

# View From The Trenches



Public Records Task Force - June 8, 2026 - Luke Busby, Esq.

# Background and Experience

- I've been on both sides.....
  - Started my career at the Public Utilities Commission in 2006, where I assisted the PUCN in complying with numerous records requests.
  - In private practice since 2010, and litigated public records request issues extensively.
  - The views I express here are my own.

# My opinions based on my experience

- The NPRA is designed "to foster democratic principles by providing members of the public with prompt access" to public records. NRS 239.001(1). This is not happening.
- The core problem is not the text of the NPRA, but intransigence and routine failure to follow the letter or spirit of the law.
- Agencies routinely use unfounded confidentiality claims, non-responsiveness, stall tactics, or litigation itself to delay disclosure of records that reflect poorly on government.
- Records that make government look good are easy to get.

# The Bell, California Scandal

- Los Angeles Times reporters used public records requests to obtain compensation data for officials of Bell, California, a working-class city of approximately 36,000.
- The records revealed the City Manager earning approximately \$800,000, the Police Chief approximately \$457,000, and part-time Council members approximately \$100,000.
- The disclosures led to criminal prosecutions and removal of multiple Bell officials for misappropriation of public funds.
- Bell illustrates why agencies cannot be allowed to define the scope of their own disclosure obligations.

## Problem No. 1 - Time Required to Respond

- NRS 239.0107 requires a response within five business days.
- *Conrad v. Washoe County*, No. 87468, 2024 Nev. Unpub. LEXIS 974 (Dec. 16, 2024), held that an automated email providing a thirty-day timeline satisfies the five-day requirement.
- Some agencies may now defer substantive review for thirty days or more as a matter of routine via automatic email responses.
- Even after the deferral, agencies often deny the request outright and then “close the request,” and cut off contact in an automated system.

## Solution 1 - Adopt a clear rule for response timelines

- Require the five-business-day response under NRS 239.0107 to contain a substantive determination of what records are generally available, require disclosure of readily available records within that time frame, not an automated placeholder.
- Work with requesters to narrow requests.
- Impose a firm outer deadline to either produce the records or assert ***and justify*** a specific claim of confidentiality.

## Problem 2 - Substance of Responses

- Wholesale denial in place of redaction, contrary to NRS 239.010(3).
- Generalized justifications
- Misuse of victims rights laws
- Misapplied privacy balancing under *Clark County School District v. Las Vegas Review-Journal*, 134 Nev. 700, 429 P.3d 313 (2018), and the *Cameranesi* test.

## Solutions to the Wholesale-Denial-Over-Redaction Problem

- Require any denial to be accompanied by a written explanation specifically identifying why redaction is not feasible.
- Amend NRS 239.010(3) to provide that failure to produce redacted records, where redaction is feasible, is a denial triggering judicial review under NRS 239.011 and civil penalties under NRS 239.340.

## Solutions to the Generalized-Justification Problem

- Provide that wholesale denials relying on generalized, hypothetical, or boilerplate justifications (canned word salad responses), or checkbox forms are unlawful and constitute a constructive denial triggering a right to judicial review under NRS 239.011.

# Solutions to the Misuse of Victims Rights Laws Problem

- Amend NRS Chapter 239 to clarify that Marsy's Law does not authorize withholding records from the victim who is the subject of those records.
- Codify that victims' rights cannot be construed to deny or disparage the victim's separate right of access under the NPRA.
- Recognize a victim's right to waive confidentiality with respect to records concerning their own victimization.

# Solutions to the Misapplied-Privacy-Balancing Problem

- Amend NRS Chapter 239 to modify *Clark County School District v. Las Vegas Review-Journal*, 134 Nev. 700, 429 P.3d 313 (2018), insofar as could be interpreted to transfer the burden of proof to the petitioner, contrary to NRS 239.0113.
- Clarify that any privacy interest claimed as a basis for must be substantial, not just “non-trivial.”
- Clarify that if any public interests exists in disclosure of the records, and if so, the agency bears the burden to show that the privacy interest clearly outweighs the public’s interest in disclosure.

## Problem No. 3 - Lack of clear procedures

- NRS Chapter 239, establishes a substantive right of access to government records but does not itself create its own procedural framework.
- NRS 239.011 expressly directs that a person whose records request has been denied may apply to the district court for an order compelling production.
- The Nevada Supreme Court filled this gap, holding that a party may challenge the denial of a records request by petitioning for a writ of mandamus in district court.
- But.....

## Problem No. 3 - Lack of clear procedures

- NRS Chapter 34, enacted in 1913 and not substantially amended since, supplies the procedural vehicle for enforcing the NPRA through NRS 34.160.
- Writ proceedings are a mix of statute and a catch all applying the rules of civil procedure.
- *City of Reno v. Conrad*, 142 Nev., Advance Opinion 13 (2026), held that ex parte alternative writs are disfavored where no emergency existed.

## Solution 3 - Adopt a clear procedural rule for judicial review of PRR denials

- Amend NRS Chapter 239 to create a self-contained judicial review procedure modeled on NRS 278.0235, which applies to local land use decision appeals.
- Establish that an ex parte petition for an order to show cause may be filed, and if issued on good cause, an order directing the agency to either produce the requested records or appear and show cause within 30 days why they should not be compelled to do so.
- Require the district court to rule expeditiously.
- This procedure would **DRASTICALLY** reduce the time and expense associated with PRR litigation.

## Problem No. 4 - The Body-Camera Redaction-Fee Problem

- NRS 289.830 requires uniformed peace officers to wear portable event recording devices, and subsection 2 declares that any record made by such a device is a public record.
- *Conrad v. Reno Police Department*, 139 Nev. 126, 530 P.3d 851 (2023), held that an officer's face in body-worn camera footage is confidential under NRS 289.025(1) as a "photograph" of a peace officer.
- Agencies leverage *Conrad* to impose substantial fees under NRS 239.055.

# Solutions to the Body-Camera Redaction-Fee Problem

- Amend NRS 289.025 to abrogate *Conrad v. Reno Police Department*, 139 Nev. 126, 530 P.3d 851 (2023), insofar as it held that "photograph" encompasses an officer's face in body-worn camera footage.
- Clarify that NRS 289.025(1) confidentiality is limited to discrete photographic images and does not extend to video recordings made under NRS 289.830, which subsection 2 declares public records.
- Alternatively, amend NRS 239.055 to prohibit fees for redactions the agency itself is required to perform to comply with statutory confidentiality provisions and limit any fee for body-worn camera footage to the actual, incremental cost of the medium on which the video is provided, e.g. a thumb drive.

## Critiques of the Urban Consortium's Proposed Approach to the NPRA

- The claim that the framework works well ignores the systemic problems detailed herein.
- Authorizing "structured responses" to allegedly harassing requests invites denial based on the requestor's identity or motive, contrary to the requestor-neutral structure of NRS 239.010(1).
- Expanded redaction-cost recovery prices ordinary citizens out of records which they already own.
- The framing of proposals restricting access as a search for "clarity" obscures that the core problem is, IMHO, agency intransigence and routine failure to follow existing law.

## Critiques of the Nevada Municipal Clerks' Association Approach

- Framing the law as outpaced by "digital reality" treats the right of access as the problem rather than agency noncompliance.
- Expanded redaction-cost recovery shifts the agency's obligations under NRS 239.010(3) and NRS 239.0113 onto requestors.
- Defining "vexatious requestors" invites denial based on the requestor's identity or motive, contrary to NRS 239.010(1).
- Restricting "litigants bypassing discovery" assumes that PRR requests are an invalid way to obtain evidence in a case; the NPRA grants access regardless of whether litigation is contemplated or ongoing.
- Redefining the five-business-day requirement as a flexible "expectation" would codify the deferral practices illustrated by *Conrad v. Washoe County*, No. 87468, 2024 Nev. Unpub. LEXIS 974 (Dec. 16, 2024) - i.e. an auto generated email response within the 5 day window was held not to be a violation.

## The NPRA as a Pre-Litigation Tool Reduces, Rather Than Increases, Litigation

- Pre-suit access allows potential plaintiffs and attorneys to investigate the facts before deciding whether to file suit, consistent with Rule 11.
- Access sometimes reveals that no viable claim exists, allowing potential plaintiffs to abandon meritless claims and sparing the courts and the agency unnecessary litigation.
- Denying pre-suit access forces plaintiffs to file suit to obtain in discovery what should have been available under the NPRA.

**Questions?**