

**ADOPTED REGULATION OF
THE PERSONNEL COMMISSION**

LCB File No. R045-13

Effective October 23, 2013

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1 and 2, NRS 284.065, 284.155 and 284.335.

A REGULATION relating to state personnel; revising provisions relating to the confidentiality of employee information; and providing other matters properly relating thereto.

Section 1. NAC 284.718 is hereby amended to read as follows:

284.718 1. The following types of information, which are maintained by the Division of Human Resource Management or the personnel office of an agency, are confidential:

(a) Information relating to salaries paid in other than governmental employment which is furnished to the Division of Human Resource Management on the condition that the source remain confidential;

(b) Any document which is used by the Division of Human Resource Management or an agency in negotiations with employees or their representatives which has not been made public by mutual agreement;

(c) The rating and remarks concerning an applicant by the individual members of the board or assessors of a center for assessment;

(d) Any document which is used by the Division of Human Resource Management or an agency in the process of interviewing an applicant, including, without limitation, a document

containing interview questions, evaluation tools used for rating applicants and any notes concerning an applicant that were taken by a person as part of the process of rating an applicant;

(e) Materials used in examinations, including suggested answers for oral examinations;

(f) Records and files maintained by an employee assistance program offered by the State of Nevada;

(g) Reports by employers, appointing authorities or law enforcement officials concerning the hiring, promotion or background of applicants, eligible persons or employees;

(h) The class title and agency of an employee whose name is excluded from the official roster, as provided in subsection 3 of NAC 284.714, when an inquiry concerning the employee is received;

(i) Any information contained on a person's application or relating to his or her status as an eligible person; and

(j) Information in the file or record of employment of a current or former employee which relates to the employee's:

(1) Performance;

(2) Conduct, including any disciplinary actions taken against the employee;

(3) Usage or balance of his or her annual leave and sick leave;

(4) Race, ethnic identity or affiliation, sex, genetic information, disability or date of birth;

(5) Home telephone number; or

(6) Social security number.

2. If the employee has requested that his or her personal mailing address be listed as confidential, the employee's file must be so designated and list his or her business address.

3. The name of any beneficiary of an employee contained in the payroll document must not be released to anyone unless:

- (a) The employee dies; or
- (b) The employee signs a release.

4. Any records in the possession of the Committee on Catastrophic Leave created pursuant to NRS 284.3627 that reveal the health, medical condition or disability of a current or former employee or a member of his or her immediate family are confidential.

5. Any notes, records, recordings or findings of an investigation conducted by the Division of Human Resource Management relating to sexual harassment or discrimination, or both, and any findings of such an investigation that are provided to an appointing authority are confidential.

6. Any notes, records, recordings, findings or other information obtained from an internal study conducted by an agency that directly relate to an employee's performance or conduct are confidential.

Sec. 2. NAC 284.726 is hereby amended to read as follows:

284.726 1. Except as otherwise provided in this subsection, access to materials for an examination and information relating to an applicant or eligible person which are relevant to an appointing authority's decision to hire that person is limited to the appointing authority or his or her designated representative. If the name of the applicant is not disclosed and the information is used for the purposes of subparagraph (2) of paragraph (a) of subsection 1 of NAC 284.204, information relating to the education and experience of an applicant may be made available to any affected applicant, employee or the designated representative of either.

2. Except as otherwise provided in subsections 3 and 4, access to an employee's file of employment containing any of the items listed in paragraphs (g) to (j), inclusive, of subsection 1 of NAC 284.718 is limited to:

- (a) The employee.
- (b) The employee's representative when a signed authorization from the employee is presented or is in his or her employment file.
- (c) The appointing authority or a designated representative of the agency by which the employee is employed.
- (d) The Administrator or a designated representative.
- (e) An appointing authority, or a designated representative, who is considering the employee for employment in the agency.
- (f) Persons who are authorized pursuant to any state or federal law or an order of a court.
- (g) The State Board of Examiners if the Board is considering a claim against the State of Nevada filed pursuant to chapter 41 of NRS which involves the employee.
- (h) Persons who are involved in processing records for the transaction of business within and between state agencies.
- (i) Persons who are involved in processing records for the transaction of business that is authorized by the employee.

3. Information concerning the health, medical condition or disability of an employee or a member of his or her immediate family must be kept separate from the employee's file in a locked cabinet. Except as otherwise provided in subsection ~~7.1~~ 8, access to such information is limited to the employee, his or her current supervisor, and the appointing authority or a designated representative.

4. Except as otherwise provided in subsection ~~7.1~~ 8, access to information concerning the employee's usage or balance of annual leave and sick leave is limited to the employee, the employee's immediate supervisor and the employee's appointing authority or the designated representative of the appointing authority.

5. *Except as otherwise provided in subsection 8, access to any notes, records, recordings, findings or other information obtained from an internal study conducted by an agency that directly relate to an employee's performance or conduct is limited to:*

(a) The employee.

(b) The appointing authority or a designated representative of the agency by which the employee is employed.

(c) Persons who are authorized pursuant to any state or federal law or an order of a court.

(d) The Governor or the Governor's designated representative.

6. Except as otherwise provided by specific statute, records maintained by an employee assistance program offered by the State of Nevada must not be released without written permission signed by the employee to whom the records pertain.

~~6.1~~ 7. Upon request, the Division of Human Resource Management will provide the personal mailing address of any employee on file with the Division of Human Resource Management to the State Controller's Office and the Internal Revenue Service.

~~7.1~~ 8. The Administrator or the appointing authority, or a designated representative, shall authorize the release of any confidential records under his or her control which are requested by the Employee-Management Committee, a hearings officer, the Commission, the Committee on Catastrophic Leave created pursuant to NRS 284.3627, the Nevada Equal Rights Commission or a court.

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
LCB File #R045-13

1. A clear and concise explanation of the need for the adopted regulation.

The amendments in this file are necessary to safeguard information received during an internal study, conducted by an agency, that directly relate to an employee's performance or conduct. These internal studies are intended to give management information that assists them in making positive improvements in the work environment. In order for internal studies to be productive and successful, and so that individuals will feel comfortable in participating, two regulations related to confidential records and access to confidential records have been amended. The amendment to NAC 284.718 expands this regulation to include such information. While the amendment to NAC 284.726 is necessary to ensure that only the individuals specified have access to information gathered during an internal study that directly relates to an employee's performance or conduct.

2. Description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

Copies of the proposed regulations, notices of workshop, and notices of intent to act upon a regulation were sent by email to persons who were known to have an interest in the subject of proposed personnel regulation changes as well as any person who had specifically requested such notice. These documents were also made available on the Division of Human Resource Management website, emailed to all county libraries in Nevada, and posted at the following locations:

Blasdel Building
209 E. Musser Street
Carson City, NV 89701

Grant Sawyer State Office Bldg.
555 E. Washington Blvd.
Las Vegas, NV 89101

Nevada State Library and Archives
100 Stewart Street
Carson City, NV 89701

Capitol Building
Main Floor
Carson City, NV 89701

Legislative Building
401 S. Carson Street
Carson City, NV 89701

Gaming Control Board
1919 College Parkway
Carson City, NV 89701

Attached are pertinent comments from the workshop and the Personnel Commission meeting.

A Regulation Workshop was conducted by the Division of Human Resource Management on July 17, 2013. A public hearing was held by the Nevada Personnel Commission on October 10, 2013.

Comments from the workshop and hearing can be obtained from the Division of Human Resource Management by contacting Shelley Blotter at sblotter@admin.nv.gov or calling (775) 684-0105.

3. **The number of persons who:**
 - (a) **Attended each hearing:** October 10, 2013 – 53
 - (b) **Testified at each hearing:** October 10, 2013 – 4
 - (c) **Submitted written comments:** 0

4. **For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency conducting the hearing:**

Michelle Garton, Supervisory Personnel Analyst
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209 E. Musser St., Room 101
Carson City, NV 89701
(775) 684-0136
mgarton@admin.nv.gov

Kareen Masters, Deputy Director
State of Nevada Department of Health & Human Services
4126 Technology Way
Carson City, NV 89706
(775) 684-4000
kmasters@dhhs.nv.gov

Mark Evans, Employee Development Manager
State of Nevada Department of Transportation
1263 S. Stewart Street
Carson City, NV 89701
(775) 888-7808
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Ron Cuzze, President
State of Nevada Law Enforcement Officers Association
(702) 736-4460
rcuzze@earthlink.net

5. **A description of how comment was solicited from affected businesses, a summary of their response and an explanation of how other interested persons may obtain a copy of the summary.**

Comments were not solicited from businesses, as the regulations do not affect businesses. Comments were solicited from effected parties including employees and employee associations. No written comments were received. Comments from the workshop and

hearing can be obtained from the Division of Human Resource Management by contacting Shelley Blotter at sblotter@admin.nv.gov or calling (775) 684-0105.

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

A regulation workshop was held to gain additional input related to confidential records related to “organizational climate studies” from all interested parties, including employee associations. During the workshop, testimony was presented requesting that information related to an employee’s performance or conduct gathered during an internal study, conducted by an agency, also remain confidential.

Testimony was heard at the hearing and all sections of the regulation were adopted by the Personnel Commission with a vote of 4 to 1.

7. The estimated economic effect of the regulation on the business which it is to regulate and on the public.

(a) Estimated economic effect on the businesses which they are to regulate.

(b) Estimated economic effect on the public which they are to regulate.

These regulations do not have a direct economic effect on either a regulated business or the public. They only impact the classified service of Executive Branch departments and the Nevada System of Higher Education.

8. The estimated cost to the agency for enforcement of the proposed regulation:

There is no additional cost to the agency for enforcement of these regulations.

9. A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agency regulations that the proposed amendments duplicate.

10. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

These regulations do not include any provisions that are more stringent than any federal regulation.

11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

No fees are associated with these regulations.

Pertinent Testimony from Regulation Workshop Held July 17, 2013

Christine Ripley, Personnel Analyst, HRM: Stated that the next three proposed regulations related to an organizational climate study and confidential records. She stated that HRM referred to two of these proposed regulations in a previous workshop. She noted during the pre-adoption review process the definition of an organizational climate study came into question. She stated the HRM was proposing a new section which would define the term "organizational climate study" and as it was used in NAC 284.718 and 284.726. She said the term organizational climate study referred to an independent study conducted by the HRM to assess and evaluate the organization's culture, overall management, effectiveness, employee morale and internal communications. She noted that these studies were performed at the request of the department director and were meant to be used as a management tool to resolve issues within their organization.

She referred to NAC 284.718 – Confidential records and noted that it was proposed by the HRM to have language that would designate any information obtained in the organizational climate study that directly reflected on any specific employee's performance. She added that conduct and performance would remain confidential regardless of the instrument used to gather information whether it was a meeting, a written statement and/or through another process.

She referred to NAC 284.726 – Access to confidential records and noted that it was proposed by the HRM to add language that would establish which individuals would have access to information gathered as part of an organizational climate study. She stated that access to the information would be limited to: 1) the employee upon whose performance, information obtained in the survey would directly reflect; 2) to the Administrator of HRM or a designated representative; 3) the appointing authority or a designated representative of the agency; 4) persons who were authorized pursuant to any state or federal law or court order; and 5) the governor or a designated representative.

Ron Cuzze, President, NSLEOA: Asked if the information was available to the employee but not the association.

Shelley Blotter, Deputy Administrator, HRM: Responded that it was up to the employee to decide with whom they wished to share the information. She added that it did not need to be included in the regulation.

Ron Cuzze, President, NSLEOA: Stated that to avoid problems down the line, they were requesting that the information be available to the associations.

Kareen Masters, Deputy Director, DHHS: Stated that with regard to the new section being created they thought that it should be broader than just a study conducted by the HRM. She added that sometimes their own department would conduct such studies and they would want the same confidentiality provisions to apply to those studies as well.

Kimberley King, Human Resource Manager, NDOT: Stated that if the HRM decided to add associations that they would like representation added as they might be represented by an attorney instead of an association. She stated that she also agreed with Kareen Masters, that NDOT did surveys and they would also like them to be covered.

Pertinent Testimony from Personnel Commission Meeting Held October 10, 2013

Michelle Garton: You will notice that the two regulations related to confidential records and access to confidential records have been proposed to be amended again in LCB File Number R045-13. The Department of Health and Human Services and the Department of Transportation requested that information obtained through an internal study that relates to an employee's performance or conduct remain confidential and access limited. Similar to the previous regulations, these studies are intended to identify issues within an agency so that management can make improvements and resolve problems.

If both LCB File Number R137-12 and this file are adopted, new subsections within NAC 284.718 and 284.726 will be created.

Commissioner Mauger: What would you learn from this internal study that you could learn or not learn from the organizational climate study.

Michelle Garton: You would learn very similar things it's just a matter of whether or not the Division of Human Resource management conducts the study or it's conducted by internal human resources department or however they want to do it but it would not involve the Division of Human Resource Management. **Commissioner Mauger:** Could this be a duplication or kind of overkill with these two studies? We approved the first one and the other one actually sounds like it's the same thing. **Michelle Garton:** I think it's kind of an "either/or," maybe if a department conducts an internal study and may need the assistance of the Human Resource Management Division, it might go that route. I wouldn't think the division or department would consider doing both.

Commissioner Mauger: I'm just curious what you could get out of this study versus what you could get out of the climate study basically it looks like the same thing. That's just my feeling on it.

Chairperson Fox: For my understanding and maybe for Commissioner Mauger's also is it because some choose not to engage with DHRM and conduct their own internal study, is that why you added this language?

Michelle Garton: Yes, precisely.

Chairperson Fox: Does that help clarify it Commissioner Mauger, that they want to make sure if a department chooses to do their own internal study and not engage with the Division of Human Resource Management that they wanted to make sure that the confidential records pertaining to performance management remain confidential.

Commissioner Mauger: I hear what you're saying Madame Chair this becomes a regulation that has to be adhered to, at least from my perspective I didn't know they had the option to participate or to not participate my understanding if it's a regulation they gotta participate.

Shelley Blotter: I think we have agency representatives here that may have conducted studies like this within their own organization so they may be able to shed light. These studies are optional so the DHRM would not conduct a study without the support or request of the management of that particular organization because there has to be a want and desire to seek this kind of information and accept the recommendations of our division so it could be that they choose to conduct this on their own, ours would be an independent study.

Commissioner Mauger: So what your saying, at least what I'm listening to is that both of these could be or are optional to the individual department and whether or not they want to participate or not.

Shelley Blotter: That's correct.

Commissioner Mauger: Wow, what's the purpose of the regulation if you are not going to adhere to it?

Shelley Blotter: The regulation is just saying if these types of studies are conducted, so if there is an organization that's having difficulty they are trying to determine what is at the root of the cause, that any information that's gained from that and it would reflect on an employee's performance that it would remain confidential so it could be handled with management appropriately and not that it becomes something that it would become out in the public.

Mark Evans: To answer the Commissioners question, NDOT has conducted an employee satisfaction survey for a number of years. Our questions are questions that we have selected these are questions that we watch the trends on what are the changes over the years for the reaction. For example one area that we look at very carefully is how well we are communicating with the employees. So we watch the trends, obviously every agency wants their communication to be more effective so as we see changes we start taking initiatives to improve communication so because we have this historical data to bring in. The DHRM may use different questions and different measures that does not give us a straight across comparison additionally some agencies prefer to do their own and have that in place for some time. Hope this answers your questions.

Commissioner Mauger: So the regulation is there basically as a guideline?

Shelley Blotter: No it's not a guideline; it has effect of law once it gets put into effect so what it's doing is that if there is a study and information is gleaned from that study that reflects on an employee's performance then it makes that information confidential. The second amendment is to allow access to that employee to those portions of the study that do reflect badly on their performance so that if there is some sort of subsequent disciplinary action, they would have access to that information.

Kareen Masters: I just want to give other examples that may be helpful as well. Sometimes it's a matter of the scope that differentiates the studies, for instance in the Department of Health and Human Services, we may have had a particular work unit that is experiencing some difficulties so the Personnel Officer would go in and be working with that particular work unit to talking with the employee assessing what the problem is maybe doing some facilitation of resolution after that point that would be one example of the agency study. The study that DHRM does under the Climate Study is an entire division or a major portion of the division so we are talking about hundreds of employees that are being surveyed. One survey that we currently have under way includes 75 questions that the employees are being asked so there is a difference in scope being addressed as well.

Mark Evans: We are in support of the regulation our agency conducts a yearly satisfaction survey and the results are used to develop strategies to improve our organization and although the purpose of the survey is to get an overall view of the agency and it's climate, there are times when there are comments either good or bad about employees, coworkers, their supervisors and their managers, we believe those comments must be kept confidential this supports the integrity of the survey, allows employees to express themselves freely and we do not see any value sharing negative comments of an individual publicly we ask for approval of this regulation.

Ron Cuzze: Actually, because of Commissioner Maugers comments it brought something up that we have not considered before and apparently an employee in this section can choose to do it or not do it. What happens with the information even though you are saying its confidential information what is to prevent that information to be used in something less than a disciplinary manner, i.e. letter of instruction or be placed in an employee's evaluation, is there a safeguard for that?

Shelley Blotter: Again, the intent of the study is to look into communications or issues going on within the organization if it does reveal something that would cause disciplinary action I believe there would be some other further investigation into those things and it may result in disciplinary action. Again, because that could be the result and it's not the intent going in, we would want to safeguard that employee's information or the information revealed from other employees because that is something specific to them, so that's the intent of the regulation changes is to ensure that it is something between the employee and management.

Commissioner Sanchez: That's the reason I asked the question earlier, is that if there was a violation of policy, that would trigger another type of investigation is that correct?

Shelley Blotter: Yes, I believe that's what would happen.

Mark Evans: Just to answer that question. A comment from a survey is from a confidential source so certainly that could make an agency aware of something going on in a division or section and that could cause an investigation to happen but certainly someone would not be disciplined based on a comment on a survey that's just to give you an awareness of what might be happening but if there was any discipline then there would be an investigation. It would be the same for an agency as it would for an organizational climate study.

Ron Cuzze: I am not questioning a disciplinary issue, my people are covered under NRS 289; we can very well take care of people and protect people and under 289. I'm talking about non-disciplinary i.e a letter of instruction or comments of adverse nature in the employee's evaluation, not discipline there two different things here, what's to prevent that?

Mark Evans: Those specific comments are not necessarily shared even with the Division or the section for that very reason. There are also concern in our agency if you share an exact comment with a supervisor sometimes they make assumptions about who makes that comment I have been involved in both organization climate studies with DHRM and with NDOT and other organizations as well and when you share that comment often a supervisor will say "oh I know who said that" and often times they are not correct. So that type of information specifically from a survey is not going to go into a person file, it's not going to be used in their evaluation; it's not going to be used even in instruction. At that point it will be more this is what's going on in your area, perhaps you want to look into it. So I don't see the possibility of that happening, honestly.

Commissioner Waugh: Based on that answer, is it assumed that that wouldn't be applied or is there something set in policy that addresses Mr. Cuzze's concerns?

Chairperson Fox: It's my understanding that according to the proposed changes in front of us, that access to any notes, records, recordings, findings, or other information obtained from an internal study or an organizational climate study conducted that directly relates to the employees performance is limited to the employee. The appointing authority which to me would typically be the department head correct? Persons are authorized to this information to any state or federal law, or order of the court or the governor so to me it's really clear that a supervisor, let's say comments come forward related to an office assistant's performance, the Supervisor of that office assistant is not entitled to that information. That's my understanding.

Shelley Blotter: So it is says the appointing authority or designated representative as Mr. Evans stated this is typically a high level type of a study end result and if there were issues going on in a particular unit, then I think that you would have to step back and look at the whole unit and see how it is functioning, the Supervisor would not automatically get that information.

Mark Evans: And I would also point out that if you don't pass this regulation there is nothing to prevent what Mr. Cuzze is worried about from happening. This is giving some confidentiality to these results so without this you are actually in a worse position, the employee.

Chairperson Fox: Thank you. That is important clarification for me:

Commissioner Mauger: Really in my mind set I consider this duplication, because the only thing you are asking for that I can read in 13 is to make internal studies confidential and you are doing the same thing in 12 basically by adding language and making it confidential. I still feel that this is a duplication.