

**REVISED ADOPTED REGULATION OF  
THE STATE LIBRARY AND ARCHIVES ADMINISTRATOR**

**LCB File No. R107-13**

Effective December 22, 2014

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

AUTHORITY: §§1-11, NRS 239.008 and 378.255.

A REGULATION relating to public records; interpreting certain statutory terms relating to public records; setting forth requirements for a form to request to inspect, copy or receive a copy of certain public records; setting forth certain procedures for records officials; adopting by reference the *Nevada Public Records Act: A Manual for State Agencies*; making various other changes relating to public records; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

Existing law requires: (1) the head of each agency of the Executive Department of the State Government to designate one or more employees of the agency to act as a records official for the agency; and (2) the records official to carry out the statutory duties of the agency that designated him or her with respect to a request to inspect or copy a public record of the agency. (NRS 239.008) Existing law also requires the State Library and Archives Administrator, in cooperation with the Attorney General, to prescribe certain forms and procedures to be used by an agency of the Executive Department or the records official in carrying out requests to inspect, copy or receive a copy of a public record. (NRS 239.008, 378.255)

Existing law: (1) authorizes a person to request a copy of a public record in any “readily available” medium; and (2) provides that if a public book or record of an agency of the Executive Department is “readily available” for inspection or copying, the person who has legal custody or control of the public book or record shall allow a person who has submitted a request to inspect, copy or receive a copy of the public book or record. (NRS 239.010, 239.0107)

**Section 2** of this regulation interprets the term “readily available.”

Existing law prohibits an officer, employee or agent of an agency of the Executive Department who has legal custody or control of a public record from refusing to provide a copy of that public record in a “readily available medium” because the officer, employee or agent has already prepared or would prefer to provide the copy in a different medium. (NRS 239.010)

**Section 3** of this regulation interprets the term “readily available medium.”

**Section 4** of this regulation requires a records official of an agency of the Executive Department to ensure that certain information related to public record requests is available on the Internet website maintained by the agency.

**Section 5** of this regulation sets forth requirements for the form to request to inspect, copy or receive a copy of a public record of an agency of the Executive Department.

**Section 6** of this regulation requires: (1) under certain circumstances, a records official to provide a person who requests a copy of a public record with an estimate of the fee for the copy; and (2) a person who requests a copy of a public record to pay any fee for the copy before receiving the copy.

**Section 7** of this regulation authorizes a records official to request additional information or clarification from a person who requests to inspect, copy or receive a copy of a public record, as necessary to determine which public record is the subject of the request.

**Section 8** of this regulation requires a records official to ensure that: (1) the agency of the Executive Department provides suitable space for a person to inspect a public record; and (2) an employee of the agency observes the inspection of the public record.

**Section 9** of this regulation provides that if a person requests to inspect, copy or receive a copy of a public record that does not exist, a records official or agency of the Executive Department is not required to create a public record to satisfy the request.

Existing law provides that an official state record may be disposed of only in accordance with a schedule for retention and disposition. (NRS 239.080) **Section 10** of this regulation prohibits an agency of the Executive Department from disposing of a public record that is the subject of a public records request until the agency has complied with the request. **Section 10** also authorizes, under certain circumstances, a records official to dispose of a copy of a public record.

**Section 11** of this regulation adopts by reference the *Nevada Public Records Act: A Manual for State Agencies, 2014 edition*, and any subsequent edition issued by the Division of State Library and Archives of the Department of Administration, which has been approved by the State Library and Archives Administrator.

**Section 1.** Chapter 239 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this regulation.

**Sec. 2.** *For the purposes of NRS 239.0107, as applicable to an agency of the Executive Department, a public record is “readily available” if:*

*1. The public record is easily retrievable by an officer, employee or agent of the agency who has legal custody or control of the record;*

*2. The public record does not contain any confidential information; and*

*3. The nature of the public record is such that an officer, employee or agent of the agency who has legal custody or control of the record is not required to review the record to determine whether the record includes confidential information.*

*Sec. 3. For the purposes of NRS 239.010, as applicable to an agency of the Executive Department, “readily available medium” means any format in which a public record exists with the agency at the time that a person requests to inspect, copy or receive a copy of the public record.*

*Sec. 4. A records official of each agency of the Executive Department shall ensure that the agency makes available on the website maintained by the agency on the Internet or its successor:*

*1. The address and regular office hours of the principal office of the agency;*

*2. The name of each records official of the agency;*

*3. An explanation of any fees the agency charges for providing a copy of a public record;*

*4. An explanation of how a person may request to inspect, copy or receive a copy of a public record; and*

*5. A link to the form described in section 5 of this regulation to request to inspect, copy or receive a copy of a public record.*

*Sec. 5. 1. The form to request to inspect, copy or receive a copy of a public record of an agency of the Executive Department must include, without limitation:*

*(a) The name, address and telephone number of the person submitting the request;*

*(b) The date that the request is submitted to the agency;*

*(c) A description of the public record that is sufficient to identify the record;*

*(d) An indication of whether the person submitting the request wants to inspect, copy or receive a copy of the public record;*

*(e) If the person wants to receive a copy of the public record, an indication of:*

*(1) Whether the person wants a paper copy, an electronic copy or a certified copy of the record; and*

*(2) Whether the person will receive the copy of the record at the office of the agency or the person wants to receive the copy by mail, facsimile machine or electronic mail; and*

*(f) An oral or written affirmation by the person requesting to inspect, copy or receive a copy of the public record that the person understands that:*

*(1) There may be a fee to receive a copy of a public record, which the person must pay in full before receiving the copy; and*

*(2) He or she will receive from a records official a written estimate to reproduce the public record if the estimated actual cost of reproducing the record is more than \$25.*

*2. If a person indicates that he or she wants to receive a copy of the public record by facsimile machine or electronic mail, the person must include on the form a facsimile number or electronic mail address, as applicable.*

**Sec. 6.** *If an agency of the Executive Department charges a fee for providing a copy of a public record:*

*1. A records official shall provide a person who requests a copy of a public record with an estimate of the fee for the copy, if the estimated actual cost is more than \$25. The estimate of the fee must include, without limitation, the amount of postage that the agency will charge the person if the person requested to have the copy delivered by mail.*

*2. A records official:*

*(a) May require the person who requests a copy of a public record to pay a deposit of not more than the estimate of the actual cost of providing the copy; and*

*(b) Shall require the person who requests a copy of a public record to pay the fee for providing the copy, including, without limitation, postage for mailing the copy, if applicable, before the person receives the copy.*

*Sec. 7. A records official may request additional information or clarification from a person who has requested to inspect, copy or receive a copy of a public record to determine which public record the person is requesting to inspect, copy or receive a copy of, as applicable.*

*Sec. 8. 1. A records official of each agency of the Executive Department shall ensure that the agency provides a suitable space for a person to inspect a public record in a manner that does not cause excessive interference with the essential functions of the agency.*

*2. A records official shall ensure that an employee of the agency observes the inspection of a public record.*

*3. A person who requests to inspect a public record shall not:*

*(a) Remove a document from the space provided pursuant to subsection 1; or*

*(b) Disassemble or alter the public record.*

*4. A records official may provide access to inspect a public record in installments if the person who requested to inspect the record agrees and the record is large enough that it would be reasonably practicable to provide access to the record in installments.*

*Sec. 9. If a person requests to inspect, copy or receive a copy of a public record that does not exist, a records official or an agency of the Executive Department is not required to create a public record to satisfy the request.*

**Sec. 10. 1.** *Except as otherwise provided in subsection 2, if a person requests to inspect, copy or receive a copy of a public record, the records official of the agency of the Executive Department which possesses the record shall ensure that the agency does not dispose of the record until the agency has complied with the request.*

*2. If a person who requests to receive a copy of a public record does not claim the copy, the records official may dispose of the copy if the person does not:*

*(a) Claim the copy from the agency; or*

*(b) Notify the agency of when the person will claim the copy,*

*↳ within 30 days after the copy is reproduced.*

**Sec. 11.** *The State Library and Archives Administrator hereby adopts by reference the Nevada Public Records Act: A Manual for State Agencies, 2014 edition, and any subsequent edition issued by the Division which has been approved by the Administrator. The most recent edition that has been approved by the Administrator may be obtained, at no cost, from the Division of State Library and Archives of the Department of Administration, 100 North Stewart Street, Carson City, Nevada 89701, or at the Internet address [http://nsla.nv.gov/Records/Public\\_Records/Public\\_Records/](http://nsla.nv.gov/Records/Public_Records/Public_Records/).*

**Informational Statement**  
LCB File No. R107-13. Public Records

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

- (a) The need for this regulation is to comply with Assembly Bill (“AB”) 31 of 2013, which requires the State Library and Archives Administrator, pursuant to NRS 378.255 and in cooperation with the Attorney General, to prescribe by regulation the procedures with which a records official must comply in carrying out his or her duties. NRS 239.008
- (b) It is also needed to interpret certain statutory terms relating to public records for agencies of the Executive Department when carrying out these procedures.

**2. A description of how public comment was solicited, a summary of public response, and an explanation 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 the regulation were sent by U.S. mail and email to persons who were known to have an interest in the subject of public records as well as any persons who had specifically requested such notice. These documents were also made available at the website of the Nevada State Library and Archives (NSLA), posted on LCB’s Administrative Regulation Notices board, emailed to all county libraries in Nevada, and posted at the following locations:

Nevada State Library and Archives, 100 N. Stewart Street, Carson City, NV  
Office of the Attorney General, 100 N. Carson Street, Carson City, NV

On November 14, 2013, the Administrator of the Nevada State Library and Archives, in a collaborative effort with the Attorney General’s Office, issued a Notice of Intent to Act Upon a Regulation.

A workshop was held by NSLA, in the hearing rooms of the Nevada Gaming Control Board in Carson City and Las Vegas, to review the regulations pursuant to NAC 348A.280 on December 6, 2013. The minutes of that Workshop, attached hereto, contain a summary of the discussion held regarding the proposed regulation. Mr. Barry Smith representing the Nevada Press Association testified at this Workshop.

A public hearing was held on December 16, 2013. All public comments from the Workshop were presented and discussed and the proposed amendments were incorporated, based on the suggestions of the parties attending the December 6, 2013 Workshop. Mr. Barry Smith representing the Nevada Press Association and Ms Ande Engleman, Independent Consultant, testified at this Hearing. The minutes of that Hearing, attached hereto, contain a summary of the discussion held regarding the proposed regulation.

A summary of the public response to the proposed regulation is attached hereto. Additional copies of the summary and copies of the proposed regulations may be obtained from the Nevada State Library and Archives, Records Management program at 100 N. Stewart St., Carson City, NV 89701, 775-684-3411, records@admin.nv.gov.

**3. The number persons who:**

- (a) Attended Workshop: December 6, 2013: 8
- (b) Testified at Workshop: December 6, 2013: 1
- (c) Submitted to the agency written comments: 2
- (d) Attended Hearing: December 16, 2013: 10
- (e) Testified at Hearing: December 16, 2013: 2

**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:**

- (a) Name;**
- (b) Telephone number;**
- (c) Business address;**
- (d) Business telephone number;**
- (e) Electronic mail address; and**
- (f) Name of entity or organization represented.**

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

The State Library and Archives is not a regulatory agency with oversight over industries or small businesses, therefore comments were not solicited from the small business. Comments were solicited from affected businesses in the same manner as they were solicited from the public.

**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.**

The permanent regulation was adopted on January 6, 2013 and included some of the changes suggested at the workshop held on December 16, 2013. All comments of the proposed regulation were thoughtfully considered by the Administrator and representatives from the Attorney General's office. Not all requests for changes were accepted by the Administrator. A summary of the comments is attached hereto.

**7. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:**

**(a) Both adverse and beneficial effects; and**

The State Library and Archives is not a regulatory agency with oversight over industries or small businesses. There is no economic effect on the agencies. There is no economic effect on the public.



**(b) Both immediate and long-term effects.**

The State Library and Archives is not a regulatory agency with oversight over industries or small businesses. There is no immediate or long-term economic effect on the public.

**8. The estimated cost to the agency for enforcement of the adopted regulation.**

There are no estimated costs to the State Library and Archives for enforcement of the proposed regulation amendments. All impacts can be absorbed within existing staff and resources.

**8. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, identify the name of the regulating federal agency.**

The proposed regulation is not required pursuant to any federal law; the proposed regulation does not overlap that of any other state, local, or federal government agency.

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

N/A

**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 included in this regulation.

**12. Is the proposed regulation is likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business? What methods did the agency use in determining the impact of the regulation on a small business?**

The State Library and Archives is not a regulatory agency with oversight over industries or small businesses. The proposed regulation only applies to activity by state government officials and imposes no direct requirements on any private businesses.

Attachment 1: Minutes of Workshop, December 6, 2013

Attachment 2: Workshop sign-in sheet

Attachment 3: Minutes of Hearing, December 16, 2013

Attachment 4: Hearing sign-in sheet

Attachment 5: Comments summary

(Attachments available at the State Library and Archives)