PUBLIC RECORDS TASK FORCE
FINAL REPORT DRAFT (10.16.26)

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

Executive Summary

Assembly Bill 128 of the 83rd regular session of the Nevada Legislature, created the Public Records Task Force. The 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 have expressed a commitment to carefully evaluate Nevada public records law and to make recommendations for improvement.

Task Force Members:

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

As part of its work, the Task Force heard presentations and considered recommendations from a variety of public and private sector stakeholders. As would be expected from a Task Force composed of ten individuals with different backgrounds and interests, members had different

concerns and priorities. Those concerns and priorities are generally reflected as follows:

Transparency Concerns

- **Delay.** Governmental entities routinely miss the five-business-day deadline and extend their responses repeatedly, sometimes for months and even years, without consequence.
- **Misapplication of the law.** Requests are denied based on exemptions that do not exist, such as a general "ongoing investigation" or "personnel records" exemption, or with boilerplate string citations that do not explain why a record is confidential.
- **Withholding instead of redaction.** Entire records are withheld when the law requires that confidential information be redacted and the rest produced.
- **Unwarranted fees.** Requesters are charged for staff time, legal review and redaction, although Nevada law limits fees to actual cost, which by statute "does not include a cost that a governmental entity incurs regardless of whether or not a person requests a copy of a particular public record." NRS 239.005(1).
- **Inconsistency and lack of accountability.** Different agencies, and different courts, treat identical requests and identical legal questions differently, and the only remedy is litigation that is slow and costly for ordinary Nevadans.

Governmental Concerns

- **Broad Requests**. Overly broad and unduly burdensome public records requests, exacerbated by the use of Artificial Intelligence.
- **Privacy Interests**. Need to protect personal information and privacy interests.
- **Criminal Investigations**. Balancing the interests of public records request during an active criminal investigation, particularly when a victim(s) or witness(es) are involved.
- **Insufficient Resources**. Lack of technological resources or staffing to respond to public records requests within five days.
- **Failure to Modernize**. Lack of statutory updates to reflect modern changes to records practices.

These differing concerns kept the Task Force from reaching consensus on some recommendations. Throughout this report, any sections entitled "*Government Perspectives and Recommendations*" reflects the position of a consensus of Government members of the Task Force, but not a consensus of the Task Force as a whole. Any sections entitled "*Transparency Perspectives and Recommendations*" reflects the position of a consensus of Transparency members of the Task Force, but not a consensus of the Task Force as a whole. Any sections entitled "*Consensus Recommendations*" reflect the position of a consensus of the Task Force as a whole.

Although this report includes what is titled "Findings and Evaluations" in Section 3 and "Recommendations" in Section 4, each section includes, where appropriate, various perspectives and recommendations.

Despite the differences of opinion on some issues, the Task Force was able to reach consensus on some issues. The primary areas of Task Force consensus included:

- **Ombudsperson or Ombuds Panel**. Nevada should create an Ombudsperson or Ombuds Panel for Public Records to expedite the resolution of public records disputes (The Task Force differed in opinion on how the Ombudsperson or Ombuds Panel should be constituted).
- **Standardized Fee Schedule**. Nevada should implement a standardized fee schedule for public records requests applicable to all state and local governmental entities. (The Task Force differed in opinion on whether charges for staff time should be allowed under a standardized fee schedule and did not reach a consensus on the details of what items could be included in charges and how much could be charged).
- **Point of Contact**. Each governmental entity should designate a point-of-contact to help members of the public with records requests.
- **Public Reading Room**. Governmental entities should post public records on a publicly-accessible website so that members of the public can obtain information without going through a public records request.

The Task Force also reached consensus on several areas of concern. These areas of concern included:

- **Resource Adequacy**: Governmental entities need sufficient funding and resources to respond to public records requests.
- **Expediting Requests**: Records disputes should be resolved quickly, preferably short of litigation whenever possible.
- **Modernization**: The NPRA should be updated to reflect modern records practices, including electronic records, while preserving accessibility and transparency.

Disclaimer

This report was prepared by the Task Force in compliance with Assembly Bill 128 of the 83rd regular session of the Nevada Legislature. The purpose of this report is to provide information and recommendations to the Nevada Legislature. This report is for general information only and does not have the force and effect of Nevada law, regulation or rule. While this report necessarily includes

references to Nevada law and sometimes sets forth interpretations of Nevada law, no position or interpretation set forth in this report should be construed as a position or interpretation by any individual member of the Task Force or a position or interpretation of that member's employers or clients. Interested parties should be aware that the laws pertaining to public records may be amended by the Nevada Legislature and may be subject to interpretation by the courts. Interested parties should consult a qualified Nevada attorney with any legal questions regarding the Nevada Public Records Act.

DRAFT

1. Introduction

1.1 Legislative Mandate

The Public Records Task Force ("Task Force" or "PRTF") was created by Assembly Bill 128. 2025 Nev. Stat. 1416
- 19, ch. 228. The purpose of this Task Force is to evaluate certain topics relating to requests for public records and make certain recommendations. The bill also: (1) prescribes the membership and duties of the Task Force; and (2) requires the Task Force to submit a written report describing its work and recommendations for transmittal to the Joint Interim Standing Committee on Government Affairs and the Senate and Assembly Standing Committees on Government Affairs for the 84th Session of the Legislature. *Id.*

1.2 Objectives

The Task Force was charged with evaluating:

1. Current exemptions to the Nevada Public Records Act, NRS Chapter 239 ("NPRA")
2. Policies relating to public records of review boards established under NRS 289.380 and 289.383
3. The impact of broad public records requests on governmental entities
4. The cost, burden, and time constraints associated with redaction
5. The financial burden on persons requesting public records
6. Mechanisms for resolving disputes, including mediation and alternative dispute resolution
7. 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:

8. To clarify the custodianship and control of public records;
9. To protect sensitive information while promoting government transparency;
10. To identify situations in which access to public records should be granted or denied;
11. For penalties to impose against governmental entities for providing delayed or incomplete responses to a request for public records;
12. For protocols to protect personal information and criminal investigations;

13. For a standardized fee schedule; and

14. For mechanisms to protect governmental entities from retaliatory litigation.

Id.

1.3 Methodology

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

The Task Force webpage includes meeting minutes, meeting agendas, and presentation materials accessible online at https://ag.nv.gov/Hot_Topics/Public_Records_Task_Force/. 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 which are included in the supporting materials attached to this report. Given changes in membership that occurred following the first meeting, the Task Force unanimously selected a new Chair and Vice Chair.

At its second meeting, the Task Force received a presentation from Warren Hardy, representing Warren Hardy Strategies, on behalf of the Urban Consortium. In the presentation, Mr. Hardy testified 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 claimed 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, purported 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 report. During its third meeting, the Task Force received a presentation from Glenn Cook, Executive Editor for the *Las Vegas Review-Journal*. In the presentation, Mr. Cook provided his observation that "governments routinely deny requests for information that is public," and emphasized that transparency "is an essential function of government." The presentation addressed rights of records requestors, the fees agencies impose on requesters for staff time, the legal fees taxpayers pay when agencies unlawfully withhold records, and a variety of challenges that he said present hurdles to requestors seeking access to public information, among other observations. The presentation noted specific examples involving investigative journalism being "stymied by public records denials," as well as specific examples involving "investigative stories completed thanks to access to public records." The presentation concluded with specific recommendations for reforms to the NPRA statute.

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

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

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.

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 fair trials, and balancing transparency concerns with avoiding exploitation of victims and witnesses, among other topics. When asked whether any Nevada conviction had been overturned over records-based reporting, she stated, "not that I'm aware of." The presentation also discussed topics relating to Marsy's Law, Nev. Const. Art. 1, Sec. 8A, including the Nevada Constitution's protections for a victim's right to be treated with fairness and respect for privacy and dignity, with emphasis on a case study involving the State of Idaho.

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

Several points of agreement among the Task Force began to emerge. Members on both sides agreed that the statutes cross-referenced in NRS 239.010(1) should be reviewed to identify those that could be removed, and that requesters need a way to resolve disputes short of litigation. Members also agreed that "legal custody or control" should be clarified (albeit with differing opinions on the nature of the clarification) and that records such as meeting minutes should be posted online. Government representatives acknowledged that the five business day deadline was often not satisfied, attributing delays to a lack of technology and staffing.

The Task Force held its fifth meeting on August 5, 2026.

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

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

Heather Hahn, Records Manager for the Nevada Department of Transportation, described NDOT's request volume, staffing and one series of requests from a single requester, discussed in Section 3.3. She urged clearer rules for homeland-security records and recommended an office similar to Utah's ombudsman program. Asked to identify any retaliatory lawsuit against a governmental entity, she said she could not.

At its sixth meeting, on September 29, 2026, the Task Force received a presentation from John Abel of the Las Vegas Police Protective Association. [Insert summary of Mr. Abel's presentation.] It received a presentation from the ACLU of Nevada, which described boilerplate invocations of a general "law enforcement privilege," a request closed by the Department of Motor Vehicles while it remained open, and fees that recover staff salaries already funded by taxpayers. Member McCarty presented the results of identical requests for an existing employee directory sent to three northern Nevada law enforcement agencies, and a compilation of fee schedules showing that charges for the same work range from nothing to $89 per hour.

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

[Are we missing any meetings or presentations?]

2. Overview of Nevada Public Records Law

2.1 Summary of Chapter 239 of NRS

The Nevada Public Records Act ("NPRA"), NRS Chapter 239, governs public access to government records generally. Under the NPRA, "unless otherwise declared by law to be confidential, all public books and public records of a governmental entity must be open at all times during office hours to inspection by any person." NRS 239.010(1). NRS 239.001 declares that the purpose of the NPRA is "to foster democratic principles," that its provisions "must be construed liberally to carry out this important purpose," and that "[a]ny exemption, exception or balancing of interests which limits or restricts access to public books and records by members of the public must be construed narrowly." NRS 239.001(1)–(3). The NPRA places the burden of proving confidentiality on the government, NRS 239.0113, and prohibits denying an entire record when confidential information can be redacted, NRS 239.010(3).

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" and

that its provisions "must be construed liberally." NRS 239.001(1); *see also Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 878, 266 P.3d 623, 626 (2011) ("the provisions of the NPRA ... promote government transparency and accountability").

Public records include any book or record of a governmental entity. Such records may be withheld from disclosure only to the extent that one of the following applies:

1. A specific statutory exemption; or
2. A specific and active 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" and setting forth the balancing test to be used).

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

1. Allow inspection or provide a copy of the record. NRS 239.0107(1)(a);

2. If the governmental entity does not have legal custody or control of the record, provide written notice of that fact and the name and address of the governmental entity that has legal custody or control, if known. NRS 239.0107(1)(b).

3. If the governmental entity is unable to make the record available within five business days, provide written notice of that fact and a date and time after which the entity reasonably believes the record will be available. NRS 239.0107(1)(c)(1). If the record is not available by that date, the entity must explain why in writing and give a new date. *Id*. The entity must also make a reasonable effort to assist the requester to focus the request so as to maximize the likelihood that the requester will be able to obtain the record as expeditiously as possible. NRS 239.0107(1)(c)(2). And a record that is readily available must be provided "as expeditiously as practicable." NRS 239.0107(2). The statute does not, however, set an outer limit on how long an entity may extend its response.

4. If a governmental entity must deny the request in whole or in part because the record or a portion of it is confidential, in addition to any of the three above, provide the legal basis for denying the request or portions of it. *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 are confidential, a "governmental entity shall not deny a request . . . on the basis" that the "requested book or record contains information that is

confidential if the governmental entity can redact; delete; conceal or separate, including, without limitation, electronically, the confidential information from the information included in the public book or record that is not otherwise confidential." NRS 239.010(3).

As noted above, both statutory and case law exemptions may apply to a request. For either, Nevada courts test an entity's "claims of confidentiality under the backdrop of the NPRA's" important principles. *Gibbons*, 127 Nev. at 880, 266 P.3d at 628. Courts analyze claims of confidentiality "with a presumption in favor of disclosure." *Pub. Emps.' Ret. Sys. of Nev. v. Reno Newspapers, Inc. (PERS)*, 129 Nev. 833, 837, 313 P.3d 221, 223-24 (2013). The governmental entity bears the burden to prove, under a preponderance standard, that the requested records qualify as confidential." *Gibbons*, 127 Nev. at 880, 266 P.3d at 628; *see also* NRS 239.0113. The entity does not satisfy its burden by making "a non-particularized showing, or by expressing hypothetical concerns." *Gibbons*, 127 Nev. at 880, 266 P.3d at 628 (citation omitted). Governmental entities and courts must adhere to the NPRA's mandate to liberally construe any provisions that facilitate access to public records; conversely, governmental entities and courts must narrowly construe any exemptions or balancing tests that limit access to public records. NRS 239.001(2)-(3); *see also Clark Cty. 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). Records or portions of them can only be withheld if there is a clear basis to do so. Under the NPRA's mandates, if there is ambiguity, it must be resolved by production of the record or portion of the record in question. NRS 239.001(3) and (5).

As for statutory exemptions, NRS 239.010(1) lists hundreds of statutes. The NPRA "yields to" these statutes. *Republican Attys. Gen. Assoc. v. Las Vegas Metro. Police Dep't,* 136 Nev. 28, 34, 458 P.3d 328, 333 (2020). The list is not exhaustive. There may be statutes that provide for confidentiality found anywhere in the NRS that are not listed in NRS 239.010(1). *City of Reno v. Reno Gazette-Journal*, 119 Nev. 55, 63 P.3d 1147 (2003). Nevada law provides that "[a]ny exemption, exception or balancing of interests which limits or restricts access to public books and records by members of the public must be construed narrowly." NRS 239.001(3) ("**Any exemption, exception** or balancing of interests **which limits or restricts access** to public books and records by members of the public **must be construed narrowly**" (emphasis added)). And a listed statute is not a categorical exemption: it protects only the specific information that it makes confidential, and the rest of the record must be produced. *State, Dep't of Emp., Training & Rehab. v. Sierra Nat'l Corp.*, 136 Nev. Adv. Op. 11, 460 P.3d 18, 21–22 & n.3 (2020).

As for common law exemptions, there are two. The first is general. It requires the governmental entity, in order to withhold portions of public records from the public, 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 balancing test must be construed narrowly against withholding. NRS 239.001(3). Since the 2007 amendments to the NPRA, courts must apply this test "to favor the public's interest in access over the governmental entity's interest in nondisclosure," and weighing the interests equally is an abuse of discretion. *Las Vegas Review-*

Journal, Inc. v. Las Vegas Metro. Police Dep't (*Apgar*), 139 Nev. Adv. Op. 8, 526 P.3d 724, 735–36 (2023).

The second is specific to privacy interests. If the governmental entity establishes that there is a "personal privacy interest that is nontrivial or . . . more than [] de minimis," then the burden shifts to the requester to "show that the public interest sought to be advanced is a significant one and that the information [sought] is likely to advance those interests. *Clark Cty. 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*. The Court has since emphasized that the privacy test does not support withholding merely because information is, "in the abstract, 'personal' or 'intimate;'" that, even when a privacy concern is properly invoked and overcomes the public's right of access to information in public records, the ordinary remedy is redaction; and that the Court has "never permitted a governmental entity to use individual personal privacy interests as a shield against accountability." *Apgar*, 526 P.3d at 737–38.

Under the NPRA, a requester can file suit in district court if a governmental entity denies or unreasonably delays a request, or charges an excessive or improper fee. NRS 239.011(1). The court must give the matter"priority over other civil matters to which priority is not given by other statutes." NRS 239.011(2). If the requester prevails, the governmental entity must pay the reasonable attorneys fees and costs incurred by the requester. *Id*. The Nevada Supreme Court has described this provision as "both one-sided and mandatory," designed to give the government an incentive to honor public records requests without litigation. *Las Vegas Review-Journal v. Clark Cnty. Office of the Coroner/Med. Exam'r*, 138 Nev. Adv. Op. 80, 521 P.3d 1169, 1173 (2022). A governmental entity's good faith is not a defense to an award of fees. *Coroner's Office*, 136 Nev. at 60–61, 458 P.3d at 1060–61. If the governmental entity willfully violates the NPRA, then additional monetary penalties apply. NRS 239.340.

2.3 Key Definitions and Concepts

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

The NPRA does not define the term "public record." According to the NAC, for state agencies, the terms "official state record" and "record" are used synonymously and defined in regulation 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 this definition is "nonrecord materials," which includes but is not limited to:

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

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

DRAFT

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

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

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

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

DRAFT

NAC 239.101.

The lack of a statutory definition has led to disagreement as to whether information in the possession of a governmental entity that was not generated by that governmental entity, is subject to the NPRA.

3. Findings and Evaluation

3.1 Current Exemptions to Chapter 239 of NRS

NRS 239.010(1) cross-references approximately 600 statutory provisions that declare information confidential or otherwise affect access. *See* list of exemptions attached hereto as Exhibit []. The expansive scope of these exemptions is too voluminous for the PRTF to review in its limited time frame.

> (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).

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

Under Nevada law, any municipality may create a review board to receive citizen complaints against peace officers and to make certain recommendations about whether the officer has violated policies and, if so, whether the officer should be disciplined. To the best of the 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

DRAFT

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 IAB issues a conclusion that a policy has been violated, LVMPD is to 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.

Government Perspectives and Recommendations

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 v. Las Vegas Review-Journal*, 136 Nev. 44, 458 P.3d 1048 (2020) (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).

In light of these issues, the Government members of the PRTF recommend clarifying Nevada law 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.

Transparency Perspectives and Recommendations

The law should not be changed to make the process less transparent to the community.

Internal Affairs Investigations

Meaningful oversight by the CRB, and by the public, depends on access to the results of internal investigations. Importantly, arguments that municipal ordinances, collective bargaining agreements or anything other than a state statute can be used to create confidentiality not created by statute has been rejected by the Nevada Supreme Court. *See Comstock Residents Ass'n v. Lyon Cty. Bd. of Comm'rs*, 134 Nev. 142, 147, 414 P.3d 318, 322 (2018); *Clark Cty. Sch. Dist. v. Las Vegas Rev.-J.*, 134 Nev. 700, 703
n.2, 429 P.3d 313, 317 n.2 (2018).

Earlier in 2026, a three-justice panel of the Nevada Supreme Court held that NRS 289.080, "when read as a whole," makes information in a peace officer's internal investigative file confidential under the NPRA, "at least absent a law enforcement agency recommending adverse employment action." *ACLU of Nev. v. Clark Cnty. Sch. Dist.*, 142 Nev. Adv. Op. 24 (Mar. 26, 2026). Transparency advocates strongly disagree that the panel decision was correct, and many argued as amici that the en banc court should, therefore, reconsider the case. In October 2026, the en banc court granted that reconsideration. Nevertheless, law enforcement agencies are already citing the panel's no-longer precedential decision to withhold internal affairs records wholesale.

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

Recommendation: Amend NRS 289.080 and NRS 289.387, if the Nevada Supreme Court

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

3.3 Impact of Broad Public Records Requests

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

Heather Hahn from the Nevada Department of Transportation also presented about what she says is the burden of overbroad and vexatious requests, claiming that some records requests severely hamper an agency's ability to respond to all records requests. Ms. Hahn claimed that vexatious requesters intentionally ask for broad, excessive, and repetitive records in an effort to overwhelm agencies known at the federal level as FOIA bombing. She did not provide any examples. Ms. Hahn reported that 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 testified that more and more requests appear to be written by AI where the approach is an over-broad format.

Government Perspectives and Recommendations

As Ms. Cabrera said, 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.

Transparency Perspectives and Recommendation

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

AB 128 directed the Task Force to evaluate "[t]he impact of broad requests for public records on governmental entities." Measured against the record actually before the Task Force, that impact has not been shown. Apart from oral estimates, no government presenter documented the number of requests it receives, the number it considers overbroad or vexatious, the staff hours it spends, the cost of compliance, or a request that disrupted government operations, in a form the Task Force could examine and question.

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

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

Other examples in the record are similar. A request to the Nevada Department of Administration for a single presentation and one month of emails of three employees went unfulfilled for more than 80 days through a series of missed, self-imposed deadlines. Conrad Presentation, slide 7. A university demanded that a student requester supply search terms and the names of custodians because it "employs over 8,000 individuals," and then reported that it had

no responsive financial reports, contracts, minutes or agendas. EFF Presentation, slides 18–20. By contrast, Northern Nevada Public Health routinely fulfills students' requests for health inspection records "before class is over." Id., slide 12. The difference is not the law; it is how agencies choose to comply with it.

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

Asserted problem	Evidence provided to the Task Force	What the record shows
Request volume is rising and overwhelming agencies	NDOT: 34% increase (2023–2025), with no staffing or response-time data. No other agency documented figures.	Urban Consortium: most requests are "fulfilled quickly and at little to no cost."
Broad or "vexatious" requests require new controls	None documented. No request was produced for the Task Force to examine.	NRS 239.0107(1)(c)(2) already requires agencies to help focus requests; the documented delays involved narrow requests.
Redaction is too costly without cost recovery	None documented; oral estimates only. The only figure in the written materials concerned a New Jersey town (about 12 minutes of review per request).	Agency charges range from $0 to $89 per hour for the same task; fee awards for unlawful withholding exceed $1.2 million in the cases presented.
The five-day deadline is unrealistic	None.	Documented delays of 75, 80 and 96 days for simple, existing records.
Commercial and AI-driven "bulk" requests threaten privacy	$282 million figure describing revenue state DMVs earned by selling personal data—not public records requests.	No Nevada example of harm from a bulk request.
Releases harm victims and fair trials	One out-of-state case study.	Idaho court ordered most records released; no reported Nevada reversal for pretrial publicity.

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

Recommendation: Do not adopt "vexatious requester," request-closure, mandatory-identification or "bot request" provisions. Instead, strengthen the existing duty to assist: when an entity believes a request is unclear or unusually broad, require it to contact the requester within five business days, describe how the relevant records are kept, and propose specific search parameters; require rolling production of records as they are located; and provide that a request may not be denied, closed or deemed abandoned because of its size. The Legislature should also require each governmental entity to publish frequently requested records and datasets online, which reduces request volume at its source—a step the Municipal Clerks' Association itself recommended.

3.4 Cost, Burden, and Time Constraints for Redaction

Nevada law provides for confidentiality under an array of circumstances, and governmental entities must redact information that a statute or the balancing tests make confidential before producing the remainder of a record. NRS 239.010(3). A number of government presenters said review and redaction is the most labor-intensive process in broad or complex records requests.

Consensus Recommendation

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

Government Perspectives and Recommendations

Transparency Perspectives and Recommendations

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

Government presenters asserted that redaction—particularly of video—is labor-intensive, but presenters offered only oral estimates and did not document the time or cost involved. The only quantified figure in the written materials came from a national magazine article about a New Jersey town that received over 1,500 requests in one month requiring more than 300 hours of review—roughly 12 minutes per request. Jack Meserve, How routine police stops are becoming viral social media fodder, Vox (Nov. 28, 2025). The constraints the government presenters actually described are a lack of dedicated staff and modern tools. The answer to those constraints is investment—dedicated records staff, modern redaction software purchased at state volume pricing, and training so that governmental entities understand the law governing transparency—not shifting the cost of the government's legal obligations onto the public that owns the records.

DRAFT

3.5 Financial Burden on Requestors

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

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

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

Government Perspectives and Recommendations

Transparency Perspectives and Recommendations

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

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

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

DRAFT

3.6 Dispute Resolution Mechanisms

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

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

Below are examples in other states:

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

Connecticut: Freedom of Information Commission (FOIC) is a public body 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* 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).

Consensus Recommendation

The concept of an Ombudsperon or Ombuds Panel carries great promise to expedite the resolution of public records request disputes. The manner in which any Ombuds office is established is important, and includes fiscal impacts that are best addressed by the Legislature. As such, the fiscal impacts were not considered or evaluated by the Task Force. The Government and Transparency perspectives and recommendations on the scope of an Ombuds office are as follows.

Government Perspectives and Recommendations

Transparency Perspectives and Recommendations

Under current law, a member of the public who believes a governmental entity has improperly denied, delayed, redacted or overcharged for public records has no practical recourse other than a lawsuit. That remedy is expensive and slow for requesters, and it is expensive for governmental entities as well. Both requesters and governmental entities asked the Task Force to recommend a path short of litigation.

Drawing on other systems already operating, the Task Force recommends a small, independent office that would work as follows:

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

The principal feature distinguishing this model from those in other states is requester-controlled

finality: the requester decides whether to use the process and whether to accept its result. That design ensures the process cannot become another source of delay, and it gives governmental entities a strong incentive to resolve disputes early.

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

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

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

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

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

DRAFT

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

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

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

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

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

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

Ind. Code § 5-14-3-2(p).

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

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

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

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

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

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

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

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

Government Perspectives and Recommendations

Discussion: Nevada does not require governmental entities to collect or report data on public records requests. As a result, neither the Legislature nor the public can measure request volume, response times, or the staff and resources entities spend on compliance. Certain jurisdictions require standardized reporting. Consistent data would give policymakers an objective record of how the law works in practice. That record would include 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 below, be measured against actual experience rather than anecdote.

Recommendation: The Legislature should amend the NPRA to require each governmental entity in Nevada to report annually on how it handles public records requests, using one standard form. The Nevada State Library, Archives and Public Records or 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 Task Force recommends that the form require, at a minimum:

1. **Volume:** the number of requests received and the number processed during the reporting period.
2. **Timeliness:** the average, median and range of days to respond to requests and to provide records.
3. **Clarification:** the number of requests for which the entity formally sought clarification from the requester.
4. **Denials:** the number of requests denied in full or in part, and the most common legal grounds relied on.
5. **Abandoned requests:** the number of requests abandoned by requesters.
6. **Staffing and cost:** the number of full-time-equivalent staff who process requests, and the total amount spent on staff time.
7. **Fees:** the total amount of fees collected, and the number of fee-waiver requests granted and denied, along with the time taken to decide them.
8. **Requester type:** to the extent the entity knows it, requests by type of requester, including individuals, law firms, organizations, insurers, governments, incarcerated persons, the media, anonymous requesters, current or former employees, and others.

9. **Disputes:** the number of petitions for nonbinding mediation with a public records ombudsperson, administrative appeals, and petitions for judicial review, and the outcome of each type of proceeding.

The designated body should also define terms on the form so that entities report consistently. The definitions should include:

- a common reporting period, such as the calendar year;
- when a request is "received" and when it is "closed";
- whether days are counted as business days or calendar days;
- what makes a request "abandoned."

Transparency Perspectives and Recommendations

1. [Need to complete Add: **Extensions:** the number of requests for which the entity extended its response beyond five business days, the number extended more than once, and the number for which records were not provided by the date the entity first gave.
2. Change Disputes to: Disputes: the number of matters submitted to the Public Records Ombudsperson and Review Panel, the number of petitions filed under NRS 239.011, the outcome of each, and the amount of attorney's fees and costs paid to requesters and spent on outside counsel.
3.

]

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

4. Recommendations

4.1 Clarification of Custodianship and Control

NPRA requires the governmental entity with "legal custody or control" of a record to respond to a requestor, NRS 239.0107, but Chapter 239 does not provide a 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 v. Lyon Cnty. Bd. of Comm'rs*, 134 Nev. 142, 147–48, 414 P.3d 318, 323 (2018) ("a record within the possession of a private entity may still constitute a public record subject to disclosure upon request") (citing NRS 239.001(4)). 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.

Other states provide models on the meaning of custody while ensuring that records are not precluded from public access because of where they are kept. 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.

Washington requires public employees who use personal devices or accounts to conduct public business to search them for responsive records and to submit a sworn statement describing the search. *Nissen v. Pierce County*, 183 Wn.2d 863, 357 P.3d 45 (2015). Florida requires contractors acting on behalf of a public agency to keep and produce public records as the agency itself would. Fla. Stat. § 119.0701.

Legal Custody and Control

Government Perspectives and Recommendations

- **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 responsible custodian does not include a government entity that did not create a record and has no right or responsibility to access, 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.
  - Incidental Custody: Control and custody should not exist solely because the record

is maintained in backup storage, related to cybersecurity monitoring or technical administration, is received as a courtesy copy, is in temporary possession for purposes of transmission, or belongs to another governmental entity or person.

Transparency Perspectives and Recommendations

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

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

Government Contractors

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

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

Public Records Act Compliance Coordination

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

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

- The name and title of its public records officer, and a backup contact
- The officer's contact information
- The agency's physical office location to make public records requests, in addition to its online submission method
- The agency's public records scope and jurisdiction

DRAFT

4.2 Protection of Personally Identifying Information and Transparency

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. Similarly, NRS 603A.210 protects social security numbers, driver license numbers, certain account numbers, medical identification numbers, and user names from disclosure under certain circumstances. Finally, NRS 239.014 protects certain personally identifiable information under certain circumstances 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.

Government Perspectives and Recommendations

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."

Transparency Perspectives and Recommendations

- **Definition of Personal Identifying Information**. The Legislature should establish a uniform statewide definition of "personal identifying information" that addresses the few categories of information that may be universally withheld while leaving all other data to be protected to the extent necessary by targeted, specific legislation rather than blanket secrecy.

- **Codify a Privacy Test**. As discussed in Section 2.2, the *CCSD* privacy test was intended to "cohere[]" with NRS 239.0113's placement of the burden on the government, but in practice it has been invoked to shift that burden to requesters on the strength of an unsupported assertion that a privacy interest exists. The Legislature can restore the balance it struck in NRS 239.001 and 239.0113 without disturbing genuine privacy protections. Codify the privacy test with the following guardrails: (1) a governmental entity asserting a privacy interest must first prove, with particularized evidence, that disclosure of specific information would cause a significant invasion of personal privacy; (2) a public interest in understanding the operations of government or the conduct of public officers and employees satisfies the requester's showing; (3) the entity bears the ultimate burden of proving that the privacy interest clearly outweighs the public interest, both the presumed interest and any additional ones relevant to the particular records in question, consistent with NRS 239.0113 and *Gibbons*; (4) the remedy is redaction of the specific information, never withholding of the entire record; and (5) public officers and employees have no protectable privacy interest in their names, titles, compensation, work contact information or official conduct/misconduct or allegations of misconduct.

- **Personnel Records**. Nevada has no general "personnel records" exemption, and an agency's internal regulations cannot create one. *CCSD*, 134 Nev. at 704, 429 P.3d at 318. The Transparency members do not recommend creating one. Specific sensitive information within personnel files is already protected by specific statutes or by redaction under a balancing test, while records of official conduct, investigations and discipline are exactly what the public needs in order to evaluate its government.

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

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

Law." *See* *https://www.marsyslaw.us/faqs?_gl=1*1n3mjuc*_gcl_au*MzgwNjM5MzM1LjE3OTE3Nzc1NDM*

The Idaho case presented to the Task Force illustrates how existing tools work. There, a criminal-court non-dissemination order protected the pending criminal case; records were released after his conviction, with the decedents' bodies, witnesses' faces and identifying information blurred; and when victims' families sought to block release, the court reviewed the records and ordered most of them released, finding they were "precisely what the law affords the public to obtain," while requiring that depictions of the decedents and the blood immediately surrounding them be blacked out. *Laramie*, Memorandum Decision at 11–12. One family member's principal complaint was that she learned of the release only after images appeared online.

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

DRAFT

Bulk Data Requests

Historically, a public record would be available at a government agency counter. The public could inspect the record, journalists could investigate it, and residents could hold officials accountable. However, more and more agencies are digitizing public records. Technical advances make information discoverable from great distances at speed and scale. Data brokers can combine records from multiple agencies and foreign actors can access the same database without ever entering Nevada.

Government Perspectives and Recommendations

Information that seems harmless individually can be aggregated and exploited. Public access to records is not a concern. 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 purpose 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 (like 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**: Define "bulk or compiled data" as all or a substantial portion of a structed electronic dataset containing information concerning Nevadans, properties, businesses, cases or transactions.

- **Recommendation**: When a requester seeks all or a substantial portion of an agency's database, the agency may process it under standardized bulk-data procedures rather than

treating it identically to an ordinary document request.

- **Recommendation**: Require a standardized dissemination agreement for defined high-risk bulk datasets requests, ensuring compliance with appliable privacy and/or confidentiality laws.

- NRS should add a provision in statute that allows a public entity who is the legal or responsible custodian of public records to demand them from any person having illegal possession of them.

Transparency Perspectives and Recommendations

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

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

The Task Force considered whether any narrowly tailored measure could address concerns about commercial exploitation of personal data without restricting public access. The most promising approaches regulate the misuse of data rather than the public's access to it. Laws governing the sale and use of personal information, including NRS Chapter 603A, can be applied to those who misuse it; and governmental entities can reduce request volume by proactively publishing datasets from which sensitive identifiers have been removed. Measures that condition access on a requester's identity or purpose, or that impose contractual restrictions on what a requester may do with public records, would invite abuse and raise serious constitutional concerns.

- Do not create a separate "bulk data" category, require dissemination agreements, or require requesters to attest to the purpose of a request. Address misuse of personal information through

laws governing its sale, and encourage proactive publication of datasets with sensitive identifiers removed.

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

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 an agency relies on a discretionary exemption.

Government Perspectives and Recommendations

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."

Overly broad and voluminous requests have been attempted to be addressed with NRS 239.0107(c)(2): "Make reasonable effort to assist the requester to focus the request." In many cases, the requestor refuses to focus their requests, so significant time is used to fulfill the request, further delaying requests that come after. While large requests remain valid, agencies should be allowed to use structured tools like standardized request forms and methods 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.

Washington allows agencies to close an unclear request when the requestor doesn't respond to a request for clarification, while requiring the agency to continue responding to portions that are clear.

A request must reasonably identify the records or categories of records sought. A request shall not 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 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 government entity to close request where requestor refuses to narrow the scope within a reasonable time and it is not possible to identify responsive records.

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."

As stated above, 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: Provide a statute that allows 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.

[Placeholder for vexatious requestors.]

- **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.

Transparency Perspectives and Recommendations

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

- Codify the standards the Nevada Supreme Court has already announced for denials, so that governmental entities apply them when they respond to requests rather than after litigation begins: (1) a denial must identify each record or category of records withheld, cite the specific statute or other authority for each, and explain how it applies, *Gibbons*, 127 Nev. at 884–85, 266 P.3d at 630–31; (2) when a record is redacted, the entity must identify the redactions and the authority for each and explain why further segregation is not feasible; (3) a denial that relies on boilerplate, string citations or an exemption that does not exist, such as a general "ongoing investigation" or "personnel records" exemption, is a denial without lawful basis; (4) grounds for withholding that protect only the entity's own interests and are not asserted in the entity's written response are waived, while statutes protecting the confidentiality of third parties are preserved, see *Coroner's Office*, 136 Nev. at 48–50, 458 P.3d at 1053–54 (relying on the Legislature's silence on waiver); (5) no ordinance, regulation, policy, contract or collective bargaining agreement (or anything other than state statute) may make a record confidential; and (6) an exemption, statutory or by balancing test, permits, but does not require, withholding unless a statute expressly prohibits disclosure.

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

- The Transparency members also oppose requiring an affidavit that records will not be used to train an AI model or for a commercial purpose; NRS 239.010(1) makes records available to "any person" without regard to purpose, and a news-media exemption would require agencies to decide who qualifies as a journalist.

4.4 Penalties for Delayed or Incomplete Responses

The NPRA currently contains provisions for delayed or incomplete responses.

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

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

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

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

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

NRS 239.340(1)."

Government Perspectives and Recommendations

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.

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.

- Impose no additional penalties. Instead, focus 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.

Transparency Perspectives and Recommendations

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

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

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

Recommendation: Make the NPRA's deadlines enforceable:

- **Substantive response.** As expeditiously as possible, but in no event more than five business days, an entity must produce records that are readily available (building on NRS 239.0107(2), which already requires that readily available records be provided "as expeditiously as practicable") and, for any remaining records, give a written, good-faith estimate of when they will be produced that is specific to the request, with a clear burden on the governmental entity to establish it cannot produce the records within five business days. Automated or form extension notices do not satisfy any of these requirements.
- **Outer limit.** Absent the requester's written agreement or an order of the Ombudsperson or a court, all nonconfidential records must be produced within 30 business days after the request, with rolling production of records as they become available.
- **Deemed denial.** Failure to meet a statutory deadline or the entity's own estimate is a denial for purposes of NRS 239.011 and the Ombudsperson process.
- **No fees when late.** An entity that misses a statutory deadline or its own estimate may not charge any fee for the request.
- **Define "willful."** A violation is willful if the entity fails to respond within the statutory deadlines, denies a request without citing specific authority, asserts an exemption that does not exist or misstates the status of an investigation, fails to comply with a court order or requester-accepted Ombudsperson decision, or destroys a record that is the subject of a pending request. Add a daily penalty, payable to the requester, for each day an entity fails to comply with a court order or requester-accepted Ombudsperson decision.
- **Preserve requested records.** Records that are the subject of a pending request or dispute may not be destroyed under a retention schedule, and an entity that reports that no responsive records exist must describe the search it performed.
- **Faster courts.** Extend the priority NRS 239.011 gives public records cases to appeals, exempt those appeals from the settlement conference program, and replace the current mandamus procedure with a self-contained summary procedure: on filing, the court would order the entity to produce the records or show cause within a short period.

4.5 Protocols to Protect Criminal Investigations

The Task Force spent considerable time discussing criminal records. Recommendations on how to address criminal records was a divisive subject among members of the Task Force.

Government Perspectives and Recommendations

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 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.

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 subject who is never arrested because probable cause cannot be established. The allegation, indeed, can be totally false. Revealing the investigation can have profoundly negative impacts on the subject's personal and professional 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). 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 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.

Based on these findings, the PRTF recommends Nevada law be clarified to ensure investigative files are confidential.

Recommendation: Ensure open criminal cases are confidential and clarify Nevada law to 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.

In general, forty-two states have protections for criminal investigative records. A summary is provided below. 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.

Alabama

Criminal investigative files are generally confidential and exempt from disclosure.

Alaska

Active criminal investigation records are confidential unless disclosure would not interfere with enforcement.

Arizona

Investigatory records may be withheld if release would harm an investigation, privacy, or law-enforcement interests.

California

Police investigatory records are broadly confidential under Government Code § 6254(f), with limited exceptions.

Colorado

Criminal justice records are largely discretionary for release, but many investigatory records may be withheld, especially for ongoing cases.

Connecticut

Active investigative files are exempt until the case is closed; some info becomes public afterward.

Delaware

Law enforcement investigatory files are exempt and confidential.

Florida

Active criminal investigative and intelligence information is confidential until cases close (well-developed statutory framework).

Georgia

Active investigations are exempt; closed files may become public with exceptions.

Hawaii

Law enforcement records can be withheld if disclosure would frustrate law enforcement or endanger safety.

Idaho

Investigatory records may be withheld if disclosure would interfere with enforcement or violate

privacy.

Illinois

Criminal investigative records are exempt from FOIA unless release would not interfere with enforcement.

Indiana

Investigatory records of law-enforcement agencies may be withheld, especially if part of an ongoing case.

Kansas

Criminal investigation records are expressly confidential unless certain criteria for disclosure are met.

Kentucky

Active criminal investigative files are exempt.

Louisiana

Criminal investigation records are confidential during active investigations.

Maryland

Investigatory records are exempt if release would interfere with enforcement or invade privacy.

Massachusetts

Investigatory materials compiled by law enforcement are confidential unless release would not jeopardize enforcement.

Michigan

Investigatory records are exempt if release would interfere with law enforcement or violate privacy.

Minnesota

Active investigative data are confidential; closed cases may be public with restrictions.

Missouri

DRAFT

Criminal investigative records are confidential while active; some may be released after matters are closed.

Nebraska

Investigatory records are exempt if release would interfere with enforcement or violate privacy.

New Hampshire

Investigatory records are exempt under RSA 91-A if disclosure would interfere with enforcement.

New Jersey

Criminal investigatory records are confidential except for limited information (GRC case law is strong here).

New Mexico

Law enforcement records in active investigations may be withheld.

New York

Law enforcement investigative records may be withheld if disclosure would interfere with enforcement or create risk.

North Carolina

Investigatory records are confidential and not public.

North Dakota

Active criminal intelligence and investigative records are confidential.

Ohio

Records pertaining to ongoing investigations are exempt until they are closed.

Oklahoma

Investigatory records may be withheld if disclosure would interfere with enforcement.

Oregon

DRAFT

Investigatory records are exempt if disclosure would interfere with enforcement or violate privacy.

Pennsylvania

Criminal investigative records are confidential under the Criminal History Record Information Act (CHRIA).

Rhode Island

Law enforcement investigatory records may be withheld if disclosure would interfere with enforcement.

South Carolina

Investigatory records may be withheld while cases are active.

Tennessee

Case files of ongoing criminal investigations are confidential.

Texas

Investigatory records may be withheld if release would interfere with law enforcement (very broad exception).

Utah

Active law-enforcement investigative records are classified as protected.

Virginia

Criminal investigative records are exempt unless the agency elects to release certain material.

Washington

Investigative records can be withheld if disclosure would interfere with enforcement, invade privacy, or endanger safety.

West Virginia

Investigatory records may be withheld if release would interfere with enforcement.

Wisconsin

DRAFT

Investigatory records can be withheld based on safety, privacy, and enforcement concerns.

Wyoming

Investigatory records may be withheld if disclosure would harm law-enforcement interests.

Transparency Perspectives and Recommendations

The Task Force spent considerable time discussing criminal records. A number of presenters claimed that providing public access to ongoing and active criminal investigations and trials jeopardizes law enforcement interests, privacy rights, and the rights of criminal defendants to a fair trial, but no Nevada example of these problems was provided. Many states have public records acts that are not designed to protect transparency with the robustness that Nevada does. Such acts should not be considered by Nevada, and transparency related to law enforcement should be strengthened not undermined.

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

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

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

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

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

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

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

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

Body-Worn Camera Recordings

Nevada law makes body-worn camera recordings public records, NRS 289.830(2), and the Nevada Supreme Court has held that agencies must segment or blur footage where necessary rather than withhold it. *Republican Attys. Gen. Ass'n*, 136 Nev. at 33–36, 458 P.3d at 333–35. In 2023, however, the Court held that an officer's face in body-worn camera footage is a confidential "photograph" of a peace officer under NRS 289.025, so that agencies may blur officers' faces. *Conrad*, 530 P.3d at 856–57. Agencies now blur the faces of on-duty officers—who "openly display their identities on their badges," as the Reporters Committee observed—and charge requesters for the time it takes, at rates of $80 to $89 per hour of staff time, plus claim it takes staff four hours of review time for every actual hour of camera footage. Concealing the identities of officers in the recordings created to hold officers accountable defeats the purpose of the recordings. The California Supreme Court has held that agencies may not shift the cost of redacting such records to requesters. *Nat'l Lawyers Guild v. City of Hayward*, 9 Cal. 5th 488 (2020).

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

4.6 Standardized Fee Schedule

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

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

Several states, like Nevada, do not permit charges for staff time. West Virginia prohibits search or retrieval fees and charges based on staff hours. W. Va. Code § 29B-1-3(e). Arkansas prohibits fees for "existing agency personnel time associated with searching for, retrieving, reviewing, or copying the records." Ark. Code § 25-19-105(d)(3)(A)(i). Indiana excludes labor and overhead from the "actual cost" that may be charged, subject to limited exceptions. Ind. Code § 5-14-3-8. Kentucky prohibits charging noncommercial requesters for staff time. Ky. Rev. Stat. § 61.874(3), (4). And California's Supreme Court has held that agencies may not charge requesters for the cost of redacting electronic records. *Nat'l Lawyers Guild*, 9 Cal. 5th 488. Other states permit staff-time charges, as described below.

Other states handle it differently. 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 some, local government entities are permitted but not required to adopt a standardized fee schedule. In some, the state legislature sets 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.[4] 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. *See* Schedule of Reasonable Charges, Office of Open

[4] 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.

DRAFT

Records Counsel, *available at* *https://www.comptroller.tn.gov/content/dam/cot/orc/documents/oorc/policies-and-guidelines/ScheduleofReasonableCharges.pdf (last visited Sept. 27, 2*026). *Id*. 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 by a single requester or, in some instances, multiple requesters acting together. Reasonable Charges for Frequent and Multiple Requests, Office of Open Records Counsel, *available at* https://comptroller.tn.gov/content/dam/cot/orc/documents/oorc/policies-and-guidelines/Frequent_and_Multiple_Requests.pdf (last visited Sept. 27, 2026). 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:

4.6.1 For staff time involved in physically duplicating a record, $.33 per minute [$19.80/hour] after the first 30 minutes.

4.6.2 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].

4.6.3 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, *available at* https://sos.vermont.gov/vsara/manage/information-governance/compliance/uniform-charges-schedule (last visited Sept. 27, 2026). Each local government entity its own schedule after public hearing. 1 Vt. Stat. Ann. § 316(e) (2025).

Many 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).

Consensus Recommendation

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

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

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

DRAFT

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

Government Perspectives and Recommendations

- Fee schedules should include costs related to searching for, reviewing, redacting and producing public records, subject to a one-hour threshold.
- Local government entities should be allowed an exemption from the fee schedule for good cause shown.

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...).

Transparency Perspectives and Recommendations

Nevada's choice is deliberate. The Legislature defined "actual cost" to exclude any "cost that a

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

The staff-time models described above are presented for comparison and are not recommended. In particular, Nevada should not adopt Hawaii's search, review and segregation fees or its 50% prepayment requirement; Tennessee's labor charges or its aggregation of "frequent and multiple" requests; Texas's "good cause" exemption from the fee schedule; or Vermont's staff-time rates. The features of those models worth borrowing are the ones that limit fees: a single schedule, set by one body and reviewed regularly, that operates as a ceiling, as in Pennsylvania.

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

4.7 Protections Against Retaliatory Litigation

Government Perspectives and Recommendations

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

Recommend measures to protect government entities from abusive or retaliatory records requests and associated litigation.

Transparency Perspectives and Recommendations

AB 128 asked the Task Force to recommend mechanisms to protect governmental entities from retaliatory litigation. The Task Force received no evidence that requesters file retaliatory suits. Litigation under NRS 239.011 is the enforcement mechanism the Legislature created, and the record shows that requesters prevail because records were unlawfully withheld. The litigation risks that governmental entities actually face come from two other directions: suits by third parties who object to the release of records about them, and the cost of defending denials that should never have been made. Nevada law already immunizes officers, employees and their employers from damages for good-faith disclosure. NRS 239.012. But the Nevada Supreme Court has suggested that the subject of a record may bring a "reverse-records action" to block disclosure, *In re Public Records Requests to Las Vegas Metro. Police Dep't*, 141 Nev. Adv. Op.

26, 569 P.3d 624, 633–34 (2025), and such suits delay access and draw both governmental entities and requesters into court. At the same time, the Court held that a governmental entity may not itself sue for declaratory relief instead of responding to a request, observing that other legislatures have addressed the issue by statute and that "[t]he Nevada Legislature, unfortunately, has not." Id. at 632–33. Some states not only provide immunity, but make clear that people identified in public records do not have standing to challenge the provision of the records ahead of disclosure or to sue based on disclosure.

Recommendation: (1) Provide that, unless a statute specifically prohibits disclosure of the information, the release of a public record is not actionable and is not subject to any penalty, and that an exemption permits, but does not require, withholding; and (2) provide that a person who is the subject of a public record lacks standing to enjoin its release unless a statute specifically makes the information confidential and gives a private right of action, and in that case require that any action be filed promptly, not suspend the NPRA's deadlines for other records, place the burden on the party seeking to block disclosure, allow the requester to intervene, and require an unsuccessful party to pay the requester's attorney's fees.

4.8 Accessibility of Records without a Records Request

The Task Force agreed that a more consistent and widespread availability of public records benefits the public and the government by eliminating the need for the public to make, or the government to respond to, a record request.

Consensus Recommendation

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

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:

- Meeting agendas and minutes
- Presentations, legal references, etc.
- Comparative analysis with other states

DRAFT