendants is essential. As the PRTF heard during its hearings, defendants have a constitutional right to a fair trial. Pretrial publicity and the premature disclosure of detailed information can jeopardize these crucial rights.

Outside of the NPRA, Nevada law already recognizes a privacy interest in criminal records. For example, it allows criminal defendants convicted of crimes to seal their criminal records under various circumstances tied to the severity of the crime and length of time that has passed. Additionally, Nevada law generally prohibits employers from asking about criminal employment history in a job application. Since employers are not allowed to ask about criminal records, and criminal records are subject to sealing, the Legislature has already found that there is a privacy interest. The former criminal defendant has served the sentence and deserves the chance to be free from past mistakes. Yet anyone could find out about past criminal conduct through the NPRA. This gap should be filled by adding language to the sealing statutes in NRS Chapter 179 to contain a presumption that any records that are eligible for sealing are confidential from the NPRA.

A similar but more profound gap in the law exists for criminal investigative files involving a suspect or person of interest who is never arrested or charged with a crime because probable cause was not established. An allegation from a witness identifying a person as a suspect, indeed, can be entirely false even if the witness acted in good faith. Revealing the investigation details of a suspect who was later ruled out or otherwise never charged can have profoundly negative impacts on the person's professional and personal life. It may also be a violation of the 14th Amendment's

due process clause, which prohibits the government from punishing individuals accused of crime prior to being convicted. The Ninth Circuit has held that disclosing booking photos prior to conviction implicates these rights, so disclosing whole files would seem to as well. *Houston v. Maricopa County*, 116 F.4th 935 (9th Cir. 2024). A person may not even know they were identified as a suspect in any criminal investigation as the government entity is not mandated to inform them of a public records request seeking records about them. And that person currently has no ability to assert any confidentiality interests pertaining to that investigatory record. Nevada law should be clarified that such records are subject to sealing and are confidential under the NPRA. If a defendant found guilty of a crime can seal records, then a subject never arrested or never charged with a crime should be able to seal records. The sealing statutes in NRS Chapter 179 should permit sealing of such records and contain a similar provision that they are confidential under the NPRA, even when not officially sealed.

Recommendation: Amend the NPRA to state that open criminal investigative and active prosecution records are confidential and recognize a privacy interest when records are subject to sealing.

An easy way to do so is through NRS Chapter 179A, which governs police records. Law enforcement agencies already rely on this chapter to protect investigative files. Two amendments would remove all doubt. First, NRS 179A.070, which is listed among the exemptions to the NPRA in 239.010(1), shall include a third subsection to read as follows: "The records identified in this section are confidential, except as provided in this Chapter." Then, NRS 179A.100, which is a comprehensive statute that governs most instances when police records shall and may be disseminated, should be amended to include a new subsection (6), as follows:

> *6. Investigative or intelligence information, reports of crime or other information concerning specific persons collected in the course of the enforcement of criminal laws must be disseminated by an agency of criminal justice, upon request, to any person, unless the agency of criminal justice provides an attestation under oath that such records relate to an active and ongoing criminal investigation or prosecution. If an agency of criminal justice disseminates records under this subsection, the agency of criminal justice may only redact the records pursuant to exemptions available under the Nevada Public Records Act, NRS Chapter 239.*

The attestation requirement accounts for the risk, raised by the Transparency members, that a police agency would misrepresent the status of an investigation.

These amendments are consistent with existing law protecting Criminal Justice Information Systems (NRS Chapter 179A), grand jury proceedings (NRS 172.245), search warrant

applications (NRS 179.045(4)), the privacy of victims through Marsy's Law (Art. of the Nevada constitution). These amendments are also consistent with Nevada law governing the disclosure of records in criminal cases (NRS 174.235). Federal law under the Privacy Act of 1974 is also consistent.

Adopting this framework in Nevada would be consistent with the majority of public records laws in the United States. In general, all states, the federal government and the District of Columbia have some level of protection for criminal investigative records. A complete summary is attached as **Appendix D**: 50 State Survey of Statutes Addressing Records of Criminal Investigations. Approximately half of the states generally exempt active investigatory files from public records laws. Even in states with blanket exemptions, many states require disclosure of routine incident reports, and basic date/time/location/immediate facts unless unusual circumstances create serious investigative or safety risks. In most other states, law enforcement may withhold records where disclosure would interfere with law-enforcement proceedings, impair a fair trial, invade privacy, reveal confidential sources/techniques, prejudice an investigation, or endanger safety or when disclosure would be contrary to the public interest. The majority of these states completely exempt such records from disclosure when the criteria is met.

In Nevada, there is no blanket confidentiality rule for all criminal investigative records, but several statutes and doctrines create confidentiality for specific categories of criminal justice records. NRS Chapter 179A makes certain categories of criminal justice information confidential, and the common-law balancing test comes into play when records are not expressly exempt. The test weighs the privacy interest of individuals, including suspects, and officers. The courts have repeatedly held that law-enforcement investigative materials often implicate strong privacy concerns, and disclosure that risks unfairly stigmatizing individuals or compromising fairness is disfavored. Under these cases, courts have upheld confidentiality when disclosure would implicate the privacy rights of crime victims or accused persons, risk interference with investigations, or risk tainting criminal proceedings.

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. 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."

States around the country provide different models for creating a standardized fee schedule. Multiple states allow a single body to publish a fee schedule for all or most government entities. Other states allow each branch of government (executive, judicial, and legislative) to set its own schedule. In general, local government entities are permitted but not required to adopt a

standardized fee schedule. The state legislatures may also set allowable fees or fee caps directly in statute.

Pennsylvania: The Office of Open Records is statutorily required to conduct a biannual review of fees charged under the Right-to-Know-Law, 65 P.S. §§ 67.101 *et seq*., *see* 65 P.S. § 67.1310(a)(8). The Office of Open Records sets duplication fees for all Commonwealth agencies and local agencies; however, the judiciary and legislature set their own fees. 65 P.S. § 67.1307(b)(1). Duplication fees must be reasonable and based on "prevailing fees for comparable duplication services provided by local business entities." 65 P.S. § 67.1307(b)(2). An agency's fees may differ from those on the Office of Open Records's fee schedule, provided that the fees are less than those permitted by the Office.

Texas: The Office of the Attorney General is required to adopt rules for use by each state government entity in determining charges for providing copies of public records. Tex. Gov. Code § 552.262(a). A government entity (other than a state agency) may determine its own fees but may not charge over 25% more than the amount established by the attorney general unless the entity requests an exemption. *Id*. The attorney general may grant an exemption for good cause. *Id.* § 552.262(c).

Hawaii: The director of the Office of Information Practices is statutorily required to "adopt rules that set forth the fees and other charges that may be imposed for searching, reviewing, or segregating disclosable records, as well as to provide for a waiver of such fees when the public interest would be served." Haw. Rev. Stat. § 92F-42 (13). The rules authorize state and county government entities to charge fees for searching for, reviewing, and segregating the record and any other lawful fees. Haw. Admin. R. § 2-71-19.[5] Agencies may charge fees up to their actual costs or the following fees: $2.50 per 15 minutes to search ($10/hour), $5 per 15 minutes to review and segregate ($20/hour), and the first $30 is waived. Haw. Admin. R. § 2-71-31.

Tennessee: The Office of Open Records Counsel is required to establish (and revise at least annually) a schedule of reasonable charges government entities may use as a guideline to charge for public records requests. Tenn. Code Ann. § 8-4-604(a)(1) (2025). The schedule sets per page copying charges and permits actual out-of-pocket costs for flash drives or similar storage devices on which electronic copies are provided. *Id*. *See* Schedule of Reasonable Charges, Tenn. Office of Open Records Counsel. The schedule expressly permits labor charges after the first hour of labor reasonably *necessary* to produce the requested records, *i.e.*, the "labor threshold." *Id*. Notably, Tennessee law establishes a separate fee policy for frequent and multiple requests. Tenn. Code Ann. § 8-4-604(a)(2) (2025). This schedule allows a government entity to aggregate requests made

[5] These rules also allow an agency to require prepayment of 50% of the agency's estimated search, review, and segregation fees, plus 100% of the agency's estimate of other lawful fees, such as copying or mailing costs search, review, and segregation fees. Haw. Admin. R. § 2-71-19.

by a single requester or, in some instances, multiple requesters acting together. *See* Reasonable Charges for Frequent and Multiple Requests, Tenn. Office of Open Records Counsel. Once a requester reaches an aggregation threshold (at least four requests within a calendar month), a government entity is no longer required to deduct the labor threshold set forth in the Schedule of Reasonable Charges or any other minimum charge per request threshold that would ordinarily be waived. *Id*.

Louisiana: The Commissioner of Administration sets a uniform fee schedule for state agencies providing copies of public records. La. Rev. Stat. § 39:241. Local government entities set and post their own reasonable fees. La. Rev. Stat. § 44:32.

Vermont: The Secretary of State, after consultation with the Secretary of Administration, adopts a uniform schedule of public records charges for state agencies, including the amount that may be charged for staff time and other actual costs. 1 Vt. Stat. Ann. § 316(d) (2025). In addition to costs for photocopies, CDs, DVDs, and audio or video tapes, the schedule establishes the following fees:

1. For staff time involved in physically duplicating a record, $.33 per minute [$19.80/hour] after the first 30 minutes.
2. For senior-level staff time, and information technology specialists' time spent extracting data from databases, or performing similar tasks necessary to comply with a request to create a new public record, $.57 per minute [$34.20/hour].
3. For any other staff time for which cost can be charged and collected under this section, $.45 per minute [$27/hour].

See Uniform Charges Schedule, Vermont Secretary of State. Each local government entity its own schedule after public hearing. 1 Vt. Stat. Ann. § 316(e) (2025).

A majority of states explicitly permit government agencies to charge for staff time spent searching for, reviewing, redacting, and making copies of records. *E.g.*, Tex. Gov. Code § 552.261(a) (fees for providing public records "shall be an amount that reasonably includes all costs related to reproducing the public information, including costs of materials, labor, and overhead"); D.C. Code § 2-532 (fees may be charged at an amount not to exceed the actual cost of searching for, reviewing, redacting, and making copies of records). However, a minority of states prohibit charging for staff time. *E.g.*, W. Va. Code § 29B-1-3(e) (prohibiting search or retrieval fees or reimbursement based on a man-hours); Ar. Code § 25-19-105(d)(3)(A)(i) (prohibiting fees for "existing agency personnel time associated with searching for, retrieving, reviewing, or copying the records"); In. Code § 5-14-3-8 (expressly excluding labor or overhead costs from "actual cost" subject to certain exceptions). Notably, Kentucky prohibits charging *noncommercial* requesters for staff time or search efforts in fulfilling their public records requests, but staff time is permissible for commercial requesters. Ky. Rev. Stat. § 61.874(3), (4).

Additionally, states around the country recognize that commercial and/or news media use of public records are different from other categories of use. Those states allow government entities

to address such requests in ways unique from other individual requesters. Mass. Gen. Laws Ch. 66 § 10(d)(ix) (defining a "commercial purpose" as "the sale or resale of any portion of the public record or the use of information from the public record to advance the requester's strategic business interests in a manner that the requester can reasonably expect to make a profit," and excluding "gathering or reporting news or gathering information to promote citizen oversight or further the understanding of the operation or activities of government or for academic, scientific, journalistic or public research or education"); Tenn. Code § 10-7-506 (2025) (defining a "record that has commercial value" to mean a "record requested for any purpose other than: (A) A non-business use by an individual; and (B) A news gathering use by the news media"); Tex. Gov. Code § 552.275(m)(2) (defining "News medium" to include "a newspaper, magazine or periodical, a book publisher, a news agency, a wire service, an FCC-licensed radio or television station or a network of such stations, a cable, satellite, or other transmission system or carrier or channel... or an audio or audiovisual production company or Internet company ... that disseminates news or information to the public by any means...).

Findings: NRS 239.052 lets each governmental entity set its own fees, limited to actual cost. The survey shows the result: most entities recover little or none of the staff time they spend, and those that do charge use widely different thresholds and rates.

Most entities charge nothing for staff time. Forty-three of 92 respondents (47%) charge no fees at all, 40 charge only in certain circumstances and nine charge routinely. For staff or attorney time, 69 (75%) never charge, 19 charge only above a threshold and four charge routinely (Table E-7).

The cost goes unrecovered. The 33 Nevada survey respondents that estimated their 2025 hours reported roughly 90,000 staff hours on public records. At the $23 to $35 hourly rates respondents charge for their lowest qualified classification, that time is worth roughly $2 million to $3 million a year in wages alone. This is a conservative figure: it excludes benefits, attorney time and the many entities that could not estimate their hours.

Entities that do charge use inconsistent thresholds and rates. Free time before charges begin ranges from 1 hour to 10 hours; 10 hours is the most common threshold among local entities. Hourly rates for ordinary staff range from about $23 to $35, usually tied to the lowest-paid classification qualified to do the work. Specialized work is priced differently: two entities charge $34 and $89 an hour for body-worn camera video review, the latter reflecting the actual cost of the commissioned personnel assigned to it (Table E-8). A requester making the same request of two Nevada entities can therefore receive very different estimates.

Charging rises with volume. Ten of the 21 highest-volume government entities charge for staff time, compared with 1 of the 20 lowest-volume respondents (Table E-7).

Fee estimates rarely end a request. Forty Nevada survey respondents have never seen a request withdrawn after a fee estimate, and only 9 (10%) see that often or very often (Table E-4).

Because most entities charge little, the survey cannot fully test whether fees deter access, but it offers no evidence that the fees now charged do, calling into question assertions of a "green wall."

Fees are the change Nevada survey respondents asked for most. Fees and cost recovery were the most frequently requested statutory change in written answers (19 of 57) and the third most frequently cited statutory ambiguity (15 of 61), after confidentiality and the definition of "record" (Table E-13). Of entities rating it, 56% rated a standardized schedule of maximum rates very or extremely important (Table E-12). Appendix E notes that the survey framed this item as maximum rates for direct costs, which may explain why it ranked in the middle despite being the most requested change.

Granicus reaches a similar conclusion. It describes a fee schedule as "a policy choice, not just an accounting exercise." It observes that producing an estimate itself consumes staff time, and that "without a common methodology, similar requests can produce materially different estimates across public bodies." Granicus recommends that a statewide approach define costs consistently, reward narrowing, treat specialty records such as video under a published method, offer a low-cost way to challenge a fee, and publish the methodology.

Discussion: A uniform schedule serves both sides of the Task Force. Requesters gain predictability and protection against inconsistent charges, a concern transparency members raised throughout the Task Force's work. Governmental entities gain a lawful, defensible basis for recovering part of the staff time that requests consume, and a defense against fee disputes. The three-hour threshold recommended below is more favorable to cost recovery than the 10-hour threshold most local respondents now use. It is consistent with Tennessee's schedule, and it still leaves routine requests free: 57% of respondents often handle requests in under an hour.

A single statewide rate cannot fit every kind of work. Ordinary search and redaction can be priced at the lowest-paid qualified classification. Video review and redaction, data extraction, and similar specialized work require personnel whose actual cost is higher, as Vermont's schedule and the survey's body-worn camera rates both show. The schedule should accommodate that work under a published method rather than force every entity into one rate.

Recommendation: The Legislature should amend the NPRA to require a single, uniform schedule of maximum fees for fulfilling public records requests, expressly including the cost of searching, reviewing, redacting and producing records. The Task Force recommends a delegated approach, so the schedule can keep up with actual costs without legislation each session. The statute should:

1. **Designate the body and set a review cycle.** Direct the Nevada State Library, Archives and Public Records or a public records ombudsperson to adopt the schedule after public notice

and comment, publish it online with the methodology used to set each rate, and review it at least annually using the staff-time and fee data reported under Section 3.7.

2. **Make the schedule a ceiling, not a mandate to charge.** No entity may charge more than the schedule allows except as provided in Recommendation 6. Any entity may charge less or waive fees entirely.

3. **Cover reproduction costs.** Set reasonable per-unit charges for standard and oversized paper copies, color copies, electronic storage media and postage or shipping.

4. **Cover staff time, subject to a three-hour threshold.** Set an hourly rate, charged in 15-minute increments, for staff time spent locating, retrieving, reviewing, redacting and copying records, based on the lowest-paid employee qualified to do the work. No staff-time charge may be assessed until staff time on a request exceeds three hours. Entities may aggregate frequent requests from the same requester, or from requesters acting together, for fee purposes, as Tennessee does at four requests in a calendar month.

5. **Set separate rates for specialized work.** Establish separate maximum rates, under a published method based on the actual cost of qualified personnel, for: (a) review and redaction of video and audio recordings; and (b) extracting or compiling data from databases. Vermont sets a higher rate for information technology specialists for this reason.

6. **Allow limited local variation.** Local government entities may request exemption from the state uniform schedule provided they do not charge over 25% more than the amount established by the state uniform schedule. The Nevada State Library, Archives and Public Records or a public records ombudsperson may approve an exemption for good cause shown, such as specialized personnel costs.

7. **Treat commercial requests at full cost.** A requester who certifies, or is found to have, a commercial purpose under Section 4.3 is not entitled to the three-hour threshold or to a public-interest waiver, and may be charged actual cost up to the schedule's maximum rates.

8. **Prohibit certain charges.** No fee may be charged for inspecting records or for deciding whether a record or part of a record is confidential.

9. **Require estimates that reward narrowing, and allow deposits.** Require a written, itemized estimate before any charge above a set amount is incurred, e.g., $25. The estimate should identify the work included and the options for narrowing the request. For estimates above a set amount, permit the entity to require a deposit of up to 50% before work begins.

10. **Provide waivers and a low-cost challenge path.** Authorize waivers or reductions when disclosure primarily benefits the public, decided promptly in writing. Allow a requester to challenge a fee or estimate through the dispute-resolution process recommended in Section 3.6 before filing suit under NRS 239.011.

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With its three-hour threshold, published maximum rates, and separate method for specialized work, this recommendation avoids the ambiguity of the "extraordinary use" language in the now-repealed NRS 239.055. It also gives governmental entities what they most often asked for: predictable, standardized fees that are easier to explain to requesters and to defend.

4.7 Protections Against Retaliatory Litigation

There are sufficient protections for requestors in Nevada law, such as anti-SLAPP that protect against abusive or retaliatory legal action.

Recommendation: Adopt measures to protect government entities from abusive or retaliatory records requests, "FOIA bombing," and associated litigation.

5. Implementation Considerations

Discuss how recommendations can be enacted.

Include:

- Legislative changes required
- Administrative actions
- Investments in technology, staffing, training, etc.
- Ongoing oversight

7. Conclusion

Summarize the Task Force recommendations and potential impact.

8. Appendix

Include supporting materials such as:

- Appendix A – Meeting agendas and minutes
- Appendix B – Presentations, legal references, etc.
- Appendix C – Exception Chart
- Appendix D – 50 State Survey of Criminal Statutes
- Appendix E – Government Survey

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- Appendix F – Law Enforcement Survey

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