

ASSEMBLY BILL NO. 102—COMMITTEE ON GOVERNMENT AFFAIRS

FEBRUARY 4, 1999

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing public access to public records of governmental entities. (BDR 19-11)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: Yes.

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

AN ACT relating to public records; revising provisions governing public access to the public records of governmental entities; requiring a governmental entity to make available certain information pertaining to its employees; requiring a governmental entity to ensure that the purchase of certain equipment will not impair or impede the ability of the entity to make public records available; and providing other matters properly relating thereto.

- 1 WHEREAS, As the state and federal constitutions recognize and
2 guarantee, all political power is inherent in the people; and
3 WHEREAS, The authority of public officers, employees and agents to
4 receive or record information in the course of their duties or to delegate to
5 others the receipt or recordation of information arises exclusively from the
6 authority of the people, and the right to be informed regarding the receipt,
7 recordation, management and use of all such information belongs to the
8 people; and
9 WHEREAS, It is the public policy of this state that the people are entitled
10 to know and be informed fully about the conduct and activities of their
11 government, although that entitlement does not authorize every person to
12 have access to every record that the government may obtain or to which
13 the government has access; and
14 WHEREAS, The purpose of this act is to ensure and facilitate the right of
15 the people to have access to information concerning the conduct and
16 activities of their government, while simultaneously protecting other
17 interests of the general public, including, without limitation, the protection
18 of personal and other private interests; and

1 WHEREAS, Such access is necessary to enable the people to understand
2 their government, monitor their government to ensure that it is being
3 conducted in the public interest and make informed judgments about the
4 manner in which to exercise their political power; now, therefore,

5
6 THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
7 SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:
8

9 **Section 1.** The legislature hereby finds and declares:

10 1. Ensuring access to information regarding the government is a matter
11 of statewide concern and significantly affects the health, safety and welfare
12 of the people. Accordingly, this act must be construed liberally to require
13 public access to information concerning the conduct and activities of the
14 government of this state.

15 2. The provisions of this act must not be construed to:

16 (a) Repeal an exemption from public disclosure currently granted by a
17 state statute or regulation.

18 (b) Prohibit a law enforcement agency or an auditor employed by a
19 governmental entity from inspecting records during the course of an
20 authorized investigation or audit.

21 (c) Interfere with the normal course of discovery in a legal action or to
22 designate as confidential any record before a court of this state that is not
23 otherwise designated as confidential.

24 **Sec. 2.** Chapter 239 of NRS is hereby amended by adding thereto the
25 provisions set forth as sections 3 to 16, inclusive, of this act.

26 **Sec. 3.** *“Actual cost” means the direct cost related to the*
27 *reproduction of a public record. The term does not include a cost that a*
28 *governmental entity incurs regardless of whether or not a person*
29 *requests a copy of a particular public record.*

30 **Sec. 4.** *“Committee” means the committee to approve schedules for*
31 *the retention and disposition of official state records created pursuant to*
32 *NRS 239.073.*

33 **Sec. 5.** *“Division” means the division of state library and archives of*
34 *the department of museums, library and arts.*

35 **Sec. 6.** *“Governmental entity” means:*

36 1. *An elected or appointed officer of this state or of a political*
37 *subdivision of this state;*

38 2. *An institution, board, commission, bureau, council, department,*
39 *division, authority or other unit of government of this state or of a*
40 *political subdivision of this state;*

41 3. *A university foundation, as defined in NRS 396.405; or*

42 4. *An educational foundation, as defined in NRS 388.750, to the*
43 *extent that the foundation is dedicated to the assistance of public schools.*

1 **Sec. 7. “Information service” has the meaning ascribed to it in NRS**
2 **242.055.**

3 **Sec. 8. “Information system” means any communication network or**
4 **computer hardware, computer software, procedures, personnel,**
5 **technology or data used to collect, process, distribute or store the**
6 **information of a governmental entity.**

7 **Sec. 9. “Initial crime report” means a written or recorded report**
8 **prepared by a peace officer which describes the elements of a crime as**
9 **the elements occurred and which is prepared in response to:**

10 **1. A complaint that alleges a violation of law; or**

11 **2. The discovery of an incident or offense that constitutes an**
12 **apparent violation of law.**

13 **The term does not include a follow-up or investigative report that is**
14 **prepared after the initial crime report.**

15 **Sec. 10. “Peace officer” has the meaning ascribed to it in NRS**
16 **289.010.**

17 **Sec. 11. 1. “Public record” means a record that is prepared, used,**
18 **received, retained or maintained by a governmental entity in connection**
19 **with the:**

20 **(a) Transaction of public business;**

21 **(b) Expenditure of public money; or**

22 **(c) Administration of public property, as that term is defined in NRS**
23 **528.096,**

24 **regardless of its physical form or characteristics, including, without**
25 **limitation, a book, letter, document, paper, final budget, proposed budget**
26 **and supporting information as submitted by the originating**
27 **governmental entity for approval or adoption, roster, map, plan,**
28 **photograph, film, card, tape, recording, electronic data or electronic**
29 **communications.**

30 **2. Except as otherwise provided by specific statute or regulation,**
31 **“public record” includes, without limitation:**

32 **(a) A report of arrest prepared by a peace officer.**

33 **(b) The contents of an initial crime report prepared by a peace officer,**
34 **including, without limitation:**

35 **(1) The date, time, location and nature of the complaint, incident or**
36 **offense;**

37 **(2) The name of the victim, unless a specific statute requires that**
38 **the name of the victim be kept confidential;**

39 **(3) The general nature or scope of the initial actions taken in**
40 **response to the complaint, incident or offense by the peace officer or the**
41 **law enforcement agency that employs him;**

1 (4) A description of the general nature of any injury or an
2 assessment of any damage sustained in the incident or as a result of the
3 offense;

4 (5) The name, address and any other information that identifies a
5 person arrested or charged in connection with the complaint, incident or
6 offense; and

7 (6) The identity of the peace officer who initially responded to the
8 complaint, incident or offense, unless the peace officer is working as an
9 undercover officer or agent.

10 (c) The contents of a “911” or other emergency telephone call
11 received by or on behalf of a law enforcement agency.

12 (d) A report pertaining to an accident involving a motor vehicle.

13 3. “Public record” does not include:

14 (a) A temporary or preliminary draft, note or memorandum that is not
15 retained by a governmental entity in the ordinary course of business,
16 unless the governmental entity uses the draft, note or memorandum as
17 the basis of a final decision.

18 (b) A record that is legally owned by an officer, employee or agent of
19 a governmental entity in his private capacity.

20 (c) A record relating to an audit conducted by a governmental entity,
21 except a final audit report.

22 (d) Proprietary computer software, including, without limitation, a
23 program or system that is developed by or for the use of a governmental
24 entity.

25 (e) Mail or publications received by a governmental entity that consist
26 solely of advertisements.

27 (f) A record that contains employment information regarding a peace
28 officer, to the extent that disclosure would impair the effectiveness of an
29 investigation or endanger a person.

30 (g) Books, publications and other records that are:

31 (1) Cataloged, indexed or inventoried; and

32 (2) Included in the collection of a public library or museum.

33 (h) Property acquired by a library or museum for exhibition.

34 (i) Artifacts and nondocumentary tangible property.

35 (j) Except as otherwise provided in section 12 of this act, a record
36 retained in the personnel file of an employee of a governmental entity.

37 **Sec. 12. 1.** Except as otherwise provided in paragraph (f) of
38 subsection 3 of section 11 of this act and this section, a governmental
39 entity shall make the following information regarding each employee of
40 a governmental entity available for public inspection:

41 (a) The name of the employee;

1 **(b) The gross compensation and perquisites paid by the governmental**
2 **entity to the employee, except any compensation that has been**
3 **reimbursed by a private person or entity;**

4 **(c) The title of the position held by the employee;**

5 **(d) A description of the position held by the employee;**

6 **(e) The qualifications established by the governmental entity for the**
7 **position held by the employee;**

8 **(f) The address and telephone number of the employee's place of**
9 **employment, unless the place of employment is a fire station;**

10 **(g) The number of hours that the employee is scheduled to work in**
11 **each pay period or, if this information is not readily available, an**
12 **indication of whether the employee works full time or part time;**

13 **(h) The date on which the employee began his employment with the**
14 **governmental entity, unless that date is used as a security code for access**
15 **to computerized records; and**

16 **(i) The date, if applicable, on which the employment of the employee**
17 **was terminated.**

18 **2. A governmental entity must comply with the provisions of this**
19 **section either by providing the information set forth in subsection 1 upon**
20 **request or by establishing and maintaining a roster that contains the**
21 **information.**

22 **Sec. 13. A governmental entity shall not contract for or take delivery**
23 **of an information system or information technology that is designed for**
24 **the storage, manipulation or retrieval of public records, unless the**
25 **governmental entity determines that the information system or**
26 **information technology will not impair or impede its duty pursuant to**
27 **subsection 1 of NRS 239.010 to make a public record available to a**
28 **person to inspect, copy or prepare an abstract therefrom. This section**
29 **must not be construed to require a governmental entity to retain obsolete**
30 **hardware or software.**

31 **Sec. 14. Each governmental entity shall create an index listing all**
32 **electronic data bases that it compiles or creates. The governmental entity**
33 **shall, upon request, make the index available to a person to inspect.**

34 **Sec. 15. Except as otherwise provided in NRS 440.650 and 481.063,**
35 **an officer, employee or agent of a governmental entity who has custody**
36 **of a public record may question a person who requests to inspect, copy or**
37 **prepare an abstract from the public record only to the extent necessary to**
38 **clarify the request or determine the appropriate fees.**

39 **Sec. 16. 1. An officer, employee or agent of a governmental entity**
40 **shall not:**

41 **(a) Deny a person the right to inspect, copy or prepare an abstract**
42 **from a public record; or**

43 **(b) Deny a request for a copy of a public record,**

1 *because the public record contains information that must not be made*
2 *available pursuant to subsection 2 of NRS 239.010.*

3 2. *If a person requests to inspect, copy or prepare an abstract from a*
4 *public record that contains information which must not be made*
5 *available pursuant to subsection 2 of NRS 239.010, an officer, employee*
6 *or agent of the governmental entity shall delete, redact or separate the*
7 *information that must not be made available and shall allow the person*
8 *who requested the public record to inspect, copy or prepare an abstract of*
9 *the information that must be made available.*

10 3. *An officer, employee or agent of a governmental entity shall not*
11 *deliberately include in a public record information that must not be made*
12 *available pursuant to subsection 2 of NRS 239.010 to make inspection of,*
13 *copying or preparation of an abstract from a public record or*
14 *information contained in a public record more difficult.*

15 **Sec. 17.** NRS 239.005 is hereby amended to read as follows:

16 239.005 As used in this chapter, unless the context otherwise requires

17 ~~it:~~

18 ~~—1. “Actual cost” means the direct cost related to the reproduction of a~~
19 ~~public record. The term does not include a cost that a governmental entity~~
20 ~~incurs regardless of whether or not a person requests a copy of a particular~~
21 ~~public record.~~

22 ~~—2. “Committee” means the committee to approve schedules for the~~
23 ~~retention and disposition of official state records.~~

24 ~~—3. “Division” means the division of state library and archives of the~~
25 ~~department of museums, library and arts.~~

26 ~~—4. “Governmental entity” means:~~

27 ~~—(a) An elected or appointed officer of this state or of a political~~
28 ~~subdivision of this state;~~

29 ~~—(b) An institution, board, commission, bureau, council, department,~~
30 ~~division, authority or other unit of government of this state or of a political~~
31 ~~subdivision of this state;~~

32 ~~—(c) A university foundation, as defined in NRS 396.405; or~~

33 ~~—(d) An educational foundation, as defined in NRS 388.750, to the extent~~
34 ~~that the foundation is dedicated to the assistance of public schools.], the~~

35 *words and terms defined in sections 3 to 11, inclusive, of this act have the*
36 *meanings ascribed to them in those sections.*

37 **Sec. 18.** NRS 239.010 is hereby amended to read as follows:

38 239.010 1. ~~[All public books and]~~ *Except as otherwise provided in*
39 *subsection 2 and section 16 of this act, the* public records of a

40 governmental entity ~~[, the contents of which are not otherwise declared by~~
41 ~~law to be confidential,]~~ must be open at all times during office hours to

42 inspection by any person ~~[,]~~ and may be fully copied, or an abstract ~~for~~

43 ~~memorandum]~~ may be prepared from those public ~~[books—and—public]~~

1 records. Any such copies ~~[, abstracts or memoranda]~~ or **abstracts** may be
2 used to supply the general public with copies ~~[, abstracts or memoranda]~~ or
3 **abstracts** of the records or may be used in any other way to the advantage
4 of the governmental entity or of the general public. This section does not
5 supersede or in any manner affect the federal laws governing copyrights or
6 enlarge, diminish or affect in any other manner the rights of a person in
7 any written book or record which is copyrighted pursuant to federal law.

8 2. ~~[A governmental entity may not reject a book or record which is~~
9 ~~copyrighted solely because it is copyrighted.] Except as otherwise~~
10 ~~provided in section 16 of this act, a public record must not be made~~
11 ~~available for a person to inspect, copy or prepare an abstract therefrom~~
12 ~~if:~~

13 (a) ~~Access to the record is restricted or the record is declared to be~~
14 ~~confidential:~~

- 15 (1) ~~By a specific federal statute or regulation;~~
16 (2) ~~By a specific statute of this state or a regulation authorized~~
17 ~~specifically by a statute of this state to declare such a restriction;~~
18 (3) ~~As a condition of participation in a state or federal program;~~
19 (4) ~~As a condition of receiving state or federal money; or~~
20 (5) ~~Pursuant to the provisions of a contract.~~

21 (b) ~~It contains information regarding a person's medical, psychiatric~~
22 ~~or psychological history, diagnosis, condition, treatment, evaluation or~~
23 ~~similar data, unless the disclosure is in a form that does not associate the~~
24 ~~information with a particular person.~~

25 (c) ~~Disclosure would jeopardize:~~

- 26 (1) ~~The physical security of a correctional facility, detention facility,~~
27 ~~juvenile facility or other governmental facility or property;~~
28 (2) ~~The safety of employees of the governmental entity; or~~
29 (3) ~~A current or future plan or tactical operation of a law~~
30 ~~enforcement agency.~~

31 (d) ~~It would reveal information compiled by a governmental entity to~~
32 ~~prevent or prosecute violations of the law, including, without limitation,~~
33 ~~information derived from witnesses, laboratory tests, surveillance,~~
34 ~~investigators, confidential informants, photographs and measurements,~~
35 ~~and:~~

- 36 (1) ~~The release of the information would:~~
37 (I) ~~Interfere with the ability to prosecute a defendant or the right~~
38 ~~of a defendant to receive a fair trial;~~
39 (II) ~~Jeopardize an investigation that has not been closed; or~~
40 (III) ~~Discourage the reporting of illegal governmental action or~~
41 ~~discourage cooperation in a related investigation regarding the action of~~
42 ~~a governmental entity or an employee of the governmental entity.~~

(2) The information concerns an investigation of an employee of the governmental entity.

(e) Except as otherwise provided in this paragraph, it contains information concerning the appraisal of real property that a governmental entity may acquire, unless the property has already been acquired. An administrator or negotiator of a governmental entity may disclose information relating to a current appraisal of real property only to another party with whom the administrator or negotiator is negotiating.

(f) *It is a record:*

(1) Prepared by or on behalf of a governmental entity in connection with existing or anticipated litigation that is not available under the rules of discovery;

(2) *Disclosing an attorney's work product, including, without limitation, mental impressions or legal theories of an attorney or other representatives of a governmental entity concerning litigation;*

(3) Concerning the strategy of a governmental entity relating to collective bargaining or pending litigation;

(4) *Revealing the contents of settlement negotiations before the settlement is final;*

(5) Revealing communication between a governmental entity and an attorney representing, retained or employed by the governmental entity, if the communication is privileged; or

(6) Revealing communication between or among attorneys or their support staff regarding their representation of a governmental entity, if the communication is privileged.

(g) It is material that a natural person donated to a library, archive or museum and, as a condition of the donation, the donor requested that his name or the material remain confidential for a specified period which has not expired. If the donor and the custodian of the material did not agree upon a period of nondisclosure, the material must not be made available pursuant to subsection 1 until after the death of the donor or until 30 years have expired since the library, archive or museum received the material, whichever is later.

(h) It would reveal the identity of a person who donated a gift to a governmental entity, if the person has declared an intent to remain anonymous.

(i) It contains questions or answers used in, or preparatory information relating to, an academic examination or an examination to determine fitness for licensure, certification or employment and:

(1) Disclosure would compromise the security, fairness or objectivity of the examination; or

1 (2) A contract governing the use of the examination requires that
2 the questions or answers remain confidential.

3 (j) It contains administrative or technical information, including,
4 without limitation, information that is contained in computer systems or
5 programs and operating procedures or manuals, the disclosure of which
6 would jeopardize the security of a recordkeeping system.

7 (k) It is information that:

8 (1) Is in the custody of a governmental entity that performs an
9 information service, microfilming or similar services; and

10 (2) Is the property of another governmental entity that is using
11 those services.

12 (l) It concerns:

13 (1) The eligibility of a person to receive benefits; or

14 (2) The level of benefits that a person is eligible to receive,
15 from a governmental entity, including, without limitation, unemployment
16 insurance, welfare assistance or other social services.

17 (m) It contains information related to the identity of a confidential
18 informant or a person participating in a program for the protection of
19 witnesses.

20 (n) It contains information related to an investigation of alleged
21 sexual harassment, regardless of whether the investigation is pending or
22 has been closed.

23 (o) It contains trade secrets or other confidential or proprietary
24 information of a governmental entity, the disclosure of which would
25 cause commercial or financial injury to the governmental entity or would
26 interfere with a commercial or financial transaction planned by the
27 governmental entity.

28 (p) Except as otherwise provided in NRS 378.290, it is correspondence
29 sent to or received by the governor or employees of his office in the
30 performance of governmental duties during the governor's term of
31 office, unless the governor determines that the release of the
32 correspondence is necessary for the performance of his duties.

33 (q) It is an application for utility service or a record related to the
34 provision of or payment for such service that is retained by a
35 governmental entity that provides utility service to members of the
36 general public.

37 3. A person may request a copy of a public record in any medium in
38 which the public record is readily available. An officer, employee or agent
39 of a governmental entity who has custody of a public record shall not
40 refuse to provide a copy of that public record in a readily available
41 medium because he has already prepared or would prefer to provide the
42 copy in a different medium.

1 ~~[4.—As used in this section:~~

2 ~~—(a) “Educational foundation” has the meaning ascribed to it in~~
3 ~~subsection 3 of NRS 388.750.~~

4 ~~—(b) “University foundation” has the meaning ascribed to it in subsection~~
5 ~~3 of NRS 396.405.]~~

6 **Sec. 19.** NRS 239.011 is hereby amended to read as follows:

7 239.011 If a request ~~{for inspection or copying of a public book or~~
8 ~~record open to inspection and copying}~~ **to inspect, copy or prepare an**
9 **abstract from a public record** is denied, the requester may apply to the
10 district court in the county in which the ~~{book or}~~ **public** record is located
11 for an order ~~{permitting}~~ **allowing** him to inspect, ~~{or}~~ **copy or prepare an**
12 **abstract from** it. The court shall give this matter priority over other civil
13 matters to which priority is not given by other statutes. If the requester
14 prevails, he is entitled to recover his costs and reasonable attorney’s fees in
15 the proceeding from the **governmental entity** whose officer, **employee or**
16 **agent** has custody of the ~~{book or}~~ **public** record.

17 **Sec. 20.** NRS 239.012 is hereby amended to read as follows:

18 239.012 A public officer, ~~{or}~~ **employee or agent** who acts in good
19 faith in disclosing or refusing to disclose information and ~~{his employer}~~
20 **the governmental entity that employs him** are immune from liability for
21 damages, either to the requester or to the person whom the information
22 concerns.

23 **Sec. 21.** NRS 239.013 is hereby amended to read as follows:

24 239.013 Any records of a public library or other library which contain
25 the identity of a user and the books, documents, films, recordings or other
26 property of the library which he used are confidential and not public
27 ~~{books or records within the meaning of NRS 239.010.}~~ **records.** Such
28 records may be disclosed only in response to an order issued by a court
29 upon a finding that the disclosure of such records is necessary to protect
30 the public safety or to prosecute a crime.

31 **Sec. 22.** NRS 239.030 is hereby amended to read as follows:

32 239.030 ~~{Every officer having}~~ **Except as otherwise provided in**
33 **subsection 2 of NRS 239.010 and section 16 of this act, an officer,**
34 **employee or agent of a governmental entity who has** custody of public
35 records, the contents of which are not declared by law to be confidential,
36 shall furnish copies certified to be correct to any person who requests them
37 and pays or tenders such fees as may be prescribed for the service of
38 copying and certifying.

39 **Sec. 23.** NRS 239.055 is hereby amended to read as follows:

40 239.055 1. Except as otherwise provided in NRS 239.054 regarding
41 information provided from a geographic information system, if a request
42 ~~{for a}~~ **to inspect, copy or prepare an abstract** of a public record,
43 **including, without limitation, a public record that contains information**

1 *which must be deleted, redacted or separated pursuant to section 16 of*
2 *this act*, would require a governmental entity to make extraordinary use of
3 its personnel or technological resources, the governmental entity may, in
4 addition to any other fee authorized pursuant to this chapter, charge a fee
5 for such extraordinary use. Upon receiving such a request, the
6 governmental entity shall inform the requester of the amount of the fee
7 before preparing the requested information. The fee charged by the
8 governmental entity must be reasonable and must be based on the *actual*
9 cost that the governmental entity ~~actually~~ incurs for the extraordinary use
10 of its personnel or technological resources. The governmental entity shall
11 not charge such a fee if the governmental entity is not required to make
12 extraordinary use of its personnel or technological resources to fulfill
13 additional requests for the same information.

14 2. As used in this section, “technological resources” means any
15 information, information system or information service acquired,
16 developed, operated, maintained or otherwise used by a governmental
17 entity.

18 **Sec. 24.** NRS 532.150 is hereby amended to read as follows:

19 532.150 1. ~~The~~ *Except as otherwise provided in subsection 4, the*
20 records of the office of the state engineer are public records and ~~shall~~
21 *must* remain on file in his office and be open to the inspection of the public
22 at all times during business hours.

23 2. Such records ~~shall~~ *must* show in full all maps, profiles and
24 engineering data relating to the use of water.

25 3. Certified copies thereof ~~shall~~ *must* be admissible as evidence in all
26 cases where the original would be admissible as evidence.

27 *4. A draft of a ruling in a contested matter before the state engineer*
28 *is not a public record. A final ruling in such a matter is a public record*
29 *subject to the provisions of this section.*

30 **Sec. 25.** The provisions of section 13 of this act do not apply to any
31 contracts for an information system or information technology into which a
32 governmental entity has entered before October 1, 1999.

33 **Sec. 26.** 1. This section, sections 1 to 13, inclusive, and 15 to 25,
34 inclusive, of this act become effective on October 1, 1999.

35 2. Section 14 of this act becomes effective on July 1, 2000.