

**PROPOSED REGULATION OF THE
STATE LIBRARY AND ARCHIVES ADMINISTRATOR**

LCB File No. R107-13

Authority

NRS 239.010¹ The Legislature directed the State Library and Archives Administrator, in cooperation with the Attorney General, to prescribe: (1) the form for requesting to inspect a copy of a public book or record of such an agency; (2) the form to be used by such an agency to respond to such a request; and (3) the procedures with which a records official is required to comply in carrying out his or her duties.

Chapter 239 of NAC is hereby amended by adding thereto a new section to read as follows:

Section 1 *Definitions*

Sec. 1.1 *“Actual cost” has the meaning ascribed to it in NRS 239.005(1).*

Sec. 1.2 *“Agency” means agency, bureau, board, commission, department, division or any other unit of the Executive Department of State Government except the Nevada System of Higher Education.*

Sec. 1.3 *“Division” means the Division of State Library and Archives of the Department of Administration.*

Sec. 1.4 *“Extraordinary use of personnel or resources” means if it takes longer than 30 minutes to format, retrieve, compile, and/or duplicate a request for a public record.*

Sec. 1.5 *“Readily Available” means records that are easily retrievable, regularly disseminated to the public and do not require additional review in order to determine whether they contain confidential information.*

¹ Nevada Assembly Bill 31, 77th Legislative Session, 2013

Sec. 1.6 *“Readily Available medium” means the file medium or format in which a document exists at the time of a request.*

Sec. 1.7 *“Records” has the meaning ascribed to it in NRS 239.080(4), with the exception of records prohibited from disclosure or specifically declared confidential by statute in NRS 239.010(1). This definition excludes nonrecords, as interpreted in NAC 239.705.*

Sec. 1.8 *“Records official” means the records officer assigned by the head of the agency responsible for managing agency records and for processing public records requests received by the agency. NAC 239.700.*

Sec. 2 *Procedures for Public Records Access*

Sec. 2.1 *Each public agency must appoint one or more records officials. The records official is a chief administrative officer or any other officer or employee of the agency who is responsible for the maintenance, care, and keeping of the agency’s records, regardless of whether the records are in his or her actual physical custody and control.*

Sec. 2.2 *Records officials shall be aware of all laws and regulations relating to records, confidential records, and recordkeeping requirements. The retention periods for records are established by the Committee to Approve Schedules for the Retention and Disposition of Official State Records, NRS 239.077. The schedules identify and describe an agency’s records and their retention periods. All public records must be accessible throughout their retention period. Records pertaining to pending or ongoing records requests must not be destroyed, damaged or altered until the request is complete.*

Sec. 2.3 *Each public agency must adopt procedures which conform to NRS Chapter 239 and to these requirements. The procedures must be publicly accessible on the agency's website. The procedures shall include:*

- (a) Principal office of the public agency and its regular office hours;*
- (b) Title and address of the record official;*
- (c) Fees charged for copies of public records;*
- (d) Procedures to be followed in requesting public records.*

Sec. 2.4 *Requests for public records are made to the agency's records official. The request is to be made in writing on a form that is publicly accessible on the agency's website. The form shall include:*

- (a) Date of the request;*
- (b) Requestor contact information: name, address, telephone number, fax number, email address;*
- (c) Title and/or description, with sufficient information to identify the record;*
- (d) Request type: in-person inspection or duplicate copies;*
- (e) Duplicate copy medium: paper, electronic copy, certified copy;*
- (f) Duplicate copy delivery method: pick up, mail, express mail, fax, email;*
- (g) Statement of understanding: I understand there may be a charge for copies of public records. I understand I will receive a written estimate for production of the records indicated above if the estimated actual cost is expected to be over \$25.00, which I will be required to pay in full prior to inspection or reproduction.;*

(h) Disclaimer: A request for public records need not be made on this form and may be made verbally, as long as the request is not extraordinary and otherwise readily identifiable as a request for public records.

Sec. 2.5 An agency often receives repeated requests for specific records. It is advisable to compile a list of frequently requested, readily available records and make it available on a website maintained by the agency.

Sec. 2.6 Agencies must provide records in the medium in which they are requested, if the agency has the capacity to do so. The records may be certified or noncertified, at the option of the person making the request. An agency is only required to provide records that already exist. There is no obligation for the agency to create a record upon request.

Sec. 2.7 Within five (5) business days after receiving a request, the agency must respond to the requestor by doing one or more of the following:

- (a) Provide the record(s);*
- (b) Reply that no responsive records exist;*
- (c) Reply that the agency is not the legal custodian of the records requested and refer the name and contact of the appropriate governmental entity, if known;*
- (d) Acknowledge the request and ask for additional clarification(s);*
- (e) Acknowledge the request and provide a reasonable estimate of how long it will take to fully respond; or*
- (f) Deny the request in writing, with reasons for the denial. This may include a denial of part of a request and production of the remainder. The agency must explain specific exemption or other law it relies upon for denial.*

Sec. 2.8 The Public Records Officer will respond in writing to all public records requests that are not fulfilled within five (5) business days. The response will include one or more of the following:

- (a) A statement that the agency is not in the possession of or the custodian of record, and, if known, the contact information to access the records;*
- (b) A request for more information or clarification before the agency can make an appropriate response;*
- (c) A list of the records the records officer's has determined are in the possession of the agency and which are responsive to the request, along with:
 - 1. An estimate of the volume,*
 - 2. An estimate of the date records will be available for viewing (if only viewing is requested) or an estimated date the records will be copied and mailed,*
 - 3. An estimate of the actual cost fees, for fees exceeding \$25.00,*
 - 4. An estimate of the postage costs, if applicable;**
- (d) A description of any records which the agency has determined is exempt from production and an explanation of the exemption.*

Sec. 2.9 Inspections of records shall take place in an agency office. The agency shall provide space for inspection, to the extent that it does not cause excessive interference with other essential agency functions or unreasonably disrupt agency operations. The inspection must take place during regular business hours and an agency employee must observe all inspections. The requestor may not remove a document from the viewing area or disassemble or alter any document. The requestor may indicate which records he or she wishes to have the

agency copy. If the records contain confidential information, the agency must redact, conceal or remove the confidential information prior to inspection

Sec. 2.10 Charges for copies shall be made in accordance with NRS 239.0107 and NRS 239.052 to NRS 239.056. The agency may require a deposit of up to one hundred percent of the estimated costs of duplicating all the records. Postage costs shall be charged, if duplicate copies are mailed. Payment is expected prior to releasing or prior to reproduction of the public record.

Sec. 2.11 If extraordinary use of personnel or technological resources is required to fulfill an inspection or copy request, the agency may charge and recover the actual cost, in accordance with NRS 239.055. The agency may not deny a request solely because the request is extraordinary. The agency may provide access in installments, if the records official reasonably determines that it would be practical to provide the records in this way.

Sec. 2.12 If an agency deems a record is confidential and thus exempt from disclosure, as exempted in NRS 239.010(1), or any part of a record exempt from disclosure, in accordance with NRS 239.010(3), the records official shall provide to the requestor a written response identifying the record or portion of the record to be withheld. A denial must detail the specific basis for withholding the requested materials. The denial must include a citation to one of the statutory exemptions upon which the records custodian relies, and must explain why the exemption applies. If only portions of a record are exempt from disclosure, the records official shall redact the confidential portions and provide the non-confidential portions.

Sec. 2.13 If within thirty days after notification that records are available for inspection or copying the requestor fails to inspect or retrieve the entire set of records or one or more of the

installments, as applicable, the records official shall close the request. The requestor shall be notified in writing of this action.