

**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/.*