
ASSEMBLY BILL NO. 625—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF SHERIFFS AND CHIEFS ASSOCIATION)

MARCH 19, 1999

Referred to Committee on Government Affairs

SUMMARY—Makes various changes regarding public records. (BDR 19-544)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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

AN ACT relating to public records; requiring a governmental entity to make certain public records in its custody available to a person to inspect, copy or prepare an abstract or memorandum therefrom in certain circumstances; describing the types of public records that a person may not inspect or copy and from which a person may not prepare an abstract or memorandum; authorizing a governmental entity to charge certain fees before providing copies of certain public records; and providing other matters properly relating thereto.

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

- 1 **Section 1.** Chapter 239 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2 to 8, inclusive, of this act.
3 **Sec. 2.** *The legislature hereby finds and declares that the provisions*
4 *of this chapter:*
5 1. *Are intended to:*
6 (a) *Enhance governmental accountability through a general policy of*
7 *access to governmental records;*
8 (b) *Make governmental entities accountable to persons with respect to*
9 *the manner in which they collect, use and disseminate information*
10 *relating to those persons; and*
11 (c) *Protect personal privacy and related interests whenever the public*
12 *interest in disclosure of information set forth in a public record does not*
13 *outweigh those interests.*
14 2. *Are not intended to be used to:*

- 1 (a) *Infringe upon personal privacy;*
- 2 (b) *Further a commercial enterprise; or*
- 3 (c) *Disrupt the carrying out of the duties of a governmental entity,*
- 4 *except insofar as is necessary to promote the purposes set forth in*
- 5 *subsection 1.*

6 Sec. 3. "Actual cost" means the direct cost related to the
7 reproduction of a public record, including, without limitation, the cost
8 incurred by a governmental entity for its employees to search for and
9 retrieve records, and other direct administrative costs.

10 Sec. 4. "Committee" means the committee to approve schedules for
11 the retention and disposition of official state records created pursuant to
12 NRS 239.073.

13 Sec. 5. "Division" means the division of state library and archives of
14 the department of museums, library and arts.

15 Sec. 6. "Governmental entity" means:

16 1. An elected or appointed officer of this state or of a political
17 subdivision of this state;

18 2. An institution, board, commission, bureau, council, department,
19 division, authority or other unit of government of this state or of a
20 political subdivision of this state;

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

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

24 Sec. 7. 1. "Public record" means a record of a governmental entity
25 that is:

26 (a) Made, received or kept in the performance of a duty and paid for
27 with public money; and

28 (b) In written, aural, visual, electronic or other physical form.

29 2. The term does not include:

30 (a) A temporary or preliminary draft, note or memorandum that is not
31 retained by a governmental entity in its normal course of business.

32 (b) Materials that are legally owned by an officer, employee or agent
33 of a governmental entity in his private capacity.

34 (c) Materials to which access is limited by the laws of copyright or
35 patent, unless the copyright or patent is owned by a governmental entity.

36 (d) Circulars or other commercial publications consisting solely of
37 advertisements that are received by a governmental entity or an officer,
38 employee or agent of a governmental entity.

39 (e) Proprietary computer software, including, without limitation, a
40 program or system that is developed or purchased by or for the use of a
41 governmental entity.

42 (f) Books, publications and other records that are cataloged, indexed
43 or inventoried and included in the collection of a library.

1 (g) Information that is prepared by an officer, employee or agent of a
2 governmental entity for his personal use or the personal use of his
3 employer, including, without limitation, calendars, notes and notebooks
4 containing schedules.

5 (h) Electronic communications, including, without limitation:

6 (1) Electronic mail, as that term is defined in NRS 41.715;

7 (2) A radio communication that has been encoded to prevent a
8 person who is not a party to the communication from listening to the
9 communication;

10 (3) Information sent to an electronic device that is designed to page,
11 contact or provide a message to a person; and

12 (4) Information sent or received by a computer or other device for
13 sending or receiving data that is installed in a motor vehicle.

14 **Sec. 8. 1.** An officer, employee or agent of a governmental entity
15 shall not:

16 (a) Deny a person the right to inspect, copy or prepare an abstract or
17 memorandum from a public record; or

18 (b) Deny a request for copies of a public record,
19 because the public record contains information that must not be made
20 available pursuant to subsection 2 of NRS 239.010.

21 2. If a person requests to inspect, copy or prepare an abstract or
22 memorandum from a public record that contains information which
23 must not be made available pursuant to subsection 2 of NRS 239.010, an
24 officer, employee or agent of the governmental entity shall delete, redact
25 or separate the information that must not be made available and shall
26 allow the person who requested the public record to inspect, copy or
27 prepare an abstract or memorandum of the information that must be
28 made available.

29 3. An officer, employee or agent of a governmental entity shall not
30 deliberately include in a public record information that must not be made
31 available pursuant to subsection 2 of NRS 239.010 to make inspection of,
32 copying or preparation of an abstract or memorandum from a public
33 record or information contained in a public record more difficult.

34 **Sec. 9.** NRS 239.005 is hereby amended to read as follows:

35 239.005 As used in this chapter, unless the context otherwise requires

36 ~~1:~~

37 ~~1. "Actual cost" means the direct cost related to the reproduction of a~~
38 ~~public record. The term does not include a cost that a governmental entity~~
39 ~~incurs regardless of whether or not a person requests a copy of a particular~~
40 ~~public record.~~

41 ~~2. "Committee" means the committee to approve schedules for the~~
42 ~~retention and disposition of official state records.~~

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

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

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

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

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

10 ~~—(d) An educational foundation, as defined in NRS 388.750, to the extent~~
11 ~~that the foundation is dedicated to the assistance of public schools.], the~~
12 ~~words and terms defined in sections 3 to 7, inclusive, of this act have the~~
13 ~~meanings ascribed to them in those sections.~~

14 **Sec. 10.** NRS 239.010 is hereby amended to read as follows:

15 239.010 1. ~~[All public books and]~~ *Except as otherwise provided in*
16 *subsection 2,* public records of a governmental entity ~~[, the contents of~~
17 ~~which are not otherwise declared by law to be confidential,]~~ must be open
18 at all times during office hours to inspection by any person, and may be
19 fully copied or an abstract or memorandum may be prepared from those
20 public ~~[books and public]~~ records. Any such copies, abstracts or
21 memoranda may be used to supply the general public with copies, abstracts
22 or memoranda of the records or may be used in any other way to the
23 advantage of the governmental entity or of the general public. This section
24 does not supersede or in any manner affect the federal laws governing
25 copyrights or enlarge, diminish or affect in any other manner the rights of a
26 person in any written book or record which is copyrighted pursuant to
27 federal law.

28 2. *Except as otherwise provided in subsection 3 and section 8 of this*
29 *act, a person may not inspect, copy or prepare an abstract or*
30 *memorandum from a public record if:*

31 *(a) Access to the record is restricted or the record is declared to be*
32 *confidential by a specific:*

33 *(1) Federal statute or regulation;*

34 *(2) Statute of this state or a regulation authorized by a statute of*
35 *this state; or*

36 *(3) Rule of evidence.*

37 *(b) The record contains personal information that a governmental*
38 *entity maintains regarding a person, the disclosure of which would*
39 *constitute a clearly unwarranted invasion of personal privacy. As used in*
40 *this paragraph, “personal information” does not include a person’s*
41 *name, salary range, title or dates of employment or any other*
42 *information regarding a person the disclosure of which the person has*
43 *consented to in writing.*

1 (c) The record contains information regarding the identity of a person
2 who conducts or is involved in an undercover investigation on behalf of
3 an administrative or law enforcement agency.

4 (d) Disclosure would jeopardize the security or safety of a correctional
5 facility, including, without limitation, a jail or facility for the detention of
6 juveniles, or interfere with the control and supervision of an offender
7 who is subject to incarceration, treatment, probation or parole.

8 (e) Disclosure would jeopardize the security of governmental property,
9 including, without limitation, a system for keeping records maintained by
10 a governmental entity, by making such property susceptible to damage,
11 theft, loss or misappropriation.

12 (f) The record contains information maintained by an administrative
13 or law enforcement agency, to the extent that the disclosure of such
14 information could reasonably be expected to:

15 (1) Interfere with proceedings for the enforcement of a statute or
16 regulation;

17 (2) Deprive a person of the right to a fair hearing or trial without
18 prejudgment;

19 (3) Reveal the identity of a confidential informant;

20 (4) With respect to a criminal investigation or prosecution, reveal
21 information provided by a confidential informant;

22 (5) Reveal procedures or techniques used to carry out a criminal
23 investigation or prosecution in a manner that would facilitate
24 circumvention of the law; or

25 (6) Endanger the life or physical safety of a person.

26 (g) The record is a photograph that depicts a peace officer or another
27 employee of a law enforcement agency, unless:

28 (1) The peace officer or employee has been arrested or is the subject
29 of an internal investigation that has resulted in the filing of a complaint
30 against the peace officer or employee; and

31 (2) Disclosure of the photograph could not reasonably be expected
32 to endanger the life or physical safety of the peace officer or employee.

33 (h) The record contains information regarding an investigation of a
34 child if that information would otherwise be confidential pursuant to
35 chapter 62 of NRS if maintained by a court.

36 (i) The record contains information regarding an academic
37 examination or an examination to determine fitness for licensure,
38 certification or employment if:

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

41 (2) A contract governing the use of the examination requires the
42 information to remain confidential.

43 (j) The record contains information regarding:

1 (1) A grievance filed by an employee against the governmental
2 entity that employs the employee; or

3 (2) Disciplinary action taken against an employee by the
4 governmental entity that employs the employee.

5 (k) The record contains information regarding collective bargaining
6 between a governmental entity and the employees of the governmental
7 entity or the representative of those employees. This paragraph does not
8 prohibit the disclosure of a final contract or collective bargaining
9 agreement.

10 (l) Disclosure would:

11 (1) Impair the ability of a governmental entity to procure goods or
12 services; or

13 (2) Give a person a competitive advantage over another person with
14 respect to:

15 (I) Bidding on a contract proposed to be let by a governmental
16 entity; or

17 (II) Entering into a contractual agreement with a governmental
18 entity.

19 (m) The record contains information, other than solely factual
20 information, communicated from one governmental entity to another
21 governmental entity or communicated within a governmental entity, but
22 only if:

23 (1) The information is communicated for purposes of making a
24 decision regarding an activity, duty or operation of the governmental
25 entity, department or division; and

26 (2) Disclosure of the information would substantially inhibit:

27 (I) The flow of information within a governmental entity; or

28 (II) The process of making decisions within a governmental
29 entity.

30 (n) The record is a record prepared by or for a program of insurance,
31 risk retention or self-insurance in anticipation of litigation or to analyze
32 or settle an actual or potential claim for money damages against a
33 governmental entity or an officer, employee or agent of the governmental
34 entity, including, without limitation:

35 (1) An evaluation of a claim;

36 (2) A record pertaining to the investigation of a claim;

37 (3) A report of losses that is computerized; and

38 (4) Information regarding a reserve of money that a governmental
39 entity has set aside to pay a claim.

40 Notwithstanding the provisions of this paragraph, if a claim described in
41 this paragraph is paid or settled, statistical data regarding the claim and
42 the amount of the claim paid are public records, unless that information
43 is ordered to be sealed by a court of competent jurisdiction.

1 (o) The record contains information prepared by or on behalf of a
2 governmental entity solely in anticipation of litigation.

3 (p) The record discloses an attorney's work product, including,
4 without limitation, mental impressions or legal theories of an attorney or
5 other representatives of a governmental entity concerning litigation.

6 (q) The record reveals communication between a governmental entity
7 and an attorney representing, retained or employed by the governmental
8 entity, if the communication would otherwise be privileged.

9 (r) The record is prepared to document a background investigation of
10 a person who is a candidate for employment with a law enforcement
11 agency.

12 (s) The record contains information not otherwise described in
13 paragraphs (a) to (r), inclusive, of this subsection, for which the
14 governmental entity that possesses the information can demonstrate that
15 the public interest served by not disclosing the information outweighs the
16 public interest served by disclosing the information.

17 3. Notwithstanding the provisions of subsection 2, a governmental
18 entity may voluntarily disclose information of the type described in that
19 subsection if the disclosure is not otherwise prohibited by another statute,
20 regulation or rule of law.

21 4. A governmental entity may not reject a book or record which is
22 copyrighted solely because it is copyrighted.

23 ~~[3.]~~ 5. A person may request a copy of a public record in any medium
24 in which ~~{the}~~ a governmental entity maintains the public record ~~{is~~
25 ~~readily available.}~~ in its normal course of business. An officer, employee
26 or agent of a governmental entity who has custody of a public record shall
27 not refuse to provide a copy of that public record in a ~~{readily available}~~
28 medium in which the governmental entity maintains the public record in
29 its normal course of business because he has already prepared or would
30 prefer to provide the copy in a different medium.

31 ~~[4.]~~ 6. A person may request a copy of a public record in a medium
32 other than that in which a governmental entity maintains the public
33 record in its normal course of business. The governmental entity may
34 fulfill such a request if:

35 (a) The governmental entity determines that fulfilling the request will
36 not interfere unreasonably with the duties and responsibilities of the
37 governmental entity; and

38 (b) The requester pays any additional fee imposed by the
39 governmental entity pursuant to NRS 239.055.

40 7. As used in this section ~~{~~:

41 ~~—(a) "Educational foundation" has the meaning ascribed to it in~~
42 ~~subsection 3 of NRS 388.750.~~

1 ~~—(b) “University foundation” has the meaning ascribed to it in subsection~~
2 ~~3 of NRS 396.405.]~~, *“confidential informant” means a person or an*
3 *agency of federal, state, local or foreign government who provides*
4 *information to a governmental entity under the condition that the*
5 *governmental entity will not reveal the identity of the person or agency.*

6 **Sec. 11.** NRS 239.013 is hereby amended to read as follows:

7 239.013 Any records of a public library or other library which contain
8 the identity of a user and the books, documents, films, recordings or other
9 property of the library which he used are confidential and not public
10 ~~{books or records within the meaning of NRS 239.010.}~~ *records.* Such
11 records may be disclosed only in response to an order issued by a court
12 upon a finding that the disclosure of such records is necessary to protect
13 the public safety or to prosecute a crime.

14 **Sec. 12.** NRS 239.055 is hereby amended to read as follows:

15 239.055 1. Except as otherwise provided in NRS 239.054 regarding
16 information provided from a geographic information system, if a ~~{request~~
17 ~~for}~~ *person requests* a copy of a public record ~~{would require a~~
18 ~~governmental entity to make extraordinary use of its personnel or~~
19 ~~technological resources.}~~ *in a medium other than that in which a*
20 *governmental entity maintains the public record in its normal course of*
21 *business,* the governmental entity may, in addition to any other fee
22 authorized pursuant to this chapter, charge *the requester* a fee ~~{for such~~
23 ~~extraordinary use.}~~ *which includes:*

24 *(a) The cost incurred by the governmental entity for its employees to*
25 *summarize, compile or tailor the record to the request;*

26 *(b) The cost incurred by the governmental entity for its employees to*
27 *search for and retrieve records necessary to fulfill the request;*

28 *(c) If the record is generated by computer, other than a word*
29 *processor:*

30 *(1) The actual, incremental cost of providing such electronic*
31 *services; and*

32 *(2) A reasonable portion of the costs associated with preparing the*
33 *information for use by a particular user; and*

34 *(d) Any other administrative costs directly attributable to the request.*

35 Upon receiving such a request, the governmental entity shall inform the
36 requester of the amount of the fee before preparing the requested
37 information. The fee charged by the governmental entity must be
38 reasonable and must be based on the cost that the governmental entity
39 actually incurs ~~{for the extraordinary use of its personnel or technological~~
40 ~~resources. The governmental entity shall not charge such a fee if the~~
41 ~~governmental entity is not required to make extraordinary use of its~~
42 ~~personnel or technological resources to fulfill additional requests for the~~
43 ~~same~~ *information.*

1 ~~—2.—As used in this section, “technological resources” means any~~
2 ~~information, information system or information service acquired,~~
3 ~~developed, operated, maintained or otherwise used by a governmental~~
4 ~~entity.] to make a copy of the record.~~

5 *2. A governmental entity may, before fulfilling a request pursuant to*
6 *subsection 1, approximate the cost that the governmental entity*
7 *reasonably expects to incur to fulfill the request and require the requester*
8 *to pay a deposit in that amount. If a governmental entity collects a*
9 *deposit pursuant to this subsection, the governmental entity shall, if the*
10 *amount of the deposit collected is:*

11 *(a) Less than the actual cost incurred by the governmental entity to*
12 *fulfill the request, collect the balance due from the requester; or*

13 *(b) More than the actual cost incurred by the governmental entity to*
14 *fulfill the request, refund the amount of the overpayment to the*
15 *requester.*

16 **Sec. 13.** This act becomes effective on July 1, 1999.